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Public law meets Private law

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1. Legal disputes concerning children are divided conceptually into private or public law. They are divided into separate chapters in the Children Act 1989. The reality is that many cases contain elements of both and it may be difficult to categorise some cases as private or public. All cases concerning children are governed by welfare but the threshold for local authority intervention is different in the two sets of proceedings. Children can be removed from a parent and placed with a different carer in either set of proceedings, but the tests are substantially different. Private law cases can turn into public law proceedings almost overnight and public law proceedings can be finalised with private law orders.

In what ways do public law and private law proceedings interrelate?

2. Private law cases can bear resemblance to care proceedings:
   (a) There may be local authority involvement and children may be made parties and be represented by a Guardian.
   (b) There may have already been local authority assessments of the family.
   (c) Subject children may be classed as "children in need" under s 17 of the Children Act 1989 or subject to child protection plans (which are not statutory but subject to extra statutory guidance, the most recent being from the Department of Health, Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children – March 2013).

3. Private law cases may turn into care proceedings if the local authority eventually considers that the s 31 threshold has been crossed; parents may resume their relationship, drug and alcohol use may be established or there may be a serious incident which jeopardises the safety of the child which prompts the local authority to issue. The public and private law proceedings will be consolidated, but the care proceedings will be the dominant application.

4. Public law cases are frequently finalised by private law disputes where children are cared for by one or other parent or an extended family under a Child Arrangements Order or Special Guardianship Order. Even more so now that the emphasis has shifted to keeping children within their families where at all possible. There can be disputes about other s 8 orders as well. Final hearings in care proceedings can often be entirely private law based where no s 31 orders are being considered and the court may never consider threshold at the final stage. Frequently though such proceedings are concluded with a Supervision Order for 6–12 months to enable the local authority to keep an eye on the situation and support the family. Where proceedings conclude with a CAO or SGO any future set of proceedings brought by family members will be in private, for example where a mother seeks increased time with children placed with a grandmother under an SGO.

5. In some senses even adoption cases can be viewed as private law matters. Step-parent adoptions for example. There is also scope for contested adoption applications to be finalised by private law orders where leave to oppose applications are successful such as in *Re L (Leave to Oppose Making of Adoption Order)* [2014] 2 FLR 913 (mother obtains leave to oppose) and *A and B v Rotherham Metropolitan Borough Council* [2015] 2 FLR 381 (identity of father established after child placed with adopters – paternal aunt comes forward to be assessed).

In what ways do they compare?

6. Some parents may be disadvantaged by being in one set of proceedings rather than the other. A young, inexperienced mother with an unstable and chaotic lifestyle might be offered an assessment in a mother and baby placement or residential unit in care proceedings where the aim is to keep mother and baby together if possible, whereas if she moves in with the maternal grandmother who subsequently applies for a SGO when the placement breaks down the mother may stand a much higher chance of being separated from her child.

7. Contact arrangements for parents are considered in different ways in public and private law matters. In care proceedings local authorities are under a duty to allow reasonable contact between a parent and a child and may only deny that contact for up to 7 days in a matter of urgency to safeguard and promote the child's welfare, thereafter the local authority must make an application for an order to refuse to allow contact between the child and a parent. In private law proceedings however, whilst there is now a presumption that the involvement of a parent in the life of a child will further the child's welfare, unless the contrary is shown, that does not automatically mean that contact will be ordered or facilitated at the outset of the proceedings. A parent may be required to satisfy a number of concerns and either identify and/or fund a venue and supervisor for contact.

8. Grandparents and extended family members are treated differently in the two set of proceedings. They must generally obtain permission to make a private law application, whereas in public law proceedings they simply present themselves to the local authority as potential carers to be assessed and need never be parties to the proceedings.

Local Authority involvement in private law proceedings

9. Local authorities can become involved in private law proceedings in a variety of ways. The following will be considered here:
   (a) The local authority may have to provide a welfare report if there is current or recent involvement
   (b) A report from a local authority is mandatory in Special Guardianship applications
   (c) The Court can make a Family Assistance Order requiring the local authority to assist a child or family in private law proceedings
   (d) Children in disputes may be Children in Need requiring support from the LA
   (e) There may be referrals from CAFCASS following the safeguarding checks or other professionals with concerns
   (f) Children may be in need of protection and the court may make a s 37 order

Who should undertake a welfare report?

10. Section 7 of the Children Act 1989 provides the following power:

    1. A court considering any question with respect to a child under this Act may –
    a. Ask an officer of the Service or a Welsh family proceedings officer; or
    b. Ask a local authority to arrange for –
       (i) An officer of the authority; or
       (ii) Such other person (other than an officer of the Service or a Welsh family proceedings offer) as the court considers appropriate

    To report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

11. In *Re W (Welfare Reports) 1995 2 FLR 142*, the court of appeal considered the different forms of expertise which could be provided by CAFCASS and a social worker. The mother had applied for a prohibited steps order to prevent the father having contact with the child. The child herself stated that she did not want to have contact with the father, nor was she willing to co-operate with any psychological assessment. At a directions hearing, when the parties' statements were filed and the matter was listed for an early hearing, the father requested an independent psychologist's report. The judge ordered a court welfare officer's report, although neither party requested this. The mother appealed, claiming that this was wrong in the face of a prior agreement between the parties that a welfare report should be filed by a social worker, which had already been filed. The social worker recommended that contact should be refused. The court dismissed the appeal and held that section 7 empowered the court to direct reports from at least two sources whose degree of expertise was bound to vary a good deal. The mother had argued had the introduction of another professional was of no value to the child, involved unnecessary duplication of reports and would result in unjustified delay. Waite LJ said at page 145:

    "*That is a power which clearly provides the court with at least two sources of reporting expertise. One is the court welfare service. The reporting officers of that service are social workers for the purposes of s 7. The other is more widely cast. It is a category that may include local authority social workers or other persons or officers selected by local authorities. In the nature of things, the degree of expertise as between those two different categories of social worker is bound to vary a good deal. Welfare officers, in the nature of their duty, are accustomed to the court process, to interviewing the child and the adults concerned in the child's life, to attending court, to making recommendations orally or in writing and to submitting to be questioned by the parties. Social workers, on the other hand, are familiar with the reporting routine in the much wider context of preparing reports for use at case conferences and for placing on file for the assistance of other social workers, and so on. Their knowledge of the court process may be much more limited, and frequently their role will be confined to fact-finding reports, and will not involve the making of any recommendations at all*

...

The step which was proposed by the mother's application is an extremely serious one. It is the cutting off of a child from contact with her natural father for a very substantial period of time, possibly for the rest of her minority. No wonder the judge described it as a difficult case. No wonder he felt that it called for the particular expertise of a member of the court welfare service. It is equally understandable that the judge was grateful for the contribution made by the social worker. Her report is admirably clear, helpful and thorough. Nevertheless, it did not explain (and I do not understand that at the hearing she offered any oral explanation in this regard) why it was that she had decided not to see father and child together. Before this important and difficult case was decided, it would be understandable for the judge to wish that the opportunity should not be lost for obtaining a skilled insight into the interaction of father and child from a suitably qualified independent person. I suspect that that is why he preferred to introduce a court welfare officer, rather than subject D to the distress of an enforced psychological assessment. Another omission from the social worker's report was any statement of her assessment of the father and his character. That, too, is something on which the judge was entitled to think that the court and D would benefit from further skilled independent reporting. It provided him with a further ground for the decision he took.

...

He was well aware that an element of delay would be involved in the final decision. He took that into account, and decided that the disadvantage of delay was outweighed by the need to ensure that when this difficult application came to trial the court would proceed on as fully informed and as expertly advised a view of the case as possible."

12. The reverse situation may apply; a CAFCASS report may have already been obtained but there may be aspects of the case which are identified by CAFCASS which would benefit from local authority involvement. CAFCASS are limited in their resources to provide contact facilities and supervision, but under s 17 of the Children Act 1989 a local authority is under a statutory duty to safeguard and promote the welfare of children provide a range and level of services appropriate to children's needs. It may be helpful for the court to establish whether the child is a Child in Need under section 17 and what support and resources would be available to the family which might assist with the progression of the case.

13. In *W v Wakefield City Council 1995 1 FLR 170* Wall LJ considered the difficulties which arise where there is an overlap between private and public law proceedings. The children, aged 6 and 4, had both been residing with their mother but she struggled to care with the boy and he was accommodated by the local authority and care proceedings were issued. The girl moved to live with her maternal aunt. The aunt sought to care for the girl and made an application in the care proceedings for the girl to be joined to those proceedings and for her private law application to be consolidated with the care proceedings. The application had been refused by the justices. On appeal Wall LJ considered that it was desirable, wherever possible, for one court to deal with all siblings. He said

"One court should deal with a family; one court should hear all the evidence; one court should make all the decisions and, in my judgment, it was most unfortunate that at an early stage in these proceedings the opportunity was not taken by the justices and by the district judge to ensure early consolidation."

14. However he went on to say that:

"In the instant case, what has happened is that the boy's case is now effectively ready for trial, a date has been fixed and, in the way the Children Act operates, the result of the boy's case is effectively a foregone conclusion. It is common ground between the local authority and the mother and the guardian ad litem that the boy should be rehabilitated to his mother's care. There is effectively, therefore, no real issue for the justices to decide." The aunt's appeal was refused.

The Children Act has specifically divided proceedings into categories of public and private law. Family life does not divide itself so neatly or conveniently. It is frequently the case, in my experience, that a local authority is brought in to investigate a case and then decides that it will take no action. In these circumstances, valuable information is accumulated by the local authority, which

is not immediately available to parties who are in dispute the one with the other in private law proceedings, either instituted as divorce proceedings between them or in private law proceedings under the Children Act itself. In these circumstances, evidence which is relevant can only be placed before the court if one of the parties takes positive steps to achieve that result and even in those circumstances it is frequently undesirable for a local authority which wishes to preserve a position of neutrality to be seen to be making a statement on behalf of one party rather than the other."

15. He considered the power under s 7 and said

> *"This section goes a long way to bridge the gulf between private and public law proceedings. In a private law case where a local authority has been involved, and evidence from the local authority is relevant, the proper course is for an application to be made to the court hearing the private law proceedings for a report under s 7, which the local authority is duty-bound to provide … . Whilst it may not thereafter follow that the local authority will wish to intervene in the private law proceedings or become a party to them, it is inconceivable that once the report is available the local authority will not itself make the author of the report available for cross-examination and/or will refuse discovery of relevant documentation underlying the report itself."*
>
> *What the Children Act does not properly address are hybrid situations where either one has siblings, one of whom is the subject of public law proceedings and one of whom is not, or, as I have already indicated, one has cases which are essentially private law, but which have a public law element because the local authority is involved by way of investigation. It seems to me that the answer in this case, with the application of good sense, is that the material in the public law proceedings should be made available in the private law proceedings. That in this case will happen voluntarily, but were it not to happen voluntarily it does seem to me that machinery, albeit somewhat cumbersome, is available for the documents to be produced by way of order of the court hearing the private law proceedings."*

16. For family members living abroad who seek private law orders in respect of children there will be the issue of who will prepare any required reports. CAFCASS and local authorities will be unlikely to volunteer members of their service to travel abroad to complete the report. In some countries it might be illegal for the social worker to carry out their work without appropriate insurance, permission or visa, and those professionals may lack familiarity with the cultural issues in that jurisdiction. For many family members the option of instructing an independent social worker to carry out the work is too costly and the same practical problems apply.

17. CFAB is the UK branch of the International Social Service network. It has partners in 120 countries and was set up specially to deal with child protection cases. It can work collaboratively with local authorities in the UK to carry out assessments of family members abroad and should be the first port of call where information from abroad is required.

18. In *London Borough of Tower Hamlets v D, E and F [2014] EWHC 3901 (Fam)* the mother of three suffered a profound psychological breakdown resulting in a complete inability to care for the children. When the authorities were called the four-month old baby was dead from malnutrition and the 2 and 4-year-old children suffering from extreme physical neglect and emotional deprivation. The mother pleaded guilty to neglect and permitting the baby's death and awaited sentence. The father in Somaliland wished to care for the children and, during the course of care proceedings, the local authority applied for a determination as to what assessment of him, if any, should be undertaken. The Foreign and Commonwealth Office advised against travel to Somalia because of the threat of terrorist attacks and the inter-clan violence in the area where the father lived. After exploring various possibilities, including an independent non-western British/Nigerian social worker willing to go to Somaliland to assess the father, the authority decided that the risk was too great and thereby submitted that the father could not and need not be assessed.

19. The court in refusing to authorise the assessment said that it was no more appropriate for the court to authorise the independent social worker to travel to Somaliland to assess the father, than it would be to sanction or encourage any other British national. Although other options could be considered there was, more importantly, an obligation on the parties and the court at this early stage to look at the real viability of any proposals that the father sought to advance through counsel.

20. Even if it were possible to surmount all the obstacles to undertaking an assessment, the father's proposal would be to take the children to a country and culture utterly alien to them and where the kind of therapeutic support they would need would be unavailable. Their needs and timescales could not be accommodated by the father's case.

21. The obligation to assess a parent whilst exploring a family option for a child was not weakened by geography and had to be addressed at the very beginning of proceedings. While the fact of terrorism or civil unrest in the country where the parent lived was a relevant factor here under s 1(3) of the Children Act 1989, it would rarely be determinative. It was the care offered by the individual that weighed most heavily and, in the present case, what was necessary or consideration of the application was a holistic assessment of the children's past and present circumstances and a survey of the broad canvas of the evidence.

22. Mr Justice Hayden approached his task here by identifying three principles:
    (i) every opportunity should be given to exploring the potential for a child to be cared for by a parent;
    (ii) that obligation is a facet of the parent's and child's Art 8 rights; and
    (iii) in evaluating the reality of the available options and the ambit of the assessment needed, the child's welfare is the paramount consideration.

    Inevitably all three come down to a focus on the individual case and thus depend on the facts. It is in this regard that the present factual matrix falls at the extreme edge of the spectrum.

23. The court observed that, '*even the prescient architects of the Children Act 1989 could not have envisaged the considerable cultural changes that were take place in the UK in the 23 years that followed the implementation of that Act. British society is now multicultural … assessing family members may involve considering individuals based anywhere in the world*'. Here, however, the rigorous assessment of the father that was needed was simply not able to take place and, even if the obstacles could be overcome, his proposals for the children's future were unlikely to satisfy their needs or timescales. The only realistic way in which he could advance his case was to obtain a visa, attend the hearing and be available for assessment in the UK.

Orders under s 37 and s 38

24. Section 37(1) gives the court the power to order the local authority to undertake an investigation of a child's circumstances if it appears to the court that it may be appropriate for a care or supervision order to be made. The report should address whether the local authority should (a) make an application for a care or supervision order, (b) provide services or assistance for the child; or (c) take any other action with respect to the child (s 37(2)). The report must be completed within 8 weeks (s 37(4)). A Guardian will usually be appointed at this stage, unless the court does not consider it necessary.

25. Practitioners must ensure that the court spells out the reasons for the making of the s 37 direction very carefully and a transcript should be provided to the local authority as soon as possible. It is not enough for the local authority to simply be told that a s 37 order has been made.

26. Within the 8 week period the local authority must inform the court of the outcome of the investigation and if they decide not to make an application they must inform the court of the their reasons, any service or assistance provided to the family and any other action which has been taken, or is proposed to be taken.

27. Section 38 gives the court the power to make an interim care order or interim supervision order where the court gives a direction under s 37(1). The court has to be satisfied that there are reasonable grounds for believing that the child is suffering or likely to suffer significant harm attributable to the care given to the child, or likely to be given, not being what it would be reasonable to expect a parent to give, or the child is beyond parental control. The child must be under 17 years of age.

28. In *Re L (Interim Care Order: Extended Family)* [2013] 2 FLR 302 the Court of Appeal held that it was not inappropriate for a Judge to make a s 37 direction and an interim care order under s 38 where the local authority had already provided a full report and indicated the intention to issue care proceedings. This course of action avoided the procedural obstacles of issuing the application and enabled the court to deal with the urgent matter of making orders for the protection of a child.

29. If an interim care order or interim supervision order is made following a s 37 direction it shall expire after 8 weeks if no application has been made by the local authority for an interim order. If the 8 week period for the provision of the s 37 report has been extended by the court the order shall expire at the end of that extension period if the local authority has not made an application.

30. The court has jurisdiction to make more than one s 37 direction in any proceedings and can extend an existing direction on the basis of which a further interim orders can be made. However, once the purpose of the s 37 direction is properly discharged and the local authority has discharged its duty there is a jurisdictional line beyond which the court may not go in deploying the power to make further interim care orders

31. S 37 directions can be useful tools in cases of intractable disputes if the children are suffering harm as a result of one parent's distorted or false views of the other. In *Re M (Intractable Contact Dispute: Interim Care Order) [2003] 2 FLR 636* the children were removed from their mother under and interim care order and placed with their father under a s 8 order with a 2-year supervision order being made in favour of the local authority.

Special Guardianship Orders

32. SGOs are private law orders which give the Special Guardian responsibility for the child concerned and provide permanence and security for children who cannot live with their parents, but for whom adoption is unsuitable. The court may not make a SGO without a report from the court. Section 14A of the Children Act 1989 deals with SGOs:

> 7. No individual may make an application under subsection (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to the make the application:
>
> a. if the child in question is being looked after by a local authority, to that local authority; or
>
> b. otherwise, to the local authority in whose area the individual is ordinarily resident.
>
> 8. On receipt of such a notice, the local authority must investigate the matter and prepare a report for the court dealing with –
>
> a. the suitability of the applicant to be a special guardian;
>
> b. such matters (if any) as may be prescribed by the Secretary of State; and
>
> c. any other matter which the local authority consider to be relevant.
>
> 9. The court may itself ask a local authority to conduct such an investigation and prepare such a report, and the local authority must do so.
>
> 11. The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8) or (9).

33. The requirement that there be 3 months notice may only be waived in limited circumstances where a placement order has been made and (a) an application has been made for an adoption order, and (b) the applicant has obtained the court's permission. In all other circumstances the 3 month notice period is required.

34. The matters that the local authority must address in the report are set out in the Special Guardianship Regulations, reg 21, and in the Schedule to that regulation.

35. The notice period is not triggered if a person requires the court's permission to make an application for SGO and that permission has not yet been obtained *(Birmingham City Council v R [2007] 1FLR 564)*. So relatives or foster carers with whom the child has lived for less than one year require leave, as does any person who does not fall within s 10(5)(b) or (c).

36. Section 14F deals with special guardianship support services, which may be vital to many clients seeking a SGO. Under the Special Guardianship Regulations 2005 the local authority is under a duty to provide services such as counseling, information and advice, but this also includes financial support in appropriate circumstances. The Regulations set out what financial support is available, the assessment process and the way in which local authorities must plan and review the provision of services.

37. Regulation 3 sets out the services available as follows:

> 1. For the purposes of section 14F(1)(b) of the Act the following services are prescribed as special guardianship support services (in addition to counselling, advice and information) —
>
> a. financial support payable under Chapter 2;
>
> b. services to enable groups of —
>
> (i) relevant children;
>
> (ii) special guardians;
>
> (iii) prospective special guardians; and
>
> (iv) parents of relevant children,
>
> to discuss matters relating to special guardianship;
>
> c. assistance, including mediation services, in relation to arrangements for contact between a relevant child and —
>
> (i) his parent or a relative of his; or
>
> (ii) any other person with whom such a child has a relationship which appears to the local authority to be beneficial to the welfare of the child having regard to the factors specified in section 1(3) of the Act;
>
> d. services in relation to the therapeutic needs of a relevant child;
>
> e. assistance for the purpose of ensuring the continuance of the relationship between a relevant child and a special guardian or prospective special guardian, including —
>
> (i) training for that person to meet any special needs of that child;
>
> (ii) subject to paragraph (3), respite care;
>
> (iii) mediation in relation to matters relating to special guardianship orders.
>
> 2. The services prescribed in paragraph (1)(b) to (e) may include giving assistance in cash.
>
> 3. For the purposes of paragraph (1)(e)(ii) respite care that consists of the provision of accommodation must be accommodation provided by or on behalf of a local authority under section 23 of the Act (accommodation of looked after children) or by a voluntary organisation under section 59 of the Act.

38. Regulation 6 deals with financial provision;

> 1. Financial support is payable under this Chapter to a special guardian or prospective special guardian —
>
> a. to facilitate arrangements for a person to become the special guardian of a child where the local authority consider such arrangements to be beneficial to the child's welfare; or

b. to support the continuation of such arrangements after a special guardianship order is made.

2. Such support is payable only in the following circumstances —

a. where the local authority consider that it is necessary to ensure that the special guardian or prospective special guardian can look after the child;

b. where the local authority consider that the child needs special care which requires a greater expenditure of resources than would otherwise be the case because of his illness, disability, emotional or behavioural difficulties or the consequences of his past abuse or neglect;

c. where the local authority consider that it is appropriate to contribute to any legal costs, including court fees, of a special guardian or prospective special guardian, as the case may be, associated with —

(i) the making of a special guardianship order or any application to vary or discharge such an order;

(ii) an application for an order under section 8 of the Act;

(iii) an order for financial provision to be made to or for the benefit of the child; or

d. where the local authority consider that it is appropriate to contribute to the expenditure necessary for the purposes of accommodating and maintaining the child, including the provision of furniture and domestic equipment, alterations to and adaptations of the home, provision of means of transport and provision of clothing, toys and other items necessary for the purpose of looking after the child.

39. Regulation 8 sets out that payments can be made periodically, by a single payment, or by instalments. Regulation 9 stipulates that payments come to an end when the child reaches the age of 18 or ceases full time education or training, or becomes eligible for income support or jobseeker's allowance. The payments also come to an end if the child ceases to have a home with the Special Guardian. Regulation 10 sets out the conditions on which payments are made such that if there are changes in circumstances, either personal or financial, which are not communicated to the local authority then payments may come to an end. Further, the local authority may seek to recoup some or all of the payments so special guardians must be very clear about what information they are expected to provide to the local authority on an ongoing basis to avoid getting into financial difficulties.

40. 40. Regulations 11, 12 and 13 deal with the assessment process. A request must be made for this to be triggered. The assessment will take into account the financial needs and resources of the proposed special guardian and the child. In addition to regular payments by way of an allowance there can be provision for legal costs, initial costs of accommodating a child, recurring costs in respect of travel to visit relatives, or other persons with whom they have a beneficial relationship, any special care, or any remuneration for those who were formerly foster carers for the child.

41. The support plan must set out all the support and services which are to be provided including the amount of financial support and how it is to be paid. The plan will be reviewed at least annually and at any time when the special guardian's circumstances change.

Family Assistance Orders

42. The power to make a Family Assistance Order is at s 16 Children Act 1989. It provides that in any family proceedings the court may make an order requiring a CAFCASS officer or a local authority social worker to be made available to advise, assist and (where appropriate) befriend any person named in the order. That person may be a parent, guardian, person with whom the child lives or the child himself. The order will be made for 12 months, unless a shorter period is stipulated.

43. Family Assistance Orders may only be made if every person named in the order, apart from the child, consents to the order being made (s 16(3)). A FAO cannot be made against a local authority unless (a) the authority agrees; or (b) the child concerned lives or will live within their area (s 16(7)).

44. FAOs are usually made of the court's own motion. There is no prescribed method of application, but there is nothing which prohibits such an application from being made.

45. Section 16(4A) sets out the duties under a FAO to assist with contact:

> 4A. If the court makes a family assistance order with respect to a child and the order is to be in force at the same time as a contact order made with respect to the child, the family assistance order may direct the officer concerned to give advice and assistance as regards establishing, improving and maintaining contact to such of the persons named in the order as may be specified in the order.

46. 46. In *Re C (Family Assistance Order) [1996] 1 FLR 424* the local authority said it did not have the resources to carry out the FAO. Johnson J said the court did not have the power to compel the local authority to implement the FAO under the Children Act 1989. Whilst in theory the order could be made against the director of social services with a penal notice and threat of committal proceedings this was likely to be contrary to the best interests of the child and the care system as a whole.

47. In *S v P [1997] 2 FLR 277* it was held not appropriate to use a FAO to direct a local authority to provide a social worker to accompany children on their visits to their father in prison where no family member was prepared to do it. This would have been tantamount to the local authority acting as an escort service.

48. A FAO is the only way in which the court can compel a local authority to provide supervised contact in private law proceedings. In *Re E (Family Assistance Order) [1999] 2 FLR 512* the mother of a 6-year-old child was convicted of the manslaughter of the father and detained under the Mental Health Act 1983. In care proceedings, a residence order was made in favour of the child's paternal aunt with whom she now lived. The court also ordered supervised contact to the mother with the arrangements and funding to be met by the local authority responsible for the area where the aunt and child lived. The family then moved house, and the new authority asked for the obligations imposed upon it to be removed.

49. The court made the FAO noting that there was no power under s 11(7) of the Children Act 1989 to make orders against local authorities in private law proceedings requiring them to supervise contact *(Leeds City Council v C [1993] 1 FLR 269.)* Further, the court had no jurisdiction to continue the order previously made or to make any orders against the previous local authority, which was no longer the authority for the area where the child was living. Notwithstanding the problems of the new local authority in meeting the costs of continuing contact it was vital for the welfare of the child that such contact should take place and accordingly a family assistance order would be made for 6 months

50. Bennett J considered that since the order places the local authority under a duty to advise, assist and befriend any person named in it, it could not reasonably decline to provide the appropriate facilities, suggesting that judicial review could follow.

51. Confusion and ambiguity surround the making of family assistance orders.

Children in Need

52. The duty of local authorities to provide support and services to children was mentioned above. Section 17 of the Children Act 1989 sets out that such services may include the provision of accommodation or giving assistance in kind or in cash (s 17(6)). Assistance may be unconditional or subject to conditions as to repayment, in whole or in part (s 17(7)) although those in receipt of state benefits are not liable to make any repayments for assistance offered.

53. Children in Need are defined in s 17 as follows:

> 10. For the purposes of this Part a child shall be taken to be in need if —
>
> a. he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
>
> b. his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
>
> c. he is disabled,
>
> and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.
>
> 11. For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part —
>
> "development" means physical, intellectual, emotional, social or behavioural development; and
>
> "health" means physical or mental health

54. Schedule 2 to the Children Act 1989 deals with the provision of services for families. Paragraph 5 provides for the local authority to assist (including with cash) a person to move accommodation in circumstances where a child is likely to suffer ill treatment at the hands of someone living at that accommodation and the person wishes to move. This is discretionary assistance only.

55. Paragraph 8 sets out the services which a local authority should make available to families living in their area:

> Every local authority shall make such provision as they consider appropriate for the following services to be available with respect to children in need within their area while they are living with their families —
>
> a. advice, guidance and counselling;
>
> b. occupational, social, cultural or recreational activities;
>
> c. home help (which may include laundry facilities);
>
> d. facilities for, or assistance with, travelling to and from home for the purpose of taking advantage of any other service provided under this Act or of any similar service;
>
> e. assistance to enable the child concerned and his family to have a holiday

56. Paragraph 10 addresses the issue of contact and provides that local authorities shall take such steps as are reasonably practicable to enable a Child in Need living in their area to enable him to live with his family, or to promote contact between him and his family, if it is necessary to do so in order to safeguard or promote his welfare. There is no requirement of a local authority to arrange, facilitate and fund such contact as there would be in care proceedings, but many local authorities will have resources available to support contact with family members for children in need.

Referrals to the Local Authority

57. A CAFCASS officer may make a referral to Children's Services following the completion of the safeguarding checks required by the court prior to the FHDRA in every private children application. Any professional with significant concerns may make such a referral for the local authority to carry out an initial or core assessment of the family.

58. A lower level of intervention is the Common Assessment Framework (CAF) which is a voluntary assessment process which family members must consent to, unlike the initial/core assessment above. The CAF is a form of early intervention to identify a child's needs and how they might be met. It was developed for professionals in all agencies dealing with children to use and may address growth/development, education or family needs. There is unlikely to be much in the way of resources available to families under the CAF and it is perhaps a more appropriate intervention to highlight children's needs and identify external services which parents might wish to access to support their child. Neglect cases may be incorrectly left at CAF level where a more robust form of intervention might be required.

59. Where there are various agencies involved with a child there should be a lead professional identified who will coordinate the work and be the lead contact for the family. The lead professional should be supported by a team of professionals from the other agencies, called a Team around the Child (TAC). This should prevent duplication of referrals and work, enable information sharing, and ensure that all professionals involved with a child know what the child's needs are and what services or interventions have been identified to support the child and his family.

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