
Child Law Team

Children, Social Services and the Local Authority

This is a vast and often complex area of the law. Fortunately it is an area of law that is child focused. In the main the child's interests are the paramount consideration when the Courts make any decision in relation to the child. It is particularly in this area of the law that the concept of working in partnership, which will be familiar to many professionals including, GPs, Social Workers, Teachers, Family Support Workers and the Police is of central importance.

At Thomson Snell & Passmore we recognise and value the multi-disciplinary approach to child protection. The formation of a multi-disciplinary Child Law Team within Thomson Snell & Passmore is an acknowledgement of this approach. We aim to build upon the best aspects of working in partnership to ensure that the children and families we represent secure the best possible assistance in times of often acute need.

The participation of children in legal proceedings initiated by a Local Authority.

Since the decision of the House of Lords in "Gillick" there has been greater legal recognition of the rights of a mature and intelligent child to take decisions for him/herself. Accordingly, parental rights only continue for so long as may be necessary to enable a parent to discharge their parental responsibilities and constitute a diminishing bundle of rights as a child grows in age, maturity and understanding. There is recognition of the rights of the child in many legal proceedings involving the Local Authority by virtue of the child him/herself being made a party to the proceedings whatever his/her age. The child will usually be represented by an independent "guardian ad litem" who is under a duty to act in pursuance of the child's best interests and who will have regard in every case to the child's ascertainable wishes and feelings. A child of sufficient age and maturity who understands the proceedings and is capable of giving instructions, may be able to instruct a solicitor directly if she/he wishes to participate in the legal proceedings personally rather than through a guardian ad litem.

Local Authorities

Local Authorities have duties to all children in need within their area. Every Local Authority is charged as follows:

- a) To safeguard and promote the welfare of children within their area who are in need;
- b) So far as is consistent with that duty, to promote the upbringing of such children by their families.

This duty is met by providing a range and level of service as appropriate to those children's needs.

Children may be in need because of disability or other health difficulties. In other cases children may have social, emotional or behavioural difficulties which leave them in need.

Financial considerations inevitably impact upon the provision of services to families in need. The range and level of services available often do fall short of the individual child's needs. There is an irreconcilable conflict between the child's welfare and the Local Authorities allocation of scarce resources. This tension has yet to be resolved by the Courts, though in particular instances there does appear to have been a willingness on the part of the Courts to place a child's needs and welfare first.

For many parents of children in need their first contact with the Local Authority will be in relation to the statementing process (see **Education**).

Child Protection Case Conferences

There will be occasions when a Local Authority is obliged to take action in relation to a child in its area whom is considered to be at risk. Nationwide many thousands of children every year are registered on the Child Protection Registers as being at risk. A child may be at risk because they have special needs, but more often because they are being neglected or abused, whether physically, emotionally or sexually.

Child Protection Conferences reflect the multi-disciplinary approach to child protection. The conferences are intended to bring together family members and professionals from agencies concerned with child care and protection, to share and evaluate information gathered during pre-conference investigations, to make decisions about the level of risk to the child, to decide on the need for registration and to make plans for the future. The various agency representatives may all have a part in the overall plan.

As a firm we are able to accompany parents and indeed children themselves to Child Protection Case Conferences and Child Protection Reviews. Advice and assistance may be given under the Legal Aid Green Form scheme subject to financial eligibility.

Child Protection

Every year many children are accommodated on a voluntary basis by Local Authorities and other foster care organisations. This may be because of parental illness or because a parent/ guardian is otherwise unable to care for their child and respite care is therefore required. We are able to offer advice and assistance to children, parents, and also to foster carers and foster care organisations on issues which may arise from such placements.

Issues can also arise as to the adequacy of the long term care which is being provided to a child. There may be allegations that a child is suffering as a result of the care being offered by their parents or other family members. Compulsory intervention in the care and upbringing of a child will be possible only by Court Order, as a result of proceedings usually brought by a Local Authority or the NSPCC. A wide range of orders can be sought:-

- Child Assessment Order
- Emergency Protection Order
- Care Order
- Supervision Order
- Education Supervision Order
- Secure Accommodation Order
- Child Recovery Order

It is not proposed in these notes to set out in detail the criteria that must exist before a Court can make any one or more of the above orders, save in relation to Care and Supervision Orders, these being the most common type of orders made.

Under a Care Order the Local Authority is under a duty to receive a child into its care and to keep him/her in care while the order remains in force. The Local Authority acquires parental responsibility for the child and can determine the extent to which a child's parents share such responsibility. A Care Order lasts until a child's 18th birthday unless it is brought to an end earlier.

If a Supervision Order is made, a named supervisor is under a duty to advise, assist and befriend the supervised child. The Order lasts for one year, though may be extended for up to three years. The Order cannot continue after the child's 18th birthday. The Local Authority does not acquire parental responsibility under a Supervision Order.

A Court may only make a Care Order or a Supervision Order if satisfied:

- a) that the child is suffering or likely to suffer significant harm; and
- b) the harm or likelihood of harm is attributable to:

- i) the care given to the child not being what it would be reasonable to expect of a parent; or
- ii) the child being beyond parental control.

These are known as the "threshold criteria".

Before making a Care Order or a Supervision Order a Court must still have regard to the child's welfare which remains the Court's paramount consideration. A Court must have regard to the welfare checklist detailed in Section 1(5) of the Children Act 1989 and must therefore amongst other things must have regard to the child's wishes and feelings considered in the light of their age and maturity.

This information sheet has been prepared to highlight some key issues relating to children, social services and the Local Authority. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at September 2000 and may be affected by subsequent changes in the law.

Key Contacts:

Desmond O'Donnell or Kate Gage
on 01892 510000

Email: desmond.odonnell@ts-p.co.uk or
kate.gage@ts-p.co.uk