

BVA

BANA VAID & ASSOCIATES
— S O L I C I T O R S —

Care Proceedings



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GUIDE TO CLIENTS ON CARE PROCEEDINGS

Care Proceedings

Every Local Authority has a duty to safeguard and promote the welfare of children in need and, so far as it is consistent with that duty, to promote the upbringing of such children by their families. Therefore, if a Local Authority has concerns about the safety or welfare of a child, they must investigate to enable them to decide whether they need to take action to safeguard the child. The Local Authority can make an application to the Court for a Care Order or a Supervision Order. Cases involving children commenced by a Local Authority are Public Law proceedings under the Children Act 1989 and usually referred to as Care Proceedings.

A Local Authority will only initiate Care Proceedings where they believe that a child is suffering, or is likely to suffer, significant harm due to the way they are being looked after by their parents or carers, or where the child is beyond parental control. This is generally known as the 'threshold criteria'.

The definition of 'significant harm' covers physical and mental health and includes sexual abuse and forms of ill treatment which are not physical.

A child is considered potentially beyond parental control when they persist in severe disciplinary problems such as defiance, truancy or running away from home, sexually promiscuous, addicted to drugs, and the parents are powerless to influence the child's behaviour.

If the Court is satisfied that the 'threshold criteria' is met then the Court will consider whether to make any Orders, and if so, they will consider the type of Order to make. When making any order, the child's welfare is of paramount consideration and the Courts will make decisions based on what they consider is in the best interests of the child.

The Local Authority will not necessarily issue proceedings at Court if they are able to safeguard the welfare of the child by working together with the parents. If the Local Authority feels that a child cannot remain living with the parents whilst they carry out assessments in relation to concerns they have, then the Local Authority may ask the parents to agree that the child is accommodated under a Section 20 Agreement. This is a voluntary Agreement entered into by the Local Authority and those with parental responsibility of the child. Because this is voluntary the person with parental responsibility has the right to remove the child at any time, however, if the child is removed then it is likely that the Local Authority will bring immediate Court action. Immediate Court action would take form of an Emergency Protection Order. Such an Order can authorise the local authority to remove the child from the care of the parents to a safe place. The Local Authority would need to satisfy the threshold criteria in order to obtain an Emergency Protection Order, or alternatively, they would need to show that the Local Authority's enquiries are being frustrated e.g. where access to the child is being unreasonably refused.

Parents are generally advised to co operate with the Local Authority as the child's best interests is of utmost importance to all concerned.

Orders the Court can make

Care Order: This would give the Local Authority parental responsibility which means that they would share the same rights, duties and obligations with the parents. It means that they can make decisions for and on behalf of the child whilst a Care Order is in place.

Supervision Order: The Courts will sometimes make a Supervision Order instead of a Care Order which means that the Local Authority would then befriend, advise and assist a parent or other family member but would not share parental responsibility with the parents.

Section 8 Order: The Courts are able to make Section 8 Orders such as Residence Orders or Prohibited Steps Orders or Specific Issues Orders within the care proceedings if there is reason to do so.

Special Guardianship Order: The Courts can make a Special Guardianship Order to place a child for longer periods of time with someone who is not their parent. A Special Guardianship Order is more permanent than a Residence Order.

Adoption Order: The Courts can make an Adoption Order if the Court considers that the child's welfare and needs will be best served in a new home permanently. If an Adoption Order is made then the parents will lose parental responsibility of the child and the child will become the legal child of the adoptive parents.

Interim Order: The Courts may make Care Orders, Supervision Orders, Residence Orders or Contact Orders on an interim basis. This is when the Orders are for a temporary period of time, for instance, these Orders will be made during the course of proceedings if required. An Interim Order lasts only until the end of the period specified, as opposed to full Orders which would last until the child is 18 years old.

Funding

Representation and advice in care proceedings are fully funded by the Legal Services Commission regardless of your financial means.

If this situation applies to you then contact us immediately in order that your position is represented in Court.

Please note that the information provided above is an overview only and is not intended to be a comprehensive study of care proceedings. If the situation applies to you, you must seek specific advice in relation to your particular circumstances.