



## CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 2023

LEVEL 3 UNIT 18 – THE PRACTICE OF CHILD CARE LAW

### Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the January 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

### CHIEF EXAMINER COMMENTS

All candidates achieved excellent results. Their performance evidenced that they had prepared well for the exam.

Candidates had good knowledge across the specification and were able to show understanding of the relevant law through application to the case study scenarios.

Their answers illustrated a very good level exam skills as they:

- Had good working knowledge of the pre-release case study scenarios.
- Had read the questions carefully and were able to answer as instructed.
- Were able to describe the relevant legal rules in an appropriate level of detail.
- Were generally able to show understanding through application to the relevant scenario.



## CANDIDATE PERFORMANCE FOR EACH QUESTION

Candidates provided good answers to all questions. Where marks were not achieved it was simply due to either one detail of knowledge not being addressed or to a failure to apply.

### **Question 1 Private law**

**1(a)**- A candidate did not fully explain CAO.

**1(b)** -No comment

**1(c)** - No comment

### **Question 2 Permanent solutions**

**2(a)** - One candidate answer was lacking in some detail.

**2(b)** - No comment

### **Question 3 Initial intervention**

**3(a)** - One candidate failed to apply.

**3(b)**- Candidates provided excellent answers.

**3(c)** - No comment

### **Question 4 Emergency powers**

**4(a)**- No comment

**4(b)** - No comment

**4(c)** - No comment

### **Question 5 Care orders**

**5(a)** - No comment

**5(b)** - No comment

**5(c)** - No comment

## SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

### LEVEL 3 UNIT 18 – THE PRACTICE OF CHILD CARE LAW

Question Number	Suggested Points for Responses	Marks (Max)
1(a)(i)	<p><b>Child Arrangements order (CAO)</b></p> <ul style="list-style-type: none"> <li>• A child arrangements order</li> <li>• An order to regulate who a child lives with, spends time with or has contact with, and when the child lives with, spends time with or has contact with that person</li> <li>• Contact can be direct contact, or indirect contact e.g. by telephone or letter</li> <li>• This order would allow Dale to have contact as specified by the court and Lili must comply</li> </ul>	4
1(a)(ii)	<p><b>A Specific Issue order</b></p> <ul style="list-style-type: none"> <li>• A specific issue order</li> <li>• An order to resolve a particular dispute relating to the child where 2, or more, people have parental responsibility for a child and disagree on how that should be exercised</li> </ul> <p>Here Dale wishes to take Tom away on holiday and Lili does not agree</p>	3
1(b)	<p>Any <b>two</b> of the following:</p> <p><b>The paramouncy principle, s1 Children Act (CA) 1989</b> The child's welfare must be the court's paramount consideration Here, the court must consider what is in the child's best interests, regardless of what his mother, Lili, or father, Dale, wishes.</p> <p><b>The no delay principle s1 CA 1989</b> Delay in resolving disputes concerning children must always be avoided as delay is prejudicial to a child's welfare Here Tom's life has changed significantly and he will benefit from knowing as soon as possible, what is going to happen so time is of the essence.</p> <p><b>The no order principle s1(5) CA 1989</b> The court should not make an order unless making an order would be better than making no order at all. Here, it appears that an order will be necessary since Lili's relationship with Dale has broken down badly and it is unlikely that a mutually satisfactory arrangement can be agreed.</p>	6



	<p><b>Shared parenting principle/</b> presumption of parental involvement s1(2A) CA 1989</p> <p>s.1(2)(A) CA 1989 (as amended by s.11 CFA 2014) - there is a presumption, subject to evidence to the contrary, that involvement of a parent in the life of a child will further the child's development.</p> <p>Application – the court will consider that it is important that Dale should be involved in Tom's life unless Lili can persuade the court otherwise.</p>	
	<b>Question 1 Total:13 marks</b>	
<b>2(a)</b>	<p><b>Special Guardianship Order</b></p> <ul style="list-style-type: none"> <li>• Under a SGO a child is placed with extended family</li> <li>• SGO provides non-parent carers with a more permanency</li> <li>• Does not sever legal relationship between child and birth family</li> <li>• Special guardian has PR and this PR overrides the PR of any other person</li> <li>• Adoption is the legal process by which a child becomes a permanent and full member of a new family</li> <li>• With closed adoption, which is preferred, ties with their natural family, their birth parents and other family members, cease</li> <li>• Here, a SGO would provide a permanent solution enabling grandparents, Ines and Kingston, to have PR and to make all relevant decisions</li> <li>• But would not 'skew' relationships with Aymee's aunt (Mia) /uncle (Jaden) which could confuse Aymee</li> <li>• AORP</li> </ul>	<b>7</b>
<b>2(b)</b>	<p><b>Eligibility to apply for a Special Guardianship Order</b></p> <ul style="list-style-type: none"> <li>• A person can apply w/out permission of court if – guardian, holder of CAO, LA foster carer with whom a child has lived for at least 1 year or a relative the child has lived with for at least a year preceding application</li> <li>• Must be aged 18 or over (S14A CA 1989)</li> <li>• Otherwise must apply for permission to apply</li> <li>• Must give 3 months' notice of intention</li> <li>• Here, Ines and Kingston would not need leave to apply as Aymee has lived with them since birth.</li> </ul>	<b>4</b>
<b>3(a)</b>	<p><b>S17 assessment</b></p> <ul style="list-style-type: none"> <li>• s17(1) CA 1989</li> <li>• Kempston CC has a Duty to safeguard and promote welfare of children in need in their area.</li> <li>• To promote upbringing of such children by their families provided it is safe by providing support and assistance.</li> <li>• Here there has been an initial referral and it has been decided that more action is required.</li> <li>• There are concerns about Carly and Ellie – their appearance, their lack of food and drink etc. and their home life with their mother.</li> <li>• Carly and Ellie are children in need.</li> </ul>	<b>Max 6 marks</b>

	<ul style="list-style-type: none"> <li>• An assessment is required to confirm concerns and to identify social care required.</li> <li>• The assessment will be conducted by a social worker.</li> </ul>	
<b>3(b)</b>	<p><b>Child in need</b></p> <ul style="list-style-type: none"> <li>• Section 17 (10) Children Act (CA) 1989</li> <li>• A child in need is a child who is unlikely to achieve or maintain a satisfactory level of health or development unless he receives assistance from the LA, OR</li> <li>• A child who will suffer significantly impaired health or development unless he receives help from the LA, OR</li> <li>• A child who is disabled</li> <li>• Here, Carly and Mia are clearly suffering from poor care and their mother is not coping</li> <li>• This is affecting their health and their development and is likely to affect their education</li> </ul> <p>Carly and Mia are children in need</p>	<b>7 marks</b>
<b>3(c)</b>	<p><b>Action following a s17 assessment that a child is a child in need</b></p> <ul style="list-style-type: none"> <li>• Kempston County Council would need to identify what services and support could improve the child's welfare, based on the report</li> <li>• A family group conference might be arranged to involve the mother and encourage her to identify the support that she and the children need</li> <li>• A child protection plan will be devised setting out the support required and identifying who is responsible</li> </ul> <p>If there is cause to suspect that the child is suffering or at risk of suffering significant harm then Kempston County Council has a duty to conduct a s47 assessment under Children Act 1989</p>	Max 3 marks
<b>Question 3 total:16 marks</b>		
<b>4(b)</b>	<p><b>Emergency protection order (EPO)</b></p> <ul style="list-style-type: none"> <li>• Police protection will only last for a maximum of 72 hours</li> <li>• George and Penny will require continuing protection until Kempston CC can decide what is the best option for their care</li> <li>• An EPO would authorise LA to provide this and place/keep them in a safe environment</li> <li>• Here, unless an EPO is obtained, Willa will be able to take George and Penny home with her when the police protection expires and it seems that this is not appropriate and further inquiries need to be made</li> <li>• An EPO will enable these enquiries to be made</li> <li>• AORP – e.g definition of EPO, relevant reference to case law.</li> </ul>	<b>4</b>

<b>4(c)</b>	<b>Effect of a care order</b> <ul style="list-style-type: none"> <li>Local authority will acquire PR</li> <li>PR will be shared with Willa</li> <li>But LA has right to decide how Willa exercises her PR</li> <li>Under s34 CA 1989 LA has a duty to allow reasonable contact with parent</li> <li>So Willa should be able to see George and Penny</li> <li>AORP</li> </ul>	<b>4</b>
<b>Question 4 total: 13 marks</b>		
<b>5(a)</b>	<b>Interim care order/supervision orders</b> <ul style="list-style-type: none"> <li>Credit for citation – s31CA1989/s33 CA 1989/s35 CA 1989</li> <li>A supervision order allows the child to remain with its parent(s), s31(b) CA 1989</li> <li>The local authority does not have PR, but does have a duty to advise and assist, s35 CA 1989</li> <li>Initially for a period of 12 months. Can be extended to a maximum of 3 years</li> <li>An interim care order places the child under the care of the local authority, s31(a) CA 1989</li> <li>The local authority will share PR with the parent(s), s33 (3)(a) CA 1989</li> <li>But the local authority will make the day to day decisions and will have the right to decide how the parent(s) exercise their PR, s33 (3)(b) CA 1989</li> <li>Ultimately a care order can last until the child is 18</li> <li>A care order will be more appropriate. George and Penny will not be safe with their mother if she is determined to allow Yoti to remain living with her OR</li> <li>Credit any other conclusion with appropriate reasoning</li> </ul>	<b>8</b>
<b>5(b)</b>	<b>Threshold criteria</b> <ul style="list-style-type: none"> <li>s38 CA 1989</li> <li>Reasonable grounds for believing that the threshold criteria (statutory criteria) exist</li> <li>1) Child is suffering or is likely to suffer significant harm , and</li> <li>2) Harm is attributable to the care being given to, or likely to be given to the child if the order is not made, being less than reasonable, or</li> <li>3) The child is beyond parental control</li> <li>Harm includes harm such as ill treatment, health concerns or developmental matters, emotional harm, neglect</li> <li>Significant – serious</li> <li>Here, George and Penny have been living in squalid conditions and without the attention they deserve fro their mother, have been ill treated by Yoti and have been regularly left alone with a large dog</li> <li>So there are serious concerns about neglect, their health, their emotional needs</li> </ul>	<b>6</b>

	But Willa is not prepared to accept these concerns or that Yoti is a serious danger to her children and if she is not prepared to tell him to move out she will be are giving less care than is reasonable	
<b>5(c)</b>	<b>Contact with parent for child under care order</b> <ul style="list-style-type: none"> <li>• S34 CA 1989</li> <li>• LA has a duty to allow reasonable contact with parent</li> <li>• So Willa should be able to see Penny and George</li> </ul>	<b>3</b>
<b>Question 5 Total: 17 marks</b>		