

Corporate Parenting Panel

15 December 2017



Overview of Care Proceedings

Report of Kelsey Clayton, Legal Manager, Children, Adults and Health, Durham County Council

Purpose of Report

- 1 The purpose of the report is to raise awareness and understanding among members of the Corporate Parenting Panel about how the decision is made to issue Care Proceedings and the process which is followed once proceedings have been commenced.
- 2 Kelsey Clayton, Legal Manager for Children, Adults and Health will present a powerpoint presentation to members of the Corporate Parenting Panel which will highlight the main issues referred to in this report.

Background

- 3 Care proceedings can only be commenced by a local authority and the court may only make a care order or supervision order if it is satisfied that the grounds set out in section 31 Children Act 1989 are met;

that the child concerned is suffering, or is likely to suffer, significant harm; and

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 being beyond parental control

“Harm” means ill-treatment or the impairment of health or development (including for example impairment suffered from seeing or hearing the ill-treatment of another).

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

“Health” means physical or mental health and “ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical.

- 4 Section 1 of the Children Act sets out some fundamental principles which the local authority and the courts must always bear in mind:

When a court determines any question with respect to the upbringing of a child, the child's welfare shall be the court's paramount consideration, (Section 1(1)).

In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child, (Section 1(2)).

Where the court is considering whether to make, vary or discharge an order, the court shall have regard in particular to:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).
- (b) his physical, emotional and educational needs.
- (c) the likely effect on him of any change in his circumstances.
- (d) his age, sex, background and any characteristics of his which the court considers relevant.
- (e) any harm which he has suffered or is at risk of suffering.
- (f) how capable each of his parents and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.
- (g) the range of powers available to the court.

(Welfare Checklist Section 1(3))

- 5 In addition to the Children Act 1989 and various Regulations issued in accordance with the Act, the Government has also produced statutory guidance which local authorities are obliged to comply with unless there are exceptional reasons which justify a departure in individual cases.

The amended guidance "Court Orders and Pre-proceedings for local authorities" was issued in April 2014 by the Department for Education to coincide with the implementation of the Children and Families Act 2014. This amended the Children Act to introduce amongst other things the current Public Law Outline (PLO) process (which was referred to at the November meeting by Mark Gurney) and to introduce the requirement that care proceedings should conclude within 26 weeks of the date of issue unless the court decides there are exceptional circumstances which require the proceedings to be extended.

Process for issuing Care Proceedings

- 6 Once the decision has been made that care proceedings should be issued, (usually following a discussion at PLO panel) the child's social worker prepares a witness statement which sets out the concerns held by the local authority, outlines the support which has been offered to parents and explains why the local authority consider that the child is suffering or will suffer significant harm if the child remains with, or returns to, the care of parents. The social worker must also prepare a care plan which sets out the arrangements for contact between the child and their parents and any other people who are important to the child and should also provide an overview of the support which is available to parents.
- 7 The evidence is submitted by the social worker to the local authority solicitor who carefully reviews the documents to ensure that all relevant information has been included and crucially, that the social worker has clearly outlined why the concerns held by the local authority mean that the child will suffer significant harm. If the local authority cannot prove this connection, the court will not be able to make an order. The local authority solicitor must also arrange witness statements from any other relevant professionals to support any concerns which they have identified, this could include health visitors, school teachers, community support workers, substance misuse workers etc.
- 8 The local authority solicitor prepares the court application and submits this to court with all the relevant evidence. Prior to the first court hearing, the solicitor will prepare a case summary which summarises the significant issues in the case for the court. Following the first hearing, the local authority solicitor is responsible for drafting the court order which must clearly identify all of the relevant matters discussed at court and then carefully set out all of the directions made by the Judge. In complex cases where perhaps there are a number of siblings who have different fathers and where the court may have directed assessments from a number of different experts, the court document can be very complex.
- 9 The local authority solicitor will usually attend the court hearing, but may use a barrister for example if the case is complex such as a serious non-accidental injury or sexual abuse case or where the hearing is listed at very short notice. If there is an emergency which requires an immediate application to court, it is not always possible for a solicitor to travel from the office to court which is usually in either Middlesbrough or Newcastle. There is no Family Court based in Durham, our work is dealt with at the Family Courts in Middlesbrough and Newcastle. Only hearings listed before magistrates are listed at courts in County Durham.
- 10 In accordance with the Public Law Outline, there should be only a limited number of court hearings. There is always a case management conference where the timetable is fixed and an issues resolution

hearing once all evidence and any further assessments are available, to see if the matter can be finalised without a full hearing. There will be a first hearing if the authority requests an interim care order and further interim hearings may be arranged to consider issues which arise during the proceedings. If a final hearing is required, this can take several days if the evidence is challenged by parents.

- 11 The only orders which the local authority can apply for are supervision orders or care orders under the Children Act 1989. If the plan for the child is for the child to remain in the care of a family member, either under a child arrangements order or a Special Guardianship Order, we can make it clear in the application that we will be inviting the court to conclude the care proceedings by making an appropriate private law order.
- 12 If the conclusion reached by the social worker following the completion of assessments, is that the only option for the child is to be placed for adoption, then the local authority must apply under the Adoption and Children Act 2002 for a placement order, before the care proceedings conclude. This requires a child permanence report (a detailed report setting out the reasons why adoption is being recommended) to be completed and submitted to the agency decision maker who will decide whether or not the child should be placed for adoption. That decision must be made prior to the final hearing of the care proceedings, to allow an application for a placement order to be prepared and submitted to court.
- 13 In addition to applications for care and supervision orders, this team also apply to court for defined contact orders in respect of children who are already the subject of care orders where there might be problems in making arrangements for contact with parents or other family members. We sometimes apply for placements orders after care proceedings have concluded eg: if the plan was to place a child with a family member but this plan has not been able to progress and the plan changes to adoption. We also make applications to court for secure accommodation orders. We also submit applications to court to discharge orders either where the child has returned home successfully or perhaps where the child's foster carer has indicated a wish to have a child arrangements order or special guardianship order which the local authority supports.

Recommendations

- 14 Members of the Corporate Parenting Panel are requested to
 - note the information contained in the report and presentation
 - indicate if further information is required

Background Papers

None

Contact: Kelsey Clayton

Tel No. 03000 269688

Appendix 1: Implications

Finance – None

Staffing – None

Risk – None

Equality and diversity/Public Sector Equality Duty – None

Accommodation – None

Crime and disorder – None

Human rights –None

Consultation – None

Procurement –None

Disability Issues – None

Legal Implications- The report highlights the legal basis for issuing care proceedings in respect of children and young people who live in County Durham.