

## HIGGINS MILLER SOLICITORS

### PUBLIC LAW PROCEEDINGS UNDER THE CHILDREN ACT

---

#### 1. Parental Responsibility

Parental Responsibility encompasses all the rights and duties, which a parent has regarding a child. It includes the right to decide where the child should go to school, what form of religious up-bringing the child should have and what medical treatment the child should receive.

#### 2. Emergency Protection Order

An Application for an Emergency Protection Order can be made by a Local Authority who wish to share Parental Responsibility for any child named in the Order.

An Emergency Protection Order authorises the Applicant Local Authority to remove the child to any accommodation provided by the Local Authority (or on their behalf), authorises the prevention of the child's removal from any place where he was accommodated before the Order was made and operates as a direction to any person to comply with any request to produce the child to the Applicant if they are in a position to do so.

The Court can either make an Emergency Protection Order or not. It always has to consider the child's welfare as the paramount consideration and that it must not make an Order unless doing so will be better for the child than making no Order at all.

Any Emergency Protection Order may be made for a maximum period of eight days and the Application can be made by the Local Authority without notice (i.e. without telling anybody who has parental responsibility for the child).

When making an Emergency Protection Order the Court must be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if he/she is not removed to the accommodation provided by the Applicant or he/she does not remain the placement where he/she is already being accommodated. In addition the Local Authority may indicate that enquiries are being made with respect to the child to decide if it should take any action to safeguard or promote the child's welfare and those enquiries are being frustrated by access to the child being unreasonably refused. For example, an Emergency Protection Order can be used to allow a Local Authority to have a child examined by a doctor to investigate any concerns that the Local Authority might reasonably have.

#### 3. Applications for Care and Supervision Orders

The Local Authority may make an application for an Order under Section 31 of the Children Act allowing for a child to be placed in its care.

The Application is made on the basis of:-

- a. That the statutory threshold criteria are met. To establish this the Court must be satisfied that:-
  - i. The child concerned is suffering, or likely to suffer significant harm and;
  - ii. That the harm, or likelihood of harm, is attributable to:
    1. Care given to the child, or likely to be given to the child if the Order were not made, not being what it would be reasonable to expect the parents to give him/her or;
    2. The child being beyond parental control.

If the Court finds that the threshold criteria have been met then it has to consider: -

- a. Should an Order be made?
- b. If so, what type of Order?

The Court must always: -

- a. Apply the principal that the child's welfare is the paramount consideration.
- b. Apply the Statutory Welfare Checklist (see below).
- c. Not make an Order unless it considers that in doing so it will be better for the child than making no Order at all.
- d. Before making a Care Order consider the proposed arrangements for the contact with the child and invite comment on them.

The Welfare Checklist is as follows: -

1. The ascertainable wishes and feelings of the child concerned (consider in light of his/her age and understanding).
2. The child's physical and emotional educational needs.
3. The likely effect on the child of any change in his/her circumstances.
4. The child's age, sex, background and any characteristics, which the Court considers relevant.
5. Any harm which the child has suffered or is at risk of suffering.
6. How capable are each of the parents (and any other person considered relevant) in meeting the child's needs.
7. The range of powers available to the Court under the Children Act.

Any Application now issued for a Care or Supervision Order is subject to the Public Law outline, which has an overriding objective to enable the Court to deal with the case justly, expeditiously and with the minimum of delay and in ways which ensure that the parties are on an equal footing and that the welfare of the child is safeguarded and stress to the parties is minimised.

This means that timescales will be put in place by the Court, which have to be met by everybody involved in the matter.

Following an Application for a Care or Supervision Order the Court will appoint a Children's Guardian unless it is satisfied that it is not necessary to do so. The Children's Guardian will appoint a Solicitor. It is the Children's Guardian's job to provide instructions on behalf of the children to the child's Solicitor and to report to the Court setting out his or her views on the arrangements and future arrangements for the children.

Applications for Care and Supervision Orders are brought in the Single Family Court. The nature and complexity of the proceedings will determine the level of judge that hears the case.

The mother of the child is always an automatic Respondent to the proceedings as she has parental responsibility. Any father who has parental responsibility or any person who has parental responsibility by reason of a Residence Order will automatically also be a party to the proceedings.

Any father who does not have parental responsibility has the right to make application to become a party to the proceedings. The Applicant Local Authority have a duty to give notice of any proceedings to any father without parental responsibility.

At the first hearing the Court may be asked to grant the Local Authority an Interim Care Order initially for a period of up to eight weeks and then subsequently renewed every four weeks assuming that the grounds are still met. Such an Order will be granted if the Court has reasonable grounds for believing that the child concerned is suffering, or likely to suffer significant harm and the harm or likelihood of harm, is attributable to 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 the parent to give him/her.

If the Court grants an Interim Care Order, the Local Authority will share parental responsibility for the child and will have overriding responsibility for decisions in respect of the child and in particular where and with whom the child should live. In making an Interim Care Order the Court has to be satisfied that the Local Authority plans in this regard are appropriate.

Whilst proceedings are ongoing the Local Authority has a duty to promote contact between the child in its care and its parents. Contact is a matter, which will always be considered by the Court. If the Local Authority wishes to terminate contact between the child and its parents whilst the proceedings are ongoing the Local Authority must seek the Courts approval.

Usually the first or second hearing in the proceedings is a Case Management Hearing. This is a procedural hearing to consider what evidence needs to be filed. The Court may give directions for the filing of assessments and reports. The Court will consider such things as the preparation of assessments by Social Services, independent assessments by Psychologists, Paediatricians and Psychiatrists and the filing of other evidence, for example statements and medical evidence.

Once all of the assessments and reports have been gathered as directed by the Court, the Court holds an Issues Resolution Hearing. At this hearing the Judge identifies the issues in the case and seeks to see if they can be resolved. If they cannot be resolved then the Court

will fix a final hearing at which the Judge will listen to the evidence and make his or her decision.

If the Judge finds that the Statutory Threshold criteria are met, then there are a range of Orders that the Judge may or may not make: -

1. **No Order** – this will bring to an end any Interim Care Order and the Local Authority’s parental responsibility for the child. It will mean that parental responsibility for the child remains with his/her parent(s).
2. **Care Order** – this lasts until the child is 18 years of age and means that the Local Authority shares parental responsibility for the child until then. The Local Authority will be responsible for decisions affecting the child including decisions as to where and with whom the child should live.
3. **Supervision Order** – this is often made in conjunction with either No Order or a Child Arrangements Order. A Supervision Order lasts for 12 months initially but can be extended for period of up to two years. The Local Authority will cease to have parental responsibility for the child but will be required to remain involved to advise and assist.
4. **Child Arrangements Order** – this determines the arrangements for the child. The Local Authority’s parental responsibility for the child will end upon the making of a Child Arrangements Order, although the Local Authority may remain involved because of a Supervision Order or because the child is a child in need. The order determines the arrangements for whom the child should live with and can also determine the arrangements of who the child should see and may include specific details about when, where and how often such contact is to take place.
5. **Placement Order** – if the Court concludes that neither parent or any family member are able to look after the child then the Local Authority may seek to have the child placed for adoption. This means that the parents will cease to have parental responsibility for the child who will be placed with a different family. It is unlikely that the birth parents will have any knowledge of the child’s whereabouts and contact will be restricted to cards and letters any may be very occasional visits. A Placement Order authorises the Local Authority to seek to have a child in its care placed for adoption.
6. **Special Guardianship Order** – if a Court concludes that a child’s parents are unable to look after the child but there are other family members who may be able to look after the child the Court may consider placing the child with those family members under the terms of a Special Guardianship Order. Such an Order is viewed as being permanent in the same way that an Adoption Order is. However unlike adoption the parents continue to retain parental responsibility for the child which is shared with the family members looking after the child.