

Terms you may encounter around Legal Processes

This is a briefing to assist all partner agencies in their understanding of legal terminology/processes.

Care Proceedings (also referred to as public law proceedings).

These are legal proceedings brought by the Local Authority in the family court to determine if a child should be placed in the care of (Care Order) or be supervised (Supervision Order) by the Local Authority. The Local Authority is the applicant. The child is a party and is legally represented. Parents are respondents and are represented (either together or separately) and that representation is paid for by legal aid. The Child/ren is also a party and a Children's Guardian is appointed from CAFCASS to represent the child's interests, instruct their lawyer and advise the court on matters such as what order to make and the suitability of the Local Authority's care plan for the child. Care proceedings should not ordinarily take longer than 26 weeks. In considering what order to make at the end of proceedings the court can make any public or private order.

Private law proceedings – other legal proceedings in the family court. Typically, a dispute between parents about who the child should live with (residence) and who the child should spend time with (contact). The Local Authority is often not involved at all. The Local Authority or CAFCASS may be asked to provide reports to the court about the child's welfare and advise the court on what orders to make (s7 reports). The child is not usually a party, although this can happen in exceptional circumstances. A Children's Guardian would then be appointed as in care proceedings. If the court believes the child may be suffering significant harm, they may request that the Local Authority undertake an assessment and if they determine not to issue public law proceedings then a report must be provided explaining why care proceedings are not required. (s37 report). Other orders the court may make in private law proceedings are a Prohibited Steps Order which is an order that no step which could be taken by a parent in meeting his parental responsibility for a child without the consent of the court. The court could also make a Specific Issue Order which is an order about a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child (e.g. medical treatment, circumcision, passport).

Public Law Outline (PLO) – Government guidance on conducting care proceedings that starts with a pre proceedings process that should be followed in all cases unless it is not safe for the child/ren to delay. The pre proceedings stage is a final step giving the parents the information and advice they need to avoid going to court. This is a short period of time (generally 12 weeks) in which focussed assessment takes place with the aim of keeping the child safe, the parents are given a final opportunity to improve their parenting, family options are identified alongside the Local Authority gathering and preparing the evidence for an application. This may involve commissioning specialist assessments. It will involve meeting with the parents and their lawyers to explain our concerns, and what the parents need to do to avoid us going to court. This process should only be started if the Local Authority intends to apply for a care or supervision order if there is no improvement in that time.

Parental Responsibility (PR) – the legal rights and duties of a parent. Mothers always have it. Fathers have it if they are married to the mother or are named on the birth certificate. Others may acquire it by order of the court.

Care Order – an order made in care proceedings determining that the child should be placed in the care of the Local Authority. It can only be made if the court is satisfied that the following Threshold Criteria are met.

- ☐ That the child is suffering, or likely to suffer, significant harm.
- ☐ And the harm or likelihood of harm must be attributable to one of the following:
 - a) The care given to the child, or likely to be given if the order were not made, not being what it would be reasonable to expect a parent to give; or
 - b) The child being beyond parental control.

The court will also apply the welfare test taking account of the matters set out in the Welfare Checklist (S1(3) Children Act 1989) and will only make an order if it is better for the child than not making one (No order principle). It gives the Local Authority shared Parental Responsibility with the parents and the ability to exercise that parental responsibility to implement a care plan for the child even when the parents do not agree provided such a plan is in the child's best interests. A Care Order lasts until the child turns 18 unless discharged by the court at an earlier date.

Interim Care Order (ICO) – a temporary version of the above designed to place the child in the care of the Local Authority during the course of care proceedings, before the court has made a final decision about their future. The court still needs to be satisfied there are reasonable grounds to believe the child is suffering or is at risk of suffering significant harm and the No Order principle also applies. This gives the Local Authority shared parental responsibility and while there is a responsibility to consult with parents (and competent children) about decisions an interim care order allows the Local Authority to make decisions or provide consent even where parents do not agree.

Supervision Order – an order made in care proceedings that allows the Local Authority to advise, assist and befriend a child. Usually made when a child remains at home with a parent but can exceptionally be made alongside other orders such as SGOs (see below). It requires the same threshold criteria to be met as a Care Order. It does not give the Local Authority shared Parental Responsibility. Conditions can be attached requiring actions from parents. Supervision orders usually last a year but can be extended to a maximum of 3 years on further application to the court.

Interim Supervision Order – temporary version of above used during care proceedings before the court makes a final decision about the child's future. There is no shared parental responsibility.

Emergency Protection Order (EPO) – this is an order that can be applied for if immediate safeguarding concerns exist. There needs to be an immediate risk of serious harm. It is seen as a draconian order and will only be made if there is imminent danger to the child. It lasts for up to 8 days and an application can be made for an extension for up to 7 days. The EPO will grant the local authority Parental Responsibility for the child which will enable the child to be removed to other accommodation or to remain in a place where he/she is being accommodated (e.g. a hospital or foster placement).

Police Powers of Protection (Police Protection) – This is not a court order, but rather a power of the police to protect children from harm by removing them to suitable accommodation. It should only be used in exceptional circumstances where there is insufficient time to apply for a court order. It lasts for a maximum of 72 hours. There is no shared parental responsibility.

Section 20 (s20) – An arrangement where the Local Authority looks after a child with the parent's agreement. No court order is required. There is no shared parental responsibility.

Child Arrangements Order (either/both lives with or spends time with order)– usually made in Private Law proceedings but can be an outcome from Care Proceedings. It determines which parent, or

other person, a child should live with and what contact arrangements there should be. It gives parental responsibility to the person the child lives with if they do not already have it.

Placement Order – made in care proceedings alongside a Care Order where the care plan is adoption. It allows the Local Authority to place the child with prospective adopters. It allows the Local Authority to restrict the birth parents' ability to exercise their Parental Responsibility. It gives Parental Responsibility to prospective adopters when a child is placed with them and before an adoption order is made.

Adoption Order – establishes a permanent relationship between the adopters and the child. They are legally recognised as the parents of the child as though they were the birth parents. The child has the same rights as a birth child of that family. It removes Parental Responsibility from birth parents, and anyone else, including the Local Authority.

Special Guardianship Order (SGO) – This is an order that appoints someone as a Special Guardian for a child. It does so without severing the links with birth families to the extent adoption does. It gives the Special Guardian enhanced Parental Responsibility in many areas (aside from removal from the country for a period over 3 months or change of name) and enables them to exercise it to the exclusion of others.

Deprivation of Liberty Safeguards (DoLs) – These orders are applied for to authorise a deprivation of liberty for a child. They are used where care arrangements involve the child being under continuous supervision and control and not free to leave. Unless the child is competent and agrees, parental consent will not stop that amounting to a deprivation of liberty and, unless legally authorised, the deprivation will be unlawful. This is often used where there is a need for high levels of supervision or curfew for e.g. in cases involving Criminal or sexual exploitation.

Secure Accommodation Order (SAO) – this is an order that allows the Local Authority to place a child in accommodation that is specifically designed to restrict their liberty on the basis that their welfare requires it. This is a welfare application, but children can also be remanded to secure accommodation as part of a criminal process. It is often made in tandem with an application for a Care Order.

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