

## Chapter 8: Applying to court

### **1 What needs to be done by the local authority prior to making an application to court? What is the value of this pre-proceedings work?**

It is critical that the local authority has tried to help the family in question to avoid the need for proceedings. In many instances, the help offered by a local authority can be extremely useful for parents and can improve the health and wellbeing of the child. When the child is at continuing risk of experiencing significant harm, then the local authority will need to ensure that all the work necessary for an application to the court is made in a timely manner so that there is no unnecessary delay when proceedings start.

### **2 Work through the various court orders in this chapter and produce a grid of their main features, such as duration, directions, discharge, etc.**

### **3 In the following scenarios, consider what order you may be seeking and why:**

**(a) Jon has been found wandering in the street by the police. He is bruised and crying. He is about three years old.**

Unless Jon's parents can be found quickly, the local authority will want to ensure that he is properly looked after whilst an investigation can be undertaken. If Jon appears to have been abandoned then the local authority can accommodate him under s20 of the Children Act. No order is necessary. However, if Jon's parent or parents are found and it appear to the local authority that he has been non-accidentally injured and/or neglected, the local authority should consider making an application for an Emergency Protection Order. Whether they do this will depend on the circumstances and whether the parents are willing to cooperate.

**(b) Tim is 11 years old. The headteacher of his school has contacted you with the following information. He is underweight and dressed in cast-off clothes. He is the youngest child of a family of seven. He has been absent from school on numerous occasions during the past year. When you consult your records, you find that two of the older children in the family have had short periods subject to a care order. There is a note on the file suggesting that Tim's mother finds it difficult to cope. You have talked to Tim, who seems depressed and tells you he is unhappy at home.**

In the first instance, the local authority will want to undertake a thorough assessment of the family's circumstances and whether Tim is suffering significant harm. This may be conducted under s47 of the Children Act 1989.

If matters do suggest that he has suffered significant harm or is at risk of suffering significant harm, then the local authority may decide to initiate care proceedings.

- (c) Lizzie has serious drug addiction problems. She has tried to stop her drug abuse but frequently relapses. Her children, who are aged five and nine, are neglected. You suspect that in the long term the children would progress better with a foster placement.**

In the first instance, the local authority will want to undertake a thorough assessment of the family's circumstances and whether the children are suffering significant harm. This may be conducted under s47 of the Children Act 1989. If matters do suggest that they have suffered significant harm or is at risk of suffering significant harm, then the local authority may decide to initiate care proceedings.

**4 Sarah is the subject of an emergency protection order. What are your responsibilities to Sarah and her parents during the period of the order?**

S44 of the Children Act states:

- (4) Where an emergency protection order is in force with respect to a child the applicants—
- (a) shall only exercise the power given by virtue of subsection (4)(b) in order to safeguard the welfare of the child;
  - (b) shall take, and shall only take, such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order);

The emergency protection order may be granted for a period of up to an initial eight days, extendable, once only, for a period of up to a further seven days—s. 45. These are the maximum periods allowed. It may well be that the court will decide that the order should last for a shorter period.

It is important to keep the parents informed about Sarah and what action the local authority decides is necessary once the duration of the order ceases.

**5 Paula's child, Ian, is subject to a care order and has been placed with a foster family for the past six years. Ian has told Paula that he is unhappy in his placement. Paula would like to apply for the discharge of the care order. How does she go about this?**

It would be best for Paula to seek legal advice and representation in the first instance. She can make an application to the court for the care Order to be

discharged. The court will apply the welfare principle in order to decide whether the order should be discharged or not.