

ACTING FOR PARENTS IN CARE PROCEEDINGS

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This article is written primarily as a guide to solicitors acting for parents in care proceedings. However, many of the principles outlined will apply whether a solicitor is acting for a child or another party in care proceedings.

THE PRE-COURT STAGE

The Importance of Early Advice

It is essential to encourage parents to take legal advice at a very early stage, preferably as soon as a social worker has been allocated to deal with the children of the family. The local authority will generally only advise parents to seek legal advice once a decision to issue proceedings has been made, so advertising may be the key. If a solicitor can become involved at an early stage, before the situation deteriorates to a level where an application for a care order is made, he can explain to parents the importance of co-operation and commitment to the local authority's plans, provided they are reasonable and acceptable. Very often there is a degree of mistrust and suspicion towards the social services department from parents who fear the department's only agenda is to remove the children from their care. As an independent person, the parents' solicitor may be able to remove some of that mistrust and assist the parents to work in partnership with the local authority. It is too often the case that a solicitor is only instructed by parents when they have been served with an application for a care order and the children have been removed under an emergency protection order. The opportunity to assist parents to avoid the removal of their children may have been lost by that time.

SERVICES PROVIDED BY THE LOCAL AUTHORITY

By virtue of s 17 and Sch 2 to the Children Act 1989 (the 1989 Act) local authorities have a duty:

- (a) to safeguard and promote the welfare of children within their area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs.

As a consequence of these provisions of the 1989

Act, local authorities, particularly in cases which revolve around the issue of poor parenting ability rather than deliberate harm, will frequently be working with families long before any proceedings are issued in court. Solicitors can assist parents in these circumstances by ensuring that the local authority complies with its duties under s 17 and Sch 2 and may be able to exert pressure at management level of the social services department to ensure that resources do not come second to budget considerations. A solicitor for a parent should raise any issue of failure to provide services with the team manager or group manager with responsibility for the relevant district social services offices in the first instance. The green form scheme should be available to deal with any issues of this nature and enable attendance at a case conference if necessary. Solicitors for parents should be aware of the services that local authorities can provide to assist their clients. These might include:

- (1) offering guidance and assistance through a family centre, perhaps to assist a parent in improving his practical parenting skills or understanding of a child's development and needs;
- (2) respite care, particularly where a parent is finding it difficult to cope with a child's demanding behaviour, or the child has a disability which requires intensive support;
- (3) a placement at a parent and baby unit either in the statutory or voluntary sector, for example to assist young inexperienced parents with poor parenting skills and enable an assessment to be carried out;
- (4) provision of accommodation or assistance, for example to find accommodation for an alleged abusing parent in order to protect the child within its home environment while an investigation and assessment is completed;
- (5) financial assistance;
- (6) provision of a community care worker to assist with care of the children;
- (7) a referral to a child and family guidance centre if the child is showing behavioural problems and the parents cannot cope.

There may be a whole range of other services available to parents and by virtue of Sch 1, para 1(2) of the 1989 Act local authorities have a duty to publicise them.

ACTION BY THE SOLICITOR AFTER THE ISSUE OF PROCEEDINGS

Obtaining Documents from the Local Authority

As soon as a solicitor has been instructed to act for a parent in care proceedings he should obtain as much documentation from the legal department of the local authority as is available.

The Case Conference Minutes

By virtue of *Working Together: A Guide to Arrangements for Inter-Agency Co-operation for the Protection of Children from Child Abuse* (HMSO) most local authorities now invite parents to at least part of the case conference, and their solicitor may also attend as an observer and to provide moral support to the client. Chapter 6 of *Working Together* (1991 edition) sets out the functions and form of case conferences and the involvement of parents. Parents will usually be allowed to have a copy of the minutes of any case conferences that they attend in full. When only partial attendance has been allowed, usually at the information gathering stage, parents should be allowed to have that section of the minutes and the decisions and recommendations of the conference. Solicitors should ascertain how many case conferences have taken place relating to the children of the clients and seek minutes for all conferences held in the last 12 months and, perhaps, longer.

Other Documents

Other important documents which a solicitor should request include:

- (1) care plans for at least the past 12 months;
- (2) minutes of statutory reviews if the child has been accommodated or in care;
- (3) if the child has been accommodated, any agreement the parents have signed in respect of that;
- (4) any medical reports relating to the child or parents which are relevant to the proceedings;
- (5) any assessments that have been carried out relating to the child or parents, for example at a mother and baby unit or family centre;
- (6) in cases where parents have moved between authorities, reference should be made to all authorities which have had any relevant involvement with the family;
- (7) in a case where a parent has been involved with the mental health (adult services) team of the social services department inquiries should be made to ascertain whether there are any medical reports, minutes from pre-discharge meetings or community care plans which have any relevance to the parents' case.

Public Interest Immunity

If the local authority refuses to release a document

which the solicitor believes to be relevant and of importance to his clients' case and claims public interest immunity (PII), then it may be possible to argue for transfer of the case to the county or High Court under the Children (Allocation of Proceedings) Order 1991 (SI 1991/1677). This would be on the basis that the case involves a novel and difficult point of law or some question of general public interest. The judge may then carry out a balancing act to determine whether the parents' right to see the document outweighs the claim of PII (see *Re M (A Minor) (Disclosure of Material)* [1990] 2 FLR 36). If the document concerned is a medical report, then the solicitor should rely on *Oxfordshire County Council v M* [1994] 1 FLR 175 which provides that medical reports held by a local authority, even if contrary to the parents' case and not relied upon, should be disclosed.

Ensuring Good Practice

It is essential to test the local authority's case, both in respect of the investigation stage and the planning stage, by reference to Department of Health guidance, reviews, and inquiries held, for example the *Report of the Inquiry into Child Abuse in Cleveland 1987* (HMSO), and case-law.

The Investigation Stage

Ensuring good practice at the investigation stage is particularly important in cases in which allegations of physical or sexual abuse have been made. Social workers or police officers involved in interviewing children following allegations of abuse know to their peril what happens if they have not read or complied with the recommendations in the Cleveland Report, when they are cross-examined in the witness-box. Chapters 12 and 13 and the recommendations in part 3 of the Cleveland Report are particularly relevant to the issue of good social work practice including the procedure for the interviewing of children. See, also, 'Publicity in Children Cases - a Personal View', Wall J, [1995] Fam Law 136, and *Re E (A Minor) (Child Abuse: Evidence)* [1991] 1 FLR 420. *Working Together* is another useful tool for the practitioner and may assist in cross-examination.

It is also necessary to ensure that good practice has been followed by the paediatrician involved in examining the child who is the subject of alleged physical or sexual abuse, and that any opinion expressed as to the cause of the injury is valid and not subject to a contrary interpretation. The British Medical Association publishes guidelines to those involved in the examination of children - *The Lawyer's Guide to Forensic Medicine*, Professor Bernard Knight, is a useful reference book, and see the article by Ian Young 'Child Abuse - Key Considerations for

Lawyers' [1987] Fam Law 376, and *Re AB (Child Abuse: Expert Witnesses)* [1995] 1 FLR 181.

The Planning Stage

Good practice is essential not only at the investigation stage but also at the planning stage. Always question whether the local authority has or should have completed a comprehensive risk assessment to assist it with making plans for the children. *A Guide to Social Workers Undertaking a Comprehensive Assessment* (the Orange Book) (HMSO) should form essential reading for the parents' solicitor. A thorough reading of this publication will assist the parents' solicitor to ensure that good practice has been followed and a reasonable plan is prepared from the assessment. It will also help explain to the parents the purpose of the assessment and to try to ensure their compliance. Note, also, *Manchester City Council v F* [1993] 1 FLR 419. Even after proceedings have been issued it is important

to keep at the forefront of one's mind whether there are any particular services that could help the parents and children, regardless of whether they are out of county, or expensive. Although social services managers have to be careful not to over-spend, it is the duty of the parents' solicitor to try to ensure that a resource is provided if it will benefit the family.

CONCLUSION

If the guidelines contained in this article are followed, they should ensure that the local authority's case has been properly tested. There will always be cases where parents have fallen below acceptable standards of parenting and where the local authority has acted properly throughout. In those cases it is often best for the parents to accept that they have fallen below that standard, and to work with the local authority to bring about change and minimise the risk of significant harm to their children.

GUIDANCE FOR SUBMISSION OF CONTRIBUTIONS

(1) The editors welcome the submission of articles for consideration for publication. The absolute maximum is 3000 words; one of 2000 words is more likely to be accepted. Articles to be considered for publication should be sent to: The Editors, *Family Law*, 21 St Thomas Street, Bristol BS1 6JS.

(2) Manuscripts should be type-written on one side of A4 paper, double spaced with wide margins. All pages should be numbered consecutively. Titles and headings should be as concise as possible. Two copies of the manuscript should be supplied to the editors. Hand-written material of more than three lines is not acceptable.

(3) Wherever possible, a disk should also be supplied. The disk should be a 3.5" disk, and should contain only the material submitted for publication. The disk should be an exact up-to-date version of the hard copy. The disk should be clearly labelled, giving the file name and the software used. The document should be saved in Microsoft Word or WordPerfect, or as an ASCII file (text only and unjustified, ie without line breaks but with paragraph breaks). For documents prepared on a Macintosh, a 3.5" high density 1.44MB disk should be used.

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(5) Bibliographies and footnotes should be avoided. References can often be worked satisfactorily into the main body of text.

(6) Cases, statutes, book references, etc should be cited accurately and in accordance with *Family Law* style:

(a) references to cases which have been previously reported in *Family Law* (Fam Law) or *Family Law Reports* (FLR) should include that citation, wherever possible;

(b) references to statutes should be cited in full as follows: Children Act 1989, s 1; Adoption Act 1976, Sch 1;

(c) references to statutory instruments should be cited as follows: Family Proceedings Rules 1991 (SI 1991/1247), r 4.2;

(d) books, periodicals and newspapers should be cited as follows:

Lyon and de Cruz, *Child Abuse* (Family Law, 2nd edn, 1993), at p 24.

King and Pattison, 'Homosexuality and parenthood' (1992) 303 *British Medical Journal* 295.

Re W (Minors) (1993) *The Times*, December 1.

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It is advisable to contact Elizabeth Walsh about proposed contributions – tel 0831 267594 or 01494 724833.