

Children's Services Scrutiny Committee – 16 November 2011

Report of the Acting Director of Children's Services

Care Proceedings

Purpose of Report

1. To providing Scrutiny Committee with information regarding the legal processes which are undertaken by the Local Authority in relation to the protection and safeguarding of children in need.

Background

2. Scrutiny Committee has previously been provided with information which has allowed them to scrutinise referral and assessment processes which take place when children and their families are referred to children's social care.
3. The previous report detailed how referrals were made either by children and families themselves or a range of professionals who had concerns about the welfare and safeguarding of children in our community or where there are concerns that a child and their family need additional support to enable them to continue to provide appropriate care for their children.
4. Committee have also received reports to enable them to scrutinise the processes by which decisions are taken relating to the permanency planning for children and through adoption.
5. This report seeks to outline the processes which must be undertaken with regard to applications by the Local Authority for court proceedings when it has been deemed necessary for the Local Authority to intervene to remove children from their birth families and to undertake assessments to achieve permanent arrangements for those children which may include a return home or a number of other permanency arrangements including family and friends care, residential care and foster care.
6. The majority of children who are looked after in Dudley are subject to care orders and it is therefore important for Scrutiny Committee to understand the context in which social workers are working when it becomes necessary to issue court proceedings. The legal framework is complex and demanding.
7. In many of the cases where proceedings are issued social care will have had some previous involvement with the family which may have included the provision of family support services either on a supportive voluntary basis in partnership with the family or through the development of a child protection plan where concerns have

escalated to a more significant level. However, in some circumstances families are referred to social care where there has been no previous involvement and where the circumstances have become so serious that it becomes necessary to take emergency court action in order to safeguard and protect the welfare of individual children.

8. The Framework for the Assessment of Children in Need and their Families was published by the Department of Health in April 2000. It is designed to enable social workers and managers to take a systematic approach to the assessment in a way that is tailored to the needs to individual children and or family. The social workers role is to plan the assessment carefully and in partnership with the child and family wherever possible and care proceedings are by no means an inevitable conclusion of the assessment work that is undertaken.
9. The Family Justice Review was set up in February 2010 by the previous Labour Government to look at all aspects of the family justice system from court decisions on taking children into care to disputes over contact with children when parents divorce.
10. The final report of the review was published on 3 November 2011. The key issues relating to care cases are:
 - a. A recommendation that all child protection cases are dealt with within a statutory 6 month time limit
 - b. A reduction in the use of expert witnesses
 - c. A single family friendly court to replace the 3 tiers of court that currently exists
 - d. That family courts should be refocused on the core issues of whether or not children should be taken into care
 - e. To create a new Family Justice Service which would replace CAF/CASS
11. Attached at Appendix 1 is a case scenario which outlines the basis on which a Local Authority has sought an emergency protection order in relation to two children. These children were removed from their birth family and accommodated in foster care. Care proceedings were subsequently issued.

The following paragraphs outline the legal processes relating to emergency applications and care proceedings

12. **Emergency Proceedings**

There are two types of emergency action that can be taken to secure the short term safety of a child

- 1) **Police protection** - wherever possible the decision to remove a child from their parent or carer should be made by a court by the way of an application for an emergency protection order. However if there is an insufficient time to seek an emergency protection order (EPO) and there are justified reasons relating to the immediate safety of the child then police protection powers can be utilised.

A Police Protection Order is implemented under section 46 of the Children Act 1989 and allows for the removal and accommodation of children by the police in cases of emergency for a maximum period of 72 hours.

2) **Emergency Protection Order** – This Order is made under section 44 of the Children Act 1989 and may be sought in order to seek the short term safety of a child with a maximum duration of 8 days with capacity for one extension of 7 days.

Following the expiry of a police protection order or an emergency protection order the Local Authority will have to make a decision whether to issue care proceedings in order to maintain the safety and welfare of a child. It is these proceedings which this report particularly concentrates on in relation to the processes and procedures which are followed by the social worker with the support of legal services to ensure that permanency options for a child are resolved at the earliest opportunity.

Care Proceedings

13. All childcare cases in the family jurisdiction are civil proceedings and are determined in the Family Proceedings (magistrates), County or High Courts. The function of the court is to decide the issues in the case with the evidence available. The court cannot make decisions on speculation or supposition and the threshold criteria for the application for care proceedings must be met, these are:
 - That the child concerned is suffering or is likely to suffer significant harm and
 - That the harm or likelihood of harm is attributable to:
 - the care given to the child or likely to be given to him if the Order were not made or the child being beyond parental control
14. Care proceedings are issued under the Children Act 1989.
15. On the 1st November 2003 The Public Law Outline (practice direction) came into force with the aim of reducing delay in public law care proceedings.
16. The practice direction applies to all courts hearing applications for care and supervision orders under part 4 of the Children Act 1989. The direction breaks down the court processes for a public law children act case into six distinct steps. The aim of this is to conclude a court case within 40 weeks from the date of the issue of the initial application saving exceptional unforeseen circumstances. The 6 steps are as follows:
 - The application
 - First hearing in the family proceedings court
 - Allocation hearing and directions
 - Case management conference
 - Pre hearing review
 - Final hearing

17. The practice direction also identifies specific documents to be prepared by the parties and gives guidance as to their contents. These documents are referred to as case management documents and are identified as follows:
 - Case synopsis
 - Social work chronology
 - Initial social work statement
 - Schedule of issues (including skeleton argument, background summary and advocates chronology)
18. Appendix 2 outlines the steps and timeframe which apply to the court process.
19. Care proceedings are complex, demanding and resource intensive. They require a significant amount of time and investment from both social work and legal services. Each individual social worker and child care solicitor will be carrying responsibility for significant numbers of court proceedings at any one time. Where proceedings are issued on a non emergency basis it would ideally be the case that all of the preparatory work and pre-proceedings assessments had been undertaken. The Public Law Outline includes guidance on pre-proceedings work with the aim of ensuring that as much information and assessment as possible is available to present to the court on issuing proceedings to avoid any unnecessary delay. In reality however and even when the necessary assessments have been completed it is often the case because of the complexity of the situations which are under discussion that representatives of the other parties to the proceedings and the Guardian acting on behalf the child, may well challenge the assessments and seek to request direction of the court to undertake further types of assessment. These may include psychological and psychiatric assessments of both parents and children, sibling assessments to inform future placement decisions and viability assessments of other family members who may provide future care for the child or children in question.
20. All of these assessments militate against a swift outcome to the proceedings but can ensure that outcomes are based on the most comprehensive and best evidence available and that all parties to the proceedings have had an opportunity to have their views represented and considered.
21. The conclusion of care proceedings will result in one of the following options:
 - The making of “no order” in which the children, if they were looked after by the Local Authority, will be returned to the birth parents.
 - The making of a supervision order – in this case the child will be returned to their parent/carer but the Local Authority would have a responsibility to supervise the arrangements for a period of 1-3 years but no parental responsibility for the children.
 - The making of a care order which is until the child’s 18th birthday unless the Local Authority or parent seeks to revoke the care order through application to the court at an earlier date. The Care Order confers parental responsibility to the Local Authority which it shares with the parent.

Finance

22. The costs of issuing care proceedings are as follows:

- Care Application - £2,225
- Issues Resolution Hearing - £700
- Final Hearing - £1,900
- **Total Cost - £4,825**

The total Legal Services budget for Children's Social Care for 2011/12 is £320,800. This includes provision for all legal costs including psychological assessments.

Law

23. The primary legislation governing care proceedings is the Children Act 1989, and there is a significant volume of statutory guidance issued under this act.

Equality Impact

24. The report takes into account the Council's Policies on Equality and Diversity.

Recommendation

25. That Scrutiny Committee to note, question and comment on the content of the report.



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