

CARE
PROCEEDINGS
BROCHURE



AN INTRODUCTION

The purpose of this guide is to summarise the law and procedures relating to Care Orders for those involved or about to be involved in care proceedings. It is an introduction to the law rather than detailed advice and it is advisable to seek legal advice from a Solicitor specialised in this area. Free Public funding (formerly Legal Aid) is available for all parents and children involved in care proceedings, and can be applied for by others people involved.

What is a Care Order?

A Care Order is an Order of the Court under Section 31 of the Children Act 1989. It allows the Local Authority to share Parental Responsibility for a Child and determine (after consultation) important issues affecting a child. This would include where a child should live and with whom.

A Local Authority cannot remove a child from a parent or anyone else with Parental Responsibility without their consent, (save by police protection- see below) unless they have an interim (temporary) or full (long term) Court Order. Parental Responsibility means all the rights, duties and responsibilities which by law a parent has in relation to a child.

Who Can Apply For a Care Order?

Only the Local Authority (Social Services) or the NSPCC can apply for Care Orders. In practice this is usually the Local Authority and this Guide will refer to the Local Authority as the Applicant.

Emergency Powers

Police Protection

A Police Constable can remove a child from someone caring for him if the Police Constable and a Senior Officer operate a process to take a child into Police Protection. This is the only way a child can be removed against the carer's wishes without the Court being involved. Police Protection can last for 72 hours and can only be made in emergencies if the child would otherwise be likely to suffer significant harm. After 72 hours, a Court Order must be obtained, the consent of those with Parental Responsibility must be given, or the child must be returned to someone with Parental Responsibility.

Emergency Protection Order

An Emergency Protection Order can only be made by a Court. Anyone can apply for an Emergency Protection Order. It allows the person granted an order to direct where the child should live for the period of the Order. The Court can make an Order for up to 8 days. An

Emergency Protection Order can be extended once for up to 7 days. After that a Care Order must be obtained or the child returned to someone with Parental Responsibility, unless they agree to that child living somewhere else. In exceptional circumstances an Emergency Protection Order can be applied for and made without notice to family members with the permission of the court.

The Grounds for a Care Order

In order to obtain a Care Order (or a Supervision Order), the Local Authority needs to prove to the Court that certain legal grounds are fulfilled. These are:

- a) That the Child concerned is suffering, or is likely to suffer significant harm.
- 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's being beyond parental control.

Effectively the Applicant has to prove that the children have suffered physical, sexual or emotional harm, or that their behavioural development has been affected significantly, or that this is likely to happen without a Care Order being in place.

Parliament has approved the Adoption and Children Act 2002 which is not yet fully in force. It is expected to come into force in September 2005. When it does so, the definition of harm that the child has to have suffered or be at risk of suffering will be extended to include impairment from seeing or hearing the ill-treatment of another e.g. witnessing violence such as domestic violence.

In addition, even if this ground is fulfilled, the Court also needs to be sure that it is necessary to make a Care Order and that it is in the child's best interest to do so.

In considering whether or not a care order is in the child's best interests the court has to take account of the "Welfare Checklist" (below). For example, a situation could arise where the child has suffered a serious injury, but is no longer at risk of suffering any other injury, in which case the Court would need to consider whether or not it was necessary and in the child's interest to grant a Care Order.

Welfare Checklist

This is a list of the factors the court must consider in deciding what is in the child's interests:

- ∞ The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- ∞ His physical, emotional and educational needs;
- ∞ The likely effect on him of any change in his circumstance;
- ∞ His age, sex, background and any characteristics of his which the court considers relevant;
- ∞ Any harm which he has suffered or is at risk of suffering;

∞ How capable each of his parents, and any other person in relation to whom the court considers the question relevant, is of meeting his needs;

∞ The range of powers available to the court under this Act in the proceedings in question;

NB. The court must take account of each of these factors but does not have to give them all equal weight.

Respondents

A mother will always have the right to be involved in care proceedings. If the mother and the father were married at the time of the child's birth or conception, the father automatically acquires parental responsibility for the child. The new Adoption and Children Act 2002 means that any father of a child who registers the child's birth with the mother or makes a statutory declaration of paternity after 1.12.03 will also have automatic parental responsibility. Anyone with parental responsibility for a child is an automatic Respondent to any Care Proceedings and therefore entitled to be involved in the court proceedings. (See our Parental Responsibility guide for more detail.) Previously an unmarried father did not acquire parental responsibility automatically, and still won't unless he has registered the child's birth with the mother, although there are various ways that he can acquire it, including by a registered agreement in a particular form with the mother or by court order. If he has obtained it, he will be a Respondent to the Care Proceedings and automatically involved. Without it, an unmarried father is only entitled to be notified of the proceedings and of the first Hearing. He can ask the Court to be join him as a party and to be involved.

When the new Adoption and Children Act comes fully into force (probably in September 2005), all fathers who register the birth of the child with the mother will acquire Parental

Responsibility automatically, and would be a party to any care proceedings. However this provision will not be retrospective and will only apply to children born after the Act is implemented.

Notice Period

For an Emergency Protection Order, the Local Authority should give one clear working days notice of the hearing to all people who are classed as respondents. However in emergencies, the Court can allow the Local Authority not to give any notice and for the hearing to take place without the respondents attending (called “ex parte” or without notice). This is the exception rather than the rule. For a first interim Care Order, the Local Authority should give 3 clear working days notice to respondents, but the Court can shorten this time. However an interim Care Order usually cannot be made without the respondents being told first.

Interim Care Orders

The Court can make an Interim (temporary) Care Order until it has time to consider the case fully and until sufficient evidence has been compiled. A first interim Care Order can last for 8 weeks, and thereafter it can be renewed by the Court every 28 days.

The grounds for an Interim Care Order are simply that there are reasonable grounds for believing that the same criteria for a Care Order are fulfilled. Even if the grounds are fulfilled

for the making of an Interim Care Order, the Court needs to be satisfied that it is in the best interest of a child to make an order before it can do so.

The Process

Care proceedings generally take about 6-9 months to complete. There is a new Protocol for courts to follow which aims to complete all care proceedings within 40 weeks of them starting, but of course there are always some exceptions. In that time a number of things have to happen. The case will not be immediately ready for a judge to decide it because he will need a lot more information before he can make such an important decision .

There are likely to be several directions hearings when the judge will make orders detailing how the procedural aspects of the case will be carried out and when each stage has to be completed. Under the Protocol, these could be called First hearings, Allocation Hearings, or Case Management Conferences, which all have slightly different aims. However we can advise you on these in more details. At such hearings, for example, the court is likely to order all the parties to file detailed statements about the case setting out their position and their side of events. He may also direct that there should be expert assessment of the parents or the children involved. This could involve observation of the relationships or an expert view on a particular issue such as drug dependency, mental health, whether the children have suffered any harm etc. The experts would have to file their reports with the court. Social services may also have to carry out some assessments in order to present all the necessary information to the court and to know more about the family with whom they are involved. The Children's

Guardian (see below) will also have to carry out some investigations and prepare a report for the court.

Social Services will also need to have a series of meetings to plan how the case will be conducted and what they feel they have to do to protect the child and act in his best interests. This could include planning meetings (to look at how they are going to proceed) and Child Protection conferences (to consider whether or not the child is still at risk). In addition, they may have meetings to review the placements and the child's other needs. Parents will usually be invited to attend all these meetings and it is helpful to go to as many as possible.

How are Children Represented?

On any application for a Care Order or Supervision Order (and some other applications) the Court appoints a Children's Guardian for the child. If there is more than one child, generally the same Children's Guardian would be appointed for each of them.

A Children's Guardian is an Independent Officer of the Court with substantial experience of children and knowledge of Social Work Practice. The Children's Guardian meets with each child, and if they are old enough, will discuss their wishes and feelings. A Children's Guardian will consider the child's wishes in the light of their age and understanding and formulate a view on what action is in their best interest. In doing so the Children's Guardian will also speak to all the other parties and perhaps some witnesses. They will also have access to Social Services files. The Children's Guardian will prepare a report for the Court on

what the child's views are and what he/she recommends the Court should do. Children's Guardian is independent of Social Services.

The Children's Guardian usually instructs a Solicitor for the child, to represent the child's interests in Court. The Solicitor will usually also meet the child. If the child is old enough and disagrees with the Children's Guardian's view of what is best for them, they may be separately represented by their own Solicitor. Whether or not a child is old enough depends on their maturity and understanding, rather than a specific age.

The Care Plan

Whenever the Local Authority applies for an order allowing them to care for a child it must produce a care plan for the child. This could be an interim (temporary) care plan pending the outcome of assessment or other work, or a final care plan usually at the conclusion of proceedings. The Local Authority has a duty to review the Care Plan regularly to ensure it remains in the best interests of the child.

The Care Plan should be recorded in the Social Services file and filed with the Court in ongoing Care Proceedings. The parents, and a child of sufficient age, should be notified of the contents of any care plans. The Care Plan sets out what the Local Authority feels is in the best interest of the child. It should cover matters like where the child will be living and with whom, who the child should see and how often and under what circumstances, how the child's health needs and educational needs are to be met, any counselling that is required and

any other details affecting the particular child's well being. It should also set out any action the Local Authority need to take to achieve this plan.

The Plan could set out how the Local Authority intend to rehabilitate the child home, or it could set out alternative care for the child such as placement with foster carers or adopters.

A Care Plan is a vital document and the Court needs to be able to consider it in order to assess whether granting a Care Order (which would allow the Local Authority to implement its plan) is in the child's best interest. If the Court disagrees with the Care Plan, it can invite the Local Authority to reconsider, or not make a Care Order. The Court could make some other Order such as a Supervision Order, Residence Order etc. A child could live at home with one or both parents under a Care Order if that is the plan specified by the care plan.

Other Family Members

When a Local Authority plans that a child should not live with its parents, it has a duty to consider whether other family members could properly and safely care for the child. If they could, the Local Authority must attempt to place the child within the family before considering placements outside the family. This means that the Local Authority will have to assess the family members, such as grandparents, brothers, sisters, etc assuming that they are willing to take on the full time care of the child and offer to do so.

Although generally wider family members do not have a right to be involved in care proceedings relating to a child, they can apply to the Court for leave (permission) to become a party or to seek other Court Orders in relation to the child. This could include a Residence Order (that a child should live with them) or a Contact Order (that they should see the child on specified occasions).

Final Hearing

When all the paperwork and assessments are complete, the judge can make a decision on the case. Often the parties agree what should happen to the child. In that case there is no need for a full hearing and the judge can just make an agreed final order. If there is still disagreement then there will need to be a hearing where each side gives evidence and the witnesses can be questioned. Then the judge can give his judgement which explains his or her decision and why they made it.

Can Anyone Come into Court?

Care Proceedings are heard in private with only the parties, their Legal Advisors, the Court staff and the Judge present. No one else can be present without the consent of the court. No one is allowed to tell anyone else about the content of Court reports or what is said in Court without permission from the Judge. To do so is contempt of Court and the court could sentence someone in contempt of court as if they had committed a crime.

Does a Care Order Mean the Child is Taken Away From Home?

A Care Order gives the Local Authority shared parental responsibility and the ultimate right to direct where the child should live. A Local Authority could direct that the child should remain living at home with one or both parents, or other named family members. Alternatively, they could direct that the child should live with foster carers or in a residential placement such as a children's home or specialist placement which may be more suitable for older children or children with particular needs. The Local Authority can even place a child with prospective adopters under a care order, although the child could not be adopted without the court making a later Adoption Order as well. Once the Adoption and Children Act is fully in force, the Local Authority will require a Placement order before it can place a child with prospective adopters. The Local Authority should endeavour to reach agreement with other holders of parental responsibility about where the child should live, but they can override the parents' wishes if they feel this to be in the best interests of the child.

How Long Does The Care Order Last?

A full Care Order lasts until a child is 18 years old or earlier married. However a Court can discharge the Order on the application of any party. In considering whether or not to do so, the Court will simply consider the best interests of the child and the "Welfare Checklist". The Court usually likes to see a period of time pass, or circumstances change, before it will discharge a Care Order.

Contact to a Child in Care

The Local Authority has a duty to offer reasonable contact for a child in their care to, amongst others, his parents, guardians and anyone with a Residence Order.

A Local Authority can only refuse to allow contact to these people if it is necessary to safeguard or promote the child's welfare and only for 7 days unless they obtain the Court's permission to refuse contact for longer. If there is a disagreement about what is in the child's best interests, the court can decide and could make an order for contact to a child in care. Such orders can be made on an interim or final basis. The local Authority also has a duty to promote contact between the child and others with whom the child has a relationship (such as siblings), so long as it is in the child's best interests and reasonable practicable to do so.

Is a Care Order The Same as an Adoption Order?

No. Even if the Local Authority Care Plan is for the child to be adopted (see Care Plan section) the Court only makes a Care Order not an Adoption Order at the conclusion of the case. A Care Order simply allows the Local Authority to progress towards adoption if that is in their plan. Currently this includes placing the child with potential adopters, and once the new Adoption and Children Act 2002 is fully in force (probably in September 2005) the local authority can be granted Placement Orders at the same time as a care order, to allow them to

place a child with adopters. Subsequent court proceedings will decide whether or not the child should be adopted (see our adoption guide).

Voluntary Accommodation

A child can be in the “care” of the Local Authority without a Care Order in place. The Local Authority can provide accommodation for a child with the agreement of everyone with Parental responsibility or someone with a Residence Order for the child.

Generally

This is a very brief summary of the law relating to Care Proceedings, and there are many more aspects which would need to be considered by a Solicitor. Public funding (formerly Legal Aid) is invariably available for parents in care proceedings and can be applied for by other people if they qualify financially. We would recommend that you take advice from a Children Panel Solicitor on your specific case.

The Children’s Legal Practice Ltd

The Children’s Legal Practice Ltd is a specialist Children’s Team whose members can advise and assist in connection with all aspects of the law relating to care proceedings and children’s law.

The Children's Team consists of Sarah Palmer who qualified as a Solicitor in 1990. She is a member of the Law Society's Children Panel and specialises in all aspects of childrens work and also in Education law.

Kirti Patel is also an experienced Solicitor within the team specialising in care proceedings and all aspects of the law relating to children and is a member of the Law Society Children Panel. This panel membership is only available to solicitors who have demonstrated their expertise in this area of law, to the satisfaction of the Law Society.

The team can also advise on all aspects of Adoption Law and Education matters. The team can be contacted on 01329 823322.