

Proceedings and court order information

Prior to issuing proceedings

It is unusual for the Local Authority to immediately issue proceedings for a Care Order in respect of a child. Usually they have been made aware of problems and tried to work with the families first. Only when there is a serious triggering event will the Local Authority take steps to issue proceedings without trying to resolve the problems outside proceedings.

It may be that the Local Authority try to work with the family under a Child In Need plan or the child may be placed on Child Protection. During these stages you will not be entitled to public funding to get legal representation but it is worth contacting your solicitor for a preliminary chat if you have any concerns about the direction things are going.

If things cannot be resolved in the early stages it is likely the Local Authority will enter Pre Proceedings. If this is the case you will receive a letter from your Local Authority setting out very clearly that this is your last chance to make the necessary changes and avoid the Local Authority taking court action. It is at this stage that you become entitled to free legal advice. A series of meetings will be set up.

In advance of the first meeting the Local Authority will have provided you with a Contract of Expectations. This should be considered with your solicitor. The Contract sets out clearly what is expected of the Local Authority to try and help you and what is expected of you and the father of the child.

At the first meeting you will sign the Contract of Expectations. It is very important that you stick to the Contract as failure to do so could result in the Local Authority issuing proceedings for a Care Order.

There will then follow at least one review meeting whereby everyone looks at the progress being made.

At the final meeting you will be informed of the outcome of the PreProceedings process. At this stage if the Local Authority are satisfied that you have made the necessary changes then the PreProceedings process will be brought to an end with no further action being taken. Please note that if your child is on Child Protection this will continue until determined by the Child Protection Panel and therefore not automatically brought to an end by the pre proceedings process ending. Alternatively it may be that the Local Authority remain involved under Child in Need or a lesser intervention.

If the Local Authority do not feel that the necessary changes have been made they will advise you of their intention to issue proceedings for a Care Order.

When does the Local Authority have the right to remove my child?

The Local Authority can remove your child to foster care if you provide your consent/ agreement. This is known as Section 20 Agreement.

Section 20 Accommodation

The Local Authority have a duty to accommodate any child in need of a place to stay. If you are unable to provide your child with a home for any reason then the Local Authority have to provide them with accommodation, usually with a foster placement if there are no suitable family members.

If the Local Authority are very concerned about your child's wellbeing they may ask that you provide your written agreement that your child can go into foster care. You should always seek legal advice if you are not sure what you are being asked to agree to.

What happens if I do not agree?

If you do not agree to your child being taken into foster care the Local Authority can ask the police to use their powers to remove your child immediately. They can only do this in extreme circumstances

If you do not agree to Section 20 and the police do not use their powers then the Local Authority cannot remove your child without a court order!

Types of court order

Emergency Protection Order

This order allows the immediate removal of a child to foster care and conveys Parental Responsibility to the Local Authority and, as the title implies, should only be used in an emergency. Only where there is an imminent risk of harm to the child. In some extreme cases such an order can be made without notice to the parents.

Interim Care Order

Where the Local Authority apply for a care order they will usually also be seeking an "interim" care order. This allows the Local Authority to share Parental Responsibility for the child whilst assessments are undertaken and before a long term plan is reached for the child. The Local Authority will be clear on whether they are seeking to remove the child in the interim or whether they are content for the child to remain at home under a Care Order

Care Order

Such order can be made at the end of proceedings. If the parents have made some progress, the Court may order that the child can stay with/ return to their parents but allow the Local Authority to remain sharing Parental Responsibility. Alternatively a Care Order may be made placing the child with a family member or in long term foster care.

Supervision Order

Where the Local Authority are satisfied that a good deal of progress has been made but there are still a few concerns, it is likely the Court will make a Supervision Order. This provides that the Local Authority are to "advise, befriend and assist" the family but they do not share Parental Responsibility.

Special Guardianship Order

The Order is usually made where the plan for the child is to remain with a family member (such as a Grandparent). The idea of a Special Guardianship Order is that it is to remain in place for the duration of the childhood. The Special Guardian will have a heightened Parental Responsibility which makes it clear that they, and not the parents, make the day to day decisions and have a big say in major decisions for the child.

Adoption

Adoption is the last resort for a child. It is a very "draconian" order and should not be made lightly. Although the parents agreement is sought to the adoption, it can be dispensed with if the child's welfare requires it. Unlike a Care Order or Special Guardianship Order, Adoption results in the parents losing their parental responsibility. Contact is usually letterbox only. Effectively the child receives new parents.

Once the Local Authority have applied for a Care Order there will be a Case Management Hearing which will set out and "timetable" what will happen between then and the conclusion of proceedings.

When the Local Authority file their application with the court the social worker will also file a statement and other evidence such as minutes from recent child protection conferences, any parenting assessments that have been undertaken. In the Local Authority's Application they will set out their "Threshold" which has to be met for a Care Order to be made. Threshold is where the Local Authority set out why the child has suffered or is likely to suffer significant harm as a result of the care given or likely to be given to him. All parties to proceedings may respond to that "Threshold" by way of a statement.

Who will be at court?

Your social worker will attend at court, or in their absence, their manager. They will be represented by a solicitor from the Local Authority. The mother of the child will be present, represented by their solicitor. If the father has Parental Responsibility then they will also be a party and will be entitled to free legal aid and therefore also have their own solicitor present. If the father does not have Parental Responsibility he can apply to be joined as a party and will then be entitled to free legal aid. Also present will be the Guardian. The Guardian is appointed by the court to represent the interests of the child. The Guardian will also have their own solicitor. Your case will be heard by a judge or a bench of lay magistrates assisted by a clerk.

What can you do to help yourself once proceedings are issued.

Engage, Engage, Engage

The worst thing you can do is bury your head in the sand. As previously stated, you will be entitled to free legal advice and therefore it is really important that you communicate with your solicitor. Remember they are on your side and here to help you. For a solicitor the most frustrating thing is were your client has the chance to ensure their child returns to their care but fails to comply with directions.

What ever directions have been made by the court at the Case Management Hearing must be complied with. The typical directions that are made are;

Drug and Alcohol Testing

DNA Testing

Cognitive Assessment

Copy school reports/ housing/ health visitor/ medical records

Psychological Assessment

Parenting Assessment

Engaging with your Social Worker is very important. It is accepted that not everyone has a positive relationship with their social worker. Quite often parents will see them as the enemy who is trying to remove their child. The important thing to remember is that they play a crucial role in determining the outcome of your child's future and you **MUST** work with them.

We always advise clients have a diary or a calendar to make sure that all appointments are met. A lack of engagement can appear as a lack of commitment and therefore meeting all health appointments/ contacts/ social work and legal appointments is crucial. If your appointments clash speak to the people involved and ensure things are rearranged.

You will receive a lot of correspondence during the proceedings and it is therefore very important you regularly read your post. If you are struggling your Family Support Worker can assist you.

Parenting Assessment

This will be carried out in the majority of cases unless a parenting assessment has been done just prior to the proceedings been issued. If one has already been done an "addendum" one may be done. If someone has a limited cognitive ability then the parenting assessment will be delivered in such a way that it is easy to understand. This is known as a PAMs assessment and can be carried out by the Local Authority social worker or outsourced to an Independent Social Worker. This will ensure a parenting assessment is not negative simply because someone does not understand what is being asked of them.

What if I am not happy with the Local Authority's Parenting Assessment of me?

It is quite common for a parent to be dissatisfied by a parenting assessment. In certain cases you can apply for an Independent Social Worker to carry out an assessment. This is a qualified social worker who does not work for the local authority. It is not your right to have this if you do not agree with the parenting assessment. You will need to make an application to the court and show that the parenting assessment produced by the court has "gaps" in the evidence and the report is not considered to be "robust". If an ISW report is not ordered your solicitor or barrister will still have the opportunity to cross-examine the social worker on their report at the final hearing.

What happens next?

The various pieces of information will be filed with the court and copies served upon all the parties. Once all the information is received the Local Authority will file their final evidence which will include a Care Plan for the child. This is what they are seeking at the finality of the case. The parent will then have the opportunity to respond by filing a final statement and the Guardian will also make her recommendation to the court.

Issues Resolutions Hearing

Once all the evidence has been filed with the court an IRH will take place to determine whether an agreement can be reached on a final outcome and thus the IRH will be treated as a final hearing. If agreement cannot be reached then the matter will be set down for a Final Hearing and the IRH will be used to narrow the issues to be determined at final hearing.

Final Hearing

At the final hearing the relevant people will have to give evidence and be cross examined by the other parties. The usual witnesses will be the social worker, the parents and the Guardian and any experts who have provided a report to the court. Once all the evidence has been presented to the court the judge or the magistrates will make a decision and deliver written reasoning for that decision. This is usually within 26 weeks of the proceedings being issued but in certain exceptional situations the timescale can be extended. At the final hearing threshold must be agreed or the court will make findings in the absence of agreement.

What are the potential outcomes at the conclusion of a care case?

- Return to mum
- Return to dad
- Be placed with a family member or family friend
- Be placed in long term foster care
- Be placed for adoption

If my child is returned home is this the end of things?

At the end of proceedings it may be that your child remains/ is returned to your care. This does not necessarily end social services involvement. Your child can be returned home under a court order or no order may be made at all.

- No Order

Were no order is made the Local Authority will most likely remain involved to assist for a time. This will usually be on a Child In Need plan. Where at all possible, the court should make no order.

- Care Order

The Local Authority will continue to share Parental Responsibility and remain fully involved. Your child will still be a child in care and therefore subject to the usual medicals, Personal Education Plans etc. An application can be made to discharge the Care Order. Funding for this is not automatic but can be obtained in most cases. You must be aware that if the Local Authority has a care order, if they become aware of any risk to the children they can remove them from your care without returning the matter to court.

- Supervision Order

This allows the Local Authority to remain involved on a statutory basis but they no longer share Parental Responsibility. Their role is to "advise, befriend and assist".

What if my child is placed with my family/friend - how often can I see them and does this have to be supervised?

This will depend on the type of order made. If a child is placed under a Care Order the level of contact will be governed by the Local Authority. This will not usually be a frequent level of contact as the Local Authority would be of the view that high levels of contact could disrupt the placement.

If a child is placed with family members under a Special Guardianship Order then it is for the Special Guardian to determine the level of contact but often this will be guided by the Local Authority. The Special Guardian has a serious responsibility to ensure the child is kept safe and bowing to pressure from parents to allow excessive or unsupervised contact could result in the Local Authority returning the matter to court.

Can I apply to get my child back in the future?

The purpose of the court proceedings is to find a plan of permanence for a child. It is therefore envisaged that your child will not return home to you in the future. Were a child adopted it is incredibly rare that this would be overturned. If a child is under a Special Guardianship Order you can apply to revoke this if you have had a change in circumstances but it is very rare for an SGO to be overturned and to be successful you would realistically need the support and agreement of the person holding the SGO. If your child is placed with a family member under a Care Order or in a long term foster placement you can apply to discharge the Care Order however, again you would need to demonstrate a significant change in circumstances. You can get public funding for this but it has to pass a means and merits test (i.e. the Legal Aid Agency would have to agree you have a high chance of success).

What if I want more children in the future?

If you have previously had a child removed from your care then understandably the Local Authority will want to be involved with any future children. That does not automatically mean that you will not be able to keep a future child. Each case will depend on its circumstances. It is important to be open and honest with the Local Authority as soon as you become aware you are pregnant. They may well carry out a prebirth assessment. Factors which will influence their decision are any changes in circumstances for example;

A new stable partner

The passage of time

Attending recommended courses

Ending a violent relationship

Engaging in recommended therapy

Recovering from a drug/ alcohol addiction.

It must be borne in mind that the slate is not wiped clean with a new child particularly where findings have been made against you in previous proceedings. For example if it was found you were in the pool of perpetrators who injured a child and no explanation has been received.