

**CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS**

**JANUARY 2020**

**LEVEL 3 - UNIT 18 – THE PRACTICE OF CHILD CARE LAW**

**Note to Candidates and Learning Centre Tutors:**

The purpose of the suggested answers 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 2020 examinations. The suggested answers set out a response that a good (merit/distinction) candidate would have provided. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

Candidates and learning centre tutors should review the suggested answers 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**

The overall performance of candidates in this session was weaker than previous sessions. A significant number of candidates were poorly prepared in terms of knowledge and understanding of topics covered by the specification, knowledge of the pre-release case study and the development of the necessary study and exam skills.

This is a practice paper which assesses knowledge of the law that underpins practice, and of procedure and understanding of the law through application to situations described in the case study.

Evidence of knowledge is required including providing relevant definitions, with accurate citation, which are developed through explanation. Candidates need knowledge across the specification. Evidence of understanding is provided through giving advice on the particular situations described in the case study.

Candidates should prepare for the exam by:

1. Ensuring they have knowledge of all topic areas in the specification.
2. Knowledge of the pre-release case study.
3. The skills required to answer exam questions successfully – reading questions carefully to understand what is required and providing an answer that can evidence knowledge (clear definitions; descriptions/explanations; accurate citation) and understanding through application using information in the case studies.

Previous Chief Examiner reports and suggested answers provide information on what is required to achieve good marks. Candidates should refer to the reports and the suggested answers as part of their preparation.

## CANDIDATE PERFORMANCE FOR EACH QUESTION

### Question 1 – Private Law

(a) The s.8 Children Act orders are part of the specification and candidates need knowledge of them. The key order identified in this case should have been the prohibited steps order, although credit was given to candidates who suggested a child arrangements order with appropriate justification (that is, reference to parental responsibility being granted to the grandparents).

Some good answers were seen, but where candidates failed to gain marks it was due to:

- failing to provide a description of the order;
- failing to apply to the case study. Simply repeating the question was not sufficient.

Example:

Graham and Evelyn should apply for a prohibited steps order. A prohibited steps order is an order that prevents a parent using their parental responsibility in some way. (**DESCRIPTION**)

In this case, the school would have to comply with this order and would be able to prevent Bobby from collecting Zane from school. (**APPLICATION**)

(b) The specification requires the candidates to have knowledge of both the key principles (welfare, no delay, no order and shared parenting) and also of the welfare checklist factors relating to the welfare principle. Some answers indicated a lack of knowledge as they explained welfare checklist factors which were not credit worthy.

To achieve marks, candidates needed to identify a principle (preferably with accurate citation), explain the principle and then show understanding through application to the case study.

Where candidates identified the principles, in general they either failed to explain or failed to apply.

Example:

The welfare/paramountcy principle s.1(1) Children Act 1989.  
(**IDENTIFICATION**)

This principle states that the child's welfare must be the court's paramount consideration, above all other considerations. (**EXPLANATION**)

Here, the court must consider what is in Zane's best interests, regardless of what his mother, Nancy, or father, Bobby, or grandparents, wish.  
(**APPLICATION**)

**Question 2** – permanent options

This question required candidates to show knowledge of special guardianship orders and some knowledge of adoption. It was not well answered as candidates did not appear to have the required knowledge.

(a) Answers tended to focus on application with only limited explanation shown of categories of people who are eligible to apply.

(b) For this question some better answers were seen where candidates recognised that a Special Guardianship order would be preferred to adoption because it does not sever family relationships with other family members. This is important in Zane's case as he has been living with other family members including as his aunt, uncle and cousin.

**Question 3** – initial intervention.

(a) Very few candidates showed knowledge of the general duty of care of the local authority under s.17(1).

(b) This question focussed on the Assessment Framework which identifies the 3 key areas to be considered when carrying out a s.17 assessment. Candidate knowledge of the 3 key areas was poor, although some marks were achieved through identifying appropriate examples of what each area covered.

(c) Some candidates were able to provide very good answers which explained the requirements for a child to be identified as a child in need, and then applied them to Yamini and Manya, while other answers were weak.

Several candidates confused the child in need criteria with the threshold criteria under s.31.

(d) Most candidates were able to show some knowledge of a child protection plan, although some answers were lacking in sufficient detail.

**Question 4** – ICO/CO.

(a) Although candidates were generally able to show some knowledge of the threshold criteria and to recognise that Reuben was out of control, very few explained 'significant harm'.

(b) Candidates were either able to identify documents, or not.

(c) Candidates generally were able to give a good explanation of the impact of an interim care order.

**Question 5** – emergency procedure.

(a) The level of knowledge of the 'common ground', the ground for an emergency protection order in this case, was very weak.

(b) There were varying levels of knowledge shown of the documents required to apply for an emergency protection order.

(c) Most candidates were able to show a reasonable level of knowledge of an emergency protection order.

## SUGGESTED ANSWERS

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

#### Question 1

(a) They should apply for a prohibited steps order. A prohibited steps order is an order that prevents a parent using their parental responsibility in some way.

In this case, the school would have to comply with this order and would be able to prevent Bobby from collecting Zane from school.

Alternatively, candidates could be credited for advising that they should apply for a child arrangements order. This is an order that decides who a child should live with and spend time with.

In this case, it would formalise arrangements for Zane to live with his grandparents, which would give them parental responsibility, and the school would then have to comply with their wishes regarding Zane.

(b) Key principles under the Children Act (CA) 1989 that must be considered when considering an application for a s.8 order are:

1. **The paramountcy principle** s.1(1) Children Act 1989

This principle states that the child's welfare must be the court's paramount consideration, above all other considerations.

Here, the court must consider what is in the child's best interests, regardless of what his mother, Nancy, or father, Bobby, wishes.

2. **The no delay principle** s.1(2) CA 1989

This principle states that delay in resolving disputes concerning children must always be avoided as delay is prejudicial to a child's welfare.

Here, Zane's contact with his mother has become intermittent. Contact with his father has been non-existent, but Bobby's loitering appears to be having a negative impact. Therefore, it is essential to resolve matters quickly.

### 3. **The no order principle** s.1(5) CA 1989

This principle states that 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, in view of Bobby's unpredictable behaviour, it seems unlikely a reliable arrangement with Graham and Evelyn can be agreed.

### 4. **Shared parenting principle/presumption of parental involvement** s.1(2A) CA 1989 (as amended by s.11 Children and Families Act (CFA) 2014)

This amendment to the Children Act in 2014 introduces a presumption, subject to evidence to the contrary, that the involvement of a parent in the life of a child will further the child's development.

Here, the court will consider whether Bobby should be involved in the care of Zane. His record of aggressive behaviour and domestic violence is likely to be evidence to the contrary and will rebut the presumption.

## **Question 2**

(a) A person is eligible to apply for a Special Guardianship Order (SGO) without permission of the court if they are a guardian, the holder of a child arrangements order (CAO), or a local authority (LA) foster carer or relative with whom a child has lived for at least 1 year. Other applicants must first apply for permission to apply for the order.

Here, as grandparents, Graham and Evelyn would be able to apply as they are Zane's grandparents and he has lived with them since birth, so for over a year.

(b) Adoption is the legal process by which a child becomes a permanent and full member of their adoptive family. With closed adoption, which is preferred, ties with their natural family, their birth parents and other family members, cease.

Under an SGO, a child is placed with their extended family. The SGO provides non-parent carers with a more permanent relationship with the child, but does not sever the legal relationship between a child and its birth family.

The special guardian has parental responsibility (PR), and this PR overrides the PR of any other person such as a parent.

In Zane's case, an SGO would provide a permanent solution, enabling his grandparents, Graham and Evelyn, to have PR and to make all the relevant decisions. Zane is living with other family members (an aunt, an uncle and a cousin) and an SGO would not confuse or 'skew' these relationships. Also, contact with Nancy could be maintained.

### Question 3

(a) Kempston County Council (CC) has a duty under s.17(1) CA 1989 to:

1. safeguard and promote the welfare of children in need in their area; and
2. to promote the upbringing of such children by their families, provided it is safe, by providing support and assistance.

Here, there has been an initial referral and it has been decided that more action is required to identify if the children are children in need. There are some serious concerns about Yamini and Manya – their appearance, their lack of food and drink etc. Yamini and Manya are children in need towards whom Kempston CC have a duty.

An assessment is required to confirm concerns and to identify social care required. This assessment will be conducted by a social worker.

(b) The Assessment Framework under which a s.17 assessment is carried out covers 3 areas:

1. Child's developmental needs  
Examples – health, education, emotional and behavioural development.
2. Parenting capacity  
Examples – basic care, emotional warmth, stability.
3. Family and environmental factors  
Examples – family history and functioning, housing.

Here, the children's health is likely to be affected because of poor parenting and, possibly, low income.

(c) A child in need is defined under s.17(10) CA 1989 as:

1. A child who is unlikely to achieve or maintain a satisfactory level of health or development unless he receives assistance from the LA, OR
2. A child who will suffer significantly impaired health or development unless he receives help from the LA, OR
3. A child who is disabled.

Here, Yamini and Manya are clearly suffering from poor care and their mother is not coping. This is affecting their health and their development and is likely to affect their education.

Yamini and Manya fulfil the definition of children in need.

(d) The purpose of a child protection plan is to ensure that the child is safe, and their welfare is promoted, and to allow the local authority to monitor and support the children (in this case, Yamini and Manya and their carer (their mother Aisha)).

The plan should:

1. state the support/action required; and
2. identify who is responsible for providing support/taking action; and
3. set target dates for reviews to confirm that improvements take place; and
4. appoint a key worker.

Here, Aisha appears to need help managing her time and with her parenting skills, i.e. giving the children the care that they require. She may also need financial advice and support.

#### **Question 4**

(a) The statutory criteria that must be satisfied when applying for an interim care order under s.38 (2) CA 1989 are as follows:

Reasonable grounds for believing that the threshold criteria (statutory criteria) exist. The Threshold Criteria are:

1. the child is suffering or is likely to suffer significant harm; and
2. the 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
3. the child is beyond parental control.

Harm includes harm such as ill treatment, health concerns or developmental matters, emotional harm, neglect. Significant harm is serious harm.

Here, Harold and Patricia, due to age and illness, are unable to manage Reuben's challenging behaviour, so are giving care that is less than reasonable and it appears that Reuben may cause serious harm to himself or possibly others.

It also appears that Reuben is beyond the control of Fiona, and his grandparents.

(b) The documents required to apply for an interim care order are:

1. Form C 110A
2. Social work chronology
3. Social work statement and genogram
4. Current assessments
5. Threshold statement
6. Care plan
7. Index of checklist of documents

(c) If an interim care order is granted Kempston CC as the LA **will** acquire PR. This will be shared with Fiona, but the LA has the right to decide how Fiona exercises her PR.

Under s.34 CA 1989 the LA has a duty to allow reasonable contact with a parent, so Fiona should be able to see Reuben.

#### **Question 5**

(a) The statutory ground for applying for an emergency protection order (EPO) in this case is the common ground. Kempston CC must satisfy the court that there is reasonable cause to believe that:

1. a child is likely to suffer significant harm unless he/she is moved to accommodation provided by the applicant; or
2. the child is likely to suffer significant harm if he/she does not remain in his/her current accommodation.

Here, the medical opinion and other information supports a decision that Stefan, and his brother, should be moved to accommodation provided by Kempston CC pending further investigation. This investigation will show how Stefan suffered his injuries which have not been satisfactorily explained.

(b) The key documents required to apply for an EPO are:

1. C110 A;
2. written witness statement;
3. C11 (Supplement for application).

(c) An EPO confers PR on the LA, but this is limited to what is sufficient to promote and safeguard the child's welfare. Here PR will be shared with Stefan and Wiktor's mother (Lucy). An EPO lasts eight days, but can be extended by a further seven days. Kempston CC can prevent Lucy from taking the children home and can place them in safe accommodation pending further inquiries.