

Beck Fitzgerald

lawyers & consultants

# Guide to Care Proceedings



*working for  
accessible justice*

Beck Fitzgerald is a specialist family practice based in central London and committed to accessible justice.

Our aim is to enable more families to get the expert help they need when they need it, at a price they can afford.

Alongside our casework with clients, we strive to challenge the family justice system to improve outcomes for the children and families we serve

We work tirelessly to improve the laws and protection for victims and their children so that they can feel safe.

We do not judge, and all our team are trained in trauma informed ways of working. We will help you find the best legal solution for you and your children.

## Care Proceedings

This guide is designed to help you understand some of the more common legal terms you may come across when children's services have started care proceedings and to make you feel more comfortable when attending court.

## Why has Local Authority started care proceedings?

Every Local Authority (through their children's services department) has a duty to safeguard and promote the welfare of children living in their area.

In some cases where children's services are concerned that a child is suffering or is at risk of suffering very serious harm, the Local Authority may apply for a care order.

Children's services should try to work with a family in the first instance to try to resolve the issues of concern but if this has not worked or if there is an emergency situation placing a child at

serious risk children's services will apply to the court for a care order.

## What is the effect of a care order?

Normally a parent (or carer with a court order) has parental responsibility for their child. This means that they have responsibility for their child and for making important welfare decisions.

If a care order is made it gives the Local Authority parental responsibility but it does not mean that a parent ceases to have parental responsibility for their child.

A care order however gives the Local Authority the overriding authority to make important decisions concerning a child, for example where a child shall live, even if the parents or carers are not in agreement.

The Local Authority does have a duty to consult with any other person who holds parental responsibility for the child about any important issues for that child but the Local Authority has the final decision about arrangements for the child.

## How does the court decide whether to make a care order?

When considering whether to make a Care Order the court makes its decision in two stages.

The court must first consider whether what is known as the "threshold criteria" is met, that is to say, the court may only make a Care Order if it is satisfied that:

- a) the child has suffered or is likely to suffer significant harm and
- b) the cause of the harm is attributable either to the parenting the child has received or due to the child being beyond parental control.

The Local Authority must prove that the harm to the child is serious and it includes, but is not limited to, physical or emotional harm.

If the Local Authority is unable to establish that these grounds are met the court cannot make a Care Order and the court does not go on to consider the second stage of the process.

If the Local Authority can establish that the grounds above are met, the court will go on to consider the second stage i.e. whether an order should be made and, if so, what type of order should be made.

This is the second stage of the court's decision-making process and is sometimes called either "the welfare stage" or the "disposal stage".

The choices for the court include making a Care Order, a Supervision Order (which allows the Local Authority to be involved with the child but does not confer parental responsibility upon the Local Authority) or no Order.

In reaching its decision the court will need to apply the principle that the child's welfare is the most important consideration.

The court will also need to consider what is known as the "welfare checklist" in respect of each child who is the subject of the application. The welfare checklist consists of the following factors:

- a) The ascertainable wishes and feelings of the child (in light of his age and understanding).
- b) The child's physical, emotional and educational needs.
- c) The likely effect on the child of any change in his circumstances.
- d) The child's age, sex, background and any characteristics of his which the court considers relevant
- e) Any harm which the child has suffered or is at risk of suffering.
- f) How capable each of the child's 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 under the Children Act 1989 in the proceedings in question.

The court will also consider what is known as the "no order" principle. This means that the court should not make an order unless it is necessary and it is in the child's best interests to do so.

In some instances where the court thinks that the children should be looked after by the Local Authority in foster care, the court will refuse to make an order because the parents give their consent to the children being looked after. This is often referred to as section 20 consent.

If a child is looked after by the Local Authority under s20 with the consent of a parent it is important to know that the Local Authority will not acquire parental responsibility for the child.

The effect of this is that the parents (or other person with parental responsibility) have the last say over contact issues and indeed have the right to withdraw their consent and remove the child from local authority accommodation.

It would, however, be inadvisable to take any important step such as this which could be disruptive for the child without first taking legal advice and consulting with children's services.

If a parent were to remove the child from accommodation where there were serious concerns for the child, it is likely that children's services would make an emergency application back to the court to seek an interim care order.

When considering an application for a care order, the court will need to carefully consider the Local Authority's care plan which will set out the Local Authority's proposed arrangements for the child, including details of where the child should live whilst the care order is in force and the arrangements for contact with the child's parents and other important people in the child's life.

The court can refuse to make an order if it considers that the care plan is not in the child's best interests.

## How long does a care order last?

If the Local Authority can satisfy the court at the start of the case that there should be a care order the court will usually make an interim care order in the first instance.

This is a short-term order which lasts for the duration of the proceedings, unless there is a change in circumstances during the case resulting

in the court discharging the order or making an alternative order.

If at the end of a case a court decides to make a final care order it will last until the child is 18 years, unless there is another court order made in respect of the child before he or she reaches 18 years.

## How long will the proceedings last?

The law says that delay should be avoided in proceedings concerning children and that the proceedings should not last more than 26 weeks i.e. six months.

Cases can often be delayed due to various factors, for example because the court will need expert medical or other assessments to inform its decision. The court will need to give permission if the case is to extend beyond 26 weeks.

## What happens during the proceedings?

If children's services are so concerned that they consider the child's safety requires his or her removal from her family the court may list the case for an emergency interim care hearing to determine the issue.

The court only agrees that children should be removed from their family at an early stage in the proceedings in the most exceptional of cases.

More usually the first hearing is one called a Case Management Hearing (CMH). The purpose of the hearing is to establish what evidence the court will require to enable it to decide about the future arrangements for the child.

The court will typically give directions for the parties to file statements and will also seek evidence from other sources, for example, GP reports and in some cases disclosure from the police about any relevant incidents.

The court will often need an assessment of the child or his family to assist the court at the end of the case in making decisions about the future arrangements for the child.

Often the child's social worker will prepare an assessment but sometimes there is a need for an independent medical or other expert to be instructed.

The court will only agree to an expert assessment if it is necessary to enable the court to resolve the case. Where the court directs that there is to be an expert assessment it is very important for those being assessed to engage with the assessment and to be open and honest with the assessor.

Sometimes expert reports make observations and recommendations that the party being assessed does not agree with and are not helpful to their case. It is important to know that these reports need to be disclosed to the court and the other parties, even if they do not support the case of the party being assessed.

An important issue to be considered at the Case Management Hearing is whether there are any extended family members who might be considered as carers for the child if the court decides the child cannot live with his or her parents.

Even if a parent wishes their child to remain in their care, it is critical that any other potential carers within the family are put forward as soon as possible so

that they can be fully assessed alongside the child's parents. If possible carers are not put forward until later in the proceedings the court may refuse to assess those members of the child's family/network on the basis that delay will be harmful to the child.

The court will make directions for the filing of all relevant evidence at the Case Management Hearing. The court will direct that the Local Authority prepare its final evidence and care plan in which it sets out its proposal for the future arrangements for the child, including where the child shall live and who he or she shall have contact with.

At the next hearing, known as the Issues Resolution Hearing (IRH) the court will consider whether it is possible for there to be a final order which is agreed between all the parties.

If it is not possible for there to be a final order, the court will seek to decide some, if not all, of the issues in the case and will adjourn the case for a final hearing.

Whereas the Case Management Hearing and the Issues Resolution Hearing tend to be shorter hearings of between one to three hours duration, a final hearing in which the Local Authority's plans are opposed by some or all of the other parties is likely to take much longer.

A contested final hearing usually between one and five days depending on the issues the court needs to decide and the number of witnesses which will give evidence.

Whilst these are the main hearings that are likely to take place in the proceedings, it may be that at some stage during the case the court lists the

case for other short hearings to determine particular issues.

## What happens about contact with a child who is in care?

If a child is made the subject of a care order and placed outside his or her family the Local Authority has a duty to promote reasonable contact between the child and his or her parents, guardian or any person with parental responsibility. What is reasonable depends on the circumstances of the case.

If, however, contact cannot be agreed it is possible to make an application to the court for contact with the child who is in care. This is a separate application that can be made within the care proceedings and the court can be asked to decide about contact.

## How are the child's views conveyed to the court?

In care proceedings a child is represented by a Children's Guardian (often referred to as the guardian) and the child's solicitor.

The guardian, who is quite independent of the Local Authority, is an officer of the Children and Family Court Advisory and Support Service and is a professional appointed by the court who has experience of childcare issues.

The duties of the guardian, amongst others, are to investigate the child's circumstances, meet with the child's parents and other people who are significant in the child's life and prepare a report to the court as to the arrangements the guardian considers to be in the child's best interests.

The guardian works very closely with the child's solicitor who is appointed either by the court or by the guardian. As the guardian is independent and acts in the child's best interests, his/her view carries a great deal of weight with the court in reaching a final decision.

It is important that any party to the proceedings cooperates fully with the guardian, as with other professionals, during his/her investigations.

The primary role of the Children's Guardian is to safeguard the child's best interests in the proceedings. The Guardian's role is more fully described on the Cafcass website details of which are on the following link:

<https://www.cafcass.gov.uk/parent-carer-or-family-member/my-family-involved-public-law-proceedings/applications-supervision-and-care-orders/role-cafcass-role-childrens-guardian>

In some cases, an older child who has a clear understanding of the proceedings may be separately represented by his or her solicitor if there is a difference in the Guardian's and the child's views.

In this case, the Guardian will continue to be the Children's Guardian for the young person but they will be separately represented.

## Can I show the court papers to anyone not involved in the case?

During the court proceedings there are many documents, for example statements and reports, prepared and circulated for consideration amongst the parties.

These documents are confidential and they should not be shown to anyone who is not involved in the case without the courts permission.

There are certain exceptions to this rule and if a party wished to disclose documents legal advice should be sought. Only the court can overrule the confidentiality of documents and only where it is satisfied that it is right to do so in the interests of the children.

Breach of the confidentiality rule is very serious and is a contempt of court for which the party disclosing the documents can be punished. It is therefore very important that you contact us for advice before you disclose any documents in the case.

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For more information please contact us on:

[contact@beckfitzgerald.co.uk](mailto:contact@beckfitzgerald.co.uk)

or call us on 020 7101 3090

[www.beckfitzgerald.co.uk](http://www.beckfitzgerald.co.uk)