

# Public law child care

Where the social services department of the local authority have concerns over the welfare of a child which may have caused or is likely to cause significant harm, they will take the matter to court to enable them to obtain a care order which allows them to control the child's upbringing.

Usually the social workers will investigate a referral and if they have serious concerns they will instruct their legal department to commence proceedings for a care or supervision order.

They have to show by evidence, which can include hearsay, that the child is suffering significant harm, i.e. sexual/physical abuse, emotional harm, neglect etc.

The care order gives the local authority parental responsibility and allows them, subject to the court's approval to decide all matters relating to a child's upbringing, i.e. where a child should live, who he should have contact with etc. The local authority's parental responsibility under a care order overrides the parent's parental responsibility in all circumstances where a dispute arises.

Obviously, for there to be care proceedings the concerns are usually much greater and the risk of harm to the child much greater than the welfare issues involved in private law proceedings.

To help the court decide what is in the best interests of the child, a children's guardian is appointed and fulfils a similar role to the CAFCASS Officer in private law proceedings. Usually there are experts involved to help the court decide specific issues, such as a parent's mental state, psychological functioning, whether a child has been physically/sexually abused etc. The experts will produce reports for the court and all parties will be provided with copies of any filed reports

The cases tend to take much longer to complete, i.e. average 12/18 months and are much more complicated. Final hearings often involve 5 or more days of evidence. To represent children in care cases (they have their own solicitor appointed), a solicitor has to be recognised as a specialist and be a member of the children panel.

## Procedure

The local authority issue an application with a detailed statement about their concerns. The court then appoint a children's guardian for the child who appoints a solicitor for the child.

At the first hearing, the court timetable the case to a final hearing (usually up to a year ahead) making orders for the filing of all reports and statements of evidence needed to enable the court to decide the case.

The court usually make an interim care order allowing the local authority to control the child's welfare until the final hearing. Each interim care order lasts 28 days and has to be reviewed every 28 days. If a parent or guardian objects to a renewal the court will have a contested interim care hearing.

For the final hearing the local authority have to produce a care plan which details their plans for the child's future together with any contingency plans if their placement breaks down. The guardian then produces a report which looks at whether the local authority plans are in the best interests of the child.

The court will then hear any evidence at a final hearing and decide whether or not to approve the care plan, require the local authority to reconsider its plans or reject the plan and decide a different placement for the child, i.e. return to parent/s.

## Orders available

### Care order

This gives the local authority total control over the child's upbringing, i.e. placement, contact etc. Usually under a care order a child is either placed with alternative carers to the parents, or returned to the parents under tight controls and monitoring. Other types of placement include extended family i.e. grandparents, long term fostering or adoption.

### Supervision order

The child is usually returned to the parent's care but the local authority supervise the placement for a minimum of 12 months. The local authority do not get parental responsibility with a supervision order.

## No order

Where the court return a child to parents and see no further need for statutory involvement by the local authority.

In all public law care/supervision proceedings legal funding is automatic, irrespective of how much money a parent may have. This reflects the seriousness of such cases.

Any orders made in family proceedings are final. However, every order can be varied or discharged in the future by a party on application to the court.

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