

PUBLIC LAW PROCEEDINGS:

Care proceedings:

- When a local authority makes an application for an order to safeguard the welfare of a child, the cases are usually referred to as public law cases. There are a number of different orders that a local authority can apply for but the most common are care orders, supervision orders, emergency protection orders and secure accommodation orders.
- In these proceedings, the child is automatically a party and is represented by a children's guardian appointed by Cafcass. The children's guardian is an independent person who is there to promote the child's welfare and ensure that the arrangements made for the child are in his or her best interests. The guardian appoints a solicitor to act for the child. Occasionally the child and guardian will not agree on what is in the child's interests and if the solicitor decides that the child is of sufficient age and understanding, the child will be able to instruct the solicitor.
- Public funding (legal aid) is usually available for the parents to be represented in these proceedings.

In which circumstances will Care Proceedings be initiated?

- If Children's Services believe a child is suffering significant harm or at risk of suffering significant harm, they can apply to court for permission to take action to protect the child. Children Services will set out in their application the circumstances and concerns which they say amounts to significant harm, sometimes referred to as a 'threshold document' or just **threshold**.

Emergency Protection Orders (EPO):

- These orders are obtained from the court to ensure the short-term safety of a child. Any person can make an application including a local authority or other authorised body. The court will only make the order if they are satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if:
 - they are not removed to accommodation provided by the local authority; or
 - they do not remain in the place where they are currently being accommodated (such as in hospital).
- In circumstances where the applicant believes that the child will be safe in the interim period, an application for an EPO will be made on notice to the parents. This gives them an opportunity to come to the court and advise the court of their views and plans to safeguard the child. When the court makes an EPO, the court can also make an exclusion requirement under section 44A where:

- there is reasonable cause to believe that if a person is excluded from the home, the child will cease to suffer or cease to be likely to suffer significant harm; and
 - another person living in the home is able and willing to give the child the care which it would be reasonable to expect a parent to give them and consents to the exclusion.
- The **exclusion order** may require a person to leave the home where they are living with the child, prevent them from entering the home or exclude them from a defined area. A power of arrest may be added to the order.
 - An EPO is only a short order granted for up to a maximum of eight days but can be extended for a further seven days. The order grants the applicant parental responsibility but only permits them to take such action as is reasonably required to safeguard the welfare of the child.

Who can attend the court hearings?

- The child's parents and anyone else who holds Parental Responsibility for the child will be a "party to proceedings." Protected parties may have a litigation friend attend.

Care Proceedings timeline:

- Practice Direction 12A describes the court process in cases of public law care proceedings. Section 14(2) of the Children and Families Act 2014 amends s.32(1)(a) of the Children Act 1989 to insert that a case must be concluded: without delay; and in any event, within 26 weeks, beginning with the day on which the application was issued.

Public Law Outline:

- The Public Law Outline (known as the PLO) is the set of rules that courts and parties must follow about documents and the time table for Care Proceedings.

Interim Care Order (ICO):

- A temporary order, usually for the benefit of the Children Services and provides the Local authority to share with parental responsibility. Generally, the court will decide:
 - Whether an Interim Care Order should be made
 - Where the child should live until the final hearing
 - Who the child will see until the final hearing and
 - What needs to be done and by when before the final hearing. This includes assessments, reports, statements or research into whether there is anyone else who might become a carer for your child – they are known as directions.

- Sometimes children who are the subject of care orders will remain at home being cared for by their parents. However, it is more usual for children who are the subject of care orders to live with foster carers or in residential establishments.
- If the court agrees, Children's Services can take the child into care on a temporary basis for up to 8 weeks at first, although an interim care order can be made until the conclusion of proceedings.

Welfare Checklist:

- When a court considers any question relating to the upbringing of a child under the Children Act 1989 it must have regard to the welfare checklist set out in Section 1 of that Act. This requires the consideration of:
 - the ascertainable wishes and feelings of the child concerned (considered in light of their age and understanding);
 - their physical, emotional and/or educational needs;
 - the likely effect on them of any change in their circumstances;
 - their age, sex, background and any characteristics of theirs which the court considers relevant;
 - any harm which they have suffered or are at risk of suffering;
 - how capable each of their parents (and any other person the court considers the question to be relevant) is of meeting their needs; and
 - the range of powers available to the court in the proceedings.

Case Management Hearing:

- This should happen within 12 days of children's Services applying for the Care Order. At this hearing, the court will make sure that all the assessments, statements, reports and papers are prepared, deciding whether there is a real issue about threshold to be resolved. It will also look at whether any more information is needed for the final decision to be made.

Issues Resolution Hearing:

- This is usually the penultimate hearing before the final hearing, sometimes referred to as a pre-trial review. The purpose of this hearing is to see if the care proceedings can be concluded early. If this is not possible, the purpose is to identify and narrow the issues for determination at a final hearing. But if the case is going on to a final hearing, then the Issues Resolution Hearing will also make sure that all reports, statements and papers are ready for the final hearing and decide whether any more information is needed.

Final Hearing:

- If the child's parents and the child's social workers are unable to agree a plan regarding the child, the case will proceed to a final hearing. The court will determine whether a Care Order or a Supervision Order is required to safeguard the welfare of the child. If the court agrees that a Court Order is necessary given the circumstances, final decisions will also be made regarding with whom the child will live and contact arrangements for the parents and wider family. This final hearing is when long term decisions about future plans for your child including where they should live and which court order is best are made.

Final orders: There are several possible final orders the court can make referred to below.

- **Care Order**, which means the child stays in care until they are 18 unless the order is ended before then. This is a court order which places a child in the care of Children's Services. When there is a care order, Children's Services share parental responsibility for the child with the parents. Children's Services must find out the parents' wishes about any decision they make about their child, but they always have the final say and can make plans for the child even if the parents don't agree with them.

Children who are the subject of care orders are the subject of regular reviews by the local authority. Each child will have an individual care plan that sets out how all their needs will be met. These reviews will consider, among other things, the arrangements for contact with the family and others, as well as the child's health and educational needs. All local authorities must appoint independent reviewing officers (IROs) who must work to ensure compliance with care plans. The local authority has responsibilities to ensure that plans are made and preparations in place before the child is 18 to enable the child to make the transition to independence, and the local authority continues to have duties towards the child until they are 23 years old.

- **Supervision Order**, which means Children's Services will supervise the care the person whom the child is living with. A social worker will agree a contract or supervision plan with the parent, which will set out what is expected of the parent and the help the social worker will give.

This order does not give Children's Services parental responsibility for the child so basic decisions about how the child is raised can be made by the parents/other with parental responsibility but they may still want to discuss things with the supervising social worker to make sure they are happy with the plan.

A Supervision Order lasts for up to one year, and can be extended at most for two more years.

- **Child Arrangement Order (formerly called a Residence Order)**, which says that the child will live with another person such as a family member or friend for as long as the order exists. The child arrangement order can also include how much time a child spends with another person/parent (formerly referred to as a contact order). This is a new order made under s.8 Children Act 1989. There are two types of child arrangements orders (CAOs) that can be made:
 - An order which says where and with whom a child will live. It used to be called a s.8 'Residence Order'; and
 - An order which says who the child can spend time with and for how long. This used to be called a s. 8 'Contact Order'.
- A Child Arrangements Order saying where and with whom a child should live can also say that the child can live with more than one person and it will say for how long the child is with each person (for example where grandparents and a parent are raising the child either together at the same address or at separate addresses for different parts of the week).

This order gives 'parental responsibility' to the person who the order says the child will live with (if they don't already have it) for as long as the order is in force. If you have this order, (and you are not the child's parent), you can normally make decisions about the child's care and upbringing without having to consult with their parents. However, it is still a good idea to discuss important things with the parents, as it will benefit the child if everyone who has an interest in their upbringing can agree. But note there are some things you cannot decide including:

- taking the child outside the UK for more than one month;
 - changing the child's surname without the agreement of their parents and anyone else with parental responsibility or the permission of the court;
 - appointing a guardian for the child to raise them after your death; and
 - consenting to the child being placed for adoption or being adopted.
- **Special Guardianship Order**, a legal order which says that a child will live with someone who is not their parent on a long-term basis, such as a family member but it is a more permanent arrangement because it is more difficult for a parent to apply to end (discharge). Parents cannot apply to end the order without the permission of the court and they would only get this permission if they could show that there had been a significant change of circumstances since the original order was made.

A Special Guardianship Order also gives the special guardian parental responsibility for the child. They don't have to consult the parents or anyone else with parental responsibility about most decisions for the child. But there are some things they cannot do or decide without the permission of the parents/others with parental responsibility or the court, such as

- they cannot change a child's surname
- they cannot take the child abroad for more than 3 months and
- they cannot agree to the child being placed for adoption.
- This order does not remove parental responsibility from the child's birth parents, but they are very few decisions that they can make whilst the special guardianship order exists.

Unlike in adoption cases, the child remains legally a member of the birth family under a special guardianship order.

- **Placement Order** A placement order is a court order that allows Children's Services to place a child for adoption even if the parents don't agree. Children's Services usually apply for a placement order during (or after) care proceedings if there is a plan for the child to be adopted and the parents (who have parental responsibility) don't agree.

SECURE ACCOMMODATION ORDER:

- These orders permit a local authority to place a child in secure accommodation. The court can make a secure accommodation order where:
 - a young person has a history of running away, is likely to run away from any other kind of accommodation and if they do so is likely to suffer significant harm;
 - if the young person is not kept in secure accommodation they are likely to injure themselves or other people.
- A secure accommodation order can only be made with respect to a looked-after child. If they are not subject to a care order, an order can only be made for a child who is under 16 years; if the child is subject to a care order, they can be placed in secure accommodation until they are 18. Children under 13 can only be kept in secure accommodation with the consent of the Secretary of State.
- The court's authority is not required for the first 72 hours that a child is placed in secure accommodation. However, if the local authority believes that the child needs to be in secure accommodation for longer, an application must be made to the court. The court cannot make the order unless the child is legally represented in court.

- The court can make a secure accommodation order for up to three months on the first application, and then for periods of up to six months on subsequent application. However, different rules apply where the child is on remand to the local authority from a criminal court having been charged with a criminal offence.
- Regardless of the length of the court order, if during the course of the order the child no longer meets the criteria for an order, the local authority must remove the child from secure accommodation.
- The local authority must make arrangements for contact between the child and their parents, or seek a court order to suspend or stop contact if they believe that it is not in the child's interest for contact to take place.
- There will be regular reviews of the care plan for the child and to monitor the child's progress while in the secure setting. These reviews should also consider the future plans for the child once they have left the secure setting. The child must receive education while in the accommodation.

PRIVATE LAW CASES:

Applications for child arrangements orders are usually between private individuals under Section 8 Children Act 1989, which are therefore private law matters.

In private law cases the child is not a party to the proceedings unless there are particular circumstances that make the case complex. The court can request a welfare report under Section 7 Children Act 1989, either from the local authority or from a children and family reporter who is an officer appointed by Cafcass. The report will usually inform the court of the child's wishes and feelings, but the officer will make a recommendation based on what they think is in the child's best interests rather than just report on the child's wishes.

In some circumstances, the court may order that the child is made a party to the proceedings. A children's guardian (who is a Cafcass Officer) is appointed to represent the child in the proceedings and the guardian will appoint a solicitor. If the child and guardian do not agree on what recommendations to make to the court and the child is of sufficient age and understanding, they will be able to instruct a solicitor directly to represent their views and the guardian will present their own views to the court.

Certain categories of people are entitled to make an application for a child arrangements order under Section 8 without having to seek permission from the court first, and they are:

- the parent, guardian or special guardian of a child;
- any person who has parental responsibility;
- anyone who holds a residence order in respect of the child;
- any party to a marriage or civil partnership where the child is a child of the family;
- anyone with whom the child has lived for at least three years;
- anyone who has obtained the consent of:
 - the local authority if the child is in their care; or
 - everyone who has parental responsibility for the child.

Other people can make an application to the court for permission to issue an application for a child arrangements order. It is usually via this route that wider family members such as grandparents are able to apply for orders in respect of their grandchildren. In deciding whether to give permission the court will take into account, among other things:

- the nature of the application;
- the applicant's connection with the child; and
- the risk there might be of the proposed application disrupting the child's life to such an extent that they would be harmed by it.

Welfare Checklist:

- When a court considers any question relating to the upbringing of a child under the Children Act 1989 it must have regard to the welfare checklist set out in Section 1 of that Act. See above.
- The child's welfare is the court's paramount consideration for all proceedings under the Children Act 1989 when it considers a question of the child's upbringing.

Child Arrangement Orders:

- These orders decide who the child is to live with or spend time with, and can be granted to more than one person whether they live together or not. If a child arrangements order states that the child will live with a person, that person will have parental responsibility for that child until the order ceases. Contact with a child can either be direct (such as face-to-face) or indirect (such as by the exchange of letters).
- Some orders will make very specific arrangements for the child; other orders will be more open with detailed arrangements to be made between the parties by agreement. Child arrangements orders are not only made in respect of parents; there can also be orders for arrangements between siblings and wider family members. Sometimes the order will give directions that contact is to be supervised by a third person, or that contact is to take place in a specific location.
- Failure to comply with an order may result in the court making further orders specifying activities for a party to undertake or the court making other enforcement orders which can include an order for unpaid work.

Parental responsibility:

- Parental responsibility means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and their property.
- The birth mother of a child will always have parental responsibility unless it is extinguished by the making of an adoption order to another person.
- Where the child's father and mother are married to each other at the time of the birth, they both have parental responsibility for the child.
- Where the child's mother and father are not married to each other at the time of the birth the general rule is that the mother has sole parental responsibility for the child. However, an unmarried father will have parental responsibility for a child born after 1st December 2003 if he is named on the birth certificate and Register.
- Other ways in which a father can obtain parental responsibility are by:
 - drawing up a parental responsibility agreement with the mother, which is a specific form that has to be signed by both parents;
 - marrying the mother; and

- the court making a child arrangements order for parental responsibility if the parents cannot agree on the father having parental responsibility.
- Other people may acquire parental responsibility by entering into an agreement if they are the husband or civil partner of the mother, or if they obtain a child arrangements order for residence.
- More than one person can have parental responsibility for the same child at the same time. Parental responsibility is shared between everyone, but where more than one person has parental responsibility for a child each of them may act alone in meeting that responsibility except in circumstances where the consent of everyone with parental responsibility is required.