

CHIEF EXAMINER COMMENTS WITH SUGGESTED ANSWERS

SEPTEMBER 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 September 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 performance of candidates for this session was very good. The candidates were well prepared. They showed knowledge of the relevant law and understanding through their application to the scenarios in the pre-release case study.

They had also developed the skills necessary to answer exam questions successfully as they had clearly read and understood the questions and were able to show their knowledge and understanding.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1 – Initial intervention

Good performance.

Candidates need to be clear about the initial procedure following referral of a child by a school, including the requirement that the school confirms their concerns in writing.

Candidates also need to show application of knowledge to a specific situation.

Example – For 1(b) “Hayat is likely to suffer significantly impaired development unless help is provided by the local authority (knowledge) because she is not toilet trained at 5 years and is showing serious behavioural problems.”

Question 2 – Interim Care orders/care orders

This question produced the most variation in performance.

(a)

required candidates to show knowledge of care orders and supervision orders and how they differed, and then to come to a conclusion of what was best for Hayat.

(b)

required candidates to show knowledge in outline of the procedure for applying for a care order by identifying the different stages and providing a brief description of what each stage involved.

Question 3 Emergency procedure

Very good performance.

Question 4 – Permanent options

Very good performance.

Question 5 – Private law

Very good performance.

SUGGESTED ANSWERS

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Question 1

- (a) The procedure after an initial referral to Social Services is as follows:
- the school must confirm the concern in writing within 48 hours;
 - written acknowledgement must be issued by the local authority within 1 working day;
 - an initial assessment of the concern must be made;
 - a decision must be made on whether further action is required.
- (b) Under s.17(10) Children Act (CA) 1989, a child in need is a child who:
1. is unlikely to achieve or maintain a satisfactory level of health or development unless (s)he receives assistance from the local authority; or
 2. will suffer significantly impaired health or development unless (s)he receives help from the local authority; or
 3. is out of control.

Here, Hayat is likely suffer significantly impaired development unless she receives help, as she is not yet toilet trained, even though she is five years old, and she is also showing serious behavioural problems. Unless she gets support, her educational development and her general development will be adversely affected.

Hayat is a child in need

- (c) Under s.17(1) CA 1989 Kempston County Council has a duty to:
1. safeguard and promote the welfare of children in need in their area; and
 2. promote the upbringing of such children by their families by providing support and assistance.

Hayat is a child in need, so the local authority has a duty to support Hayat and her parents in addressing Hayat's behaviour by providing support regarding toilet training, commissioning an assessment for autism and providing the support required in school, as well as in providing support for Kamila and Saeed to improve their parenting skills.

Question 2

- (a) An interim care order will place Lucy under the care of Kempston Social Services, s.33 CA 1989. Kempston Social Services will share parental responsibility with Hayat's parents, but Kempston Social Services will be able to make the day-to-day decisions regarding Hayat and will have the right to decide how Kamila and Saeed exercise their parental responsibility. Ultimately, a care order can last until Hayat is 18.

A supervision order allows a child to remain with its parents, s.35 CA 1989. In these circumstances, the local authority does not have parental responsibility, but does have a duty to advise and assist the parents.

Initially, this order will be for a period of 12 months, but it can be extended to a maximum of three years.

Various agencies in Sheffield will have been working with Hayat and her parents, but they have not been able to achieve any success in terms of improving the parenting skills of Kamila and Saeed, and therefore in helping Hayat. It seems that a care order, placing Hayat with foster parents who have the experience to help her manage her behaviour, is more appropriate.

2(b) The key stages in an application for an interim care order are:

- **Stage 1 - Issue and Allocation**
- application filed by LA;
- application reviewed by court and relevant action taken;
- application and supporting documents returned to local authority for service on respondents;
- date set for court hearing.

- **Stage 2 - Case Management Hearing**
- advocates meeting to discuss issues and draft order for consideration;
- court hearing to identify key issues and evidence required;
- the timetable for the child considered.

- **Stage 3 - Issues Resolution Hearing**
- to confirm issues to be decided;
- final hearing;
- to decide any issues not already agreed by parties.

Question 3

- (a) Kempston County Council should apply for an emergency protection order (EPO) under s.44 CA 1989, because it has reasonable cause to believe that Lucy is likely to suffer significant harm if she is not placed in emergency accommodation.

An EPO is an order to authorise the removal of a child to a place of safety, or to prevent the removal of a child from a place where (s)he is currently being accommodated.

Here, Lucy cannot remain at home as she is only six years old. She needs to be kept safe.

- (b) If Kempston County Council apply for an emergency protection order, Lucy's interests will be represented by the appointment of a children's guardian and a solicitor.

A children's guardian will be appointed by the court and is usually a social worker.

The children's guardian will:

- advise the court of course of action that is in the best interests of child;
- meet and talk with the child and their family;
- advise the child in an age appropriate way;

- provide reports for the court and attend all court hearings;
- appoint a solicitor to give advice and to represent the child in court.

The solicitor must also represent the best interests of child.

Here, Lucy is only six years old and may not be considered old enough to fully express her feelings, although some notice may be taken depending on her maturity.

Question 4

(a) Permanent placement options that might be considered for Lucy are:

- 1. Long term foster care/care order** – the child is placed with foster parents in care for an extended period.
- 2. Special guardianship order** – an order that provides non-parent carers with a more permanent status than a child arrangements order but does not sever relationships with birth family.
- 3. A child arrangement order (CAO)** – an order that states who a child should live with and who they should have contact with.

(b) When a child is adopted, the child is no longer treated as a natural child of its parents, in this case Mick, s.67 Adoption and Children Act (ACA) 2002.

Closed adoption is preferred and would mean that there would be no on-going contact with the child's blood family, in this case Mick and his family.

(c) Generally, the parents' should give their consent for adoption. However, in exceptional circumstances the need for consent can be dispensed with, s.52 ACA 2002. The circumstances where this applies are:

1. where the parent or guardian cannot be found or is incapable of giving consent; or
2. where the welfare of the child requires the consent to be dispensed with.

Here, it is likely that Mick's consent may be dispensed with. Lucy's welfare will be the prime consideration and as her father has attacked her mother, causing her mother's death, his consent is unlikely to be considered appropriate.

(d) Answers should include **3 factors** from the Adoption and Children Act checklist:

- **Child's ascertainable wishes and feelings with regard to the decision**
- Lucy is only six years old but appears to have some maturity as she phoned emergency services she may have some ascertainable wishes and feelings that may be considered
- **The child's particular needs**
- Lucy has been through a traumatic experience and will need a lot of support from people she knows.

- **Likely effect on child of having ceased to be a member of original family**
- Lucy will be adopted by relatives she knows, and will not feel any loss of contact with her father or his family who she doesn't know
- **Child's age, sex and background**
- Lucy is six years old – and she has a good relationship with her aunt and uncle
- **Any harm the child has suffered, or is likely to suffer**
- Lucy's father appears to have been responsible for her mother's death and it seems that Lucy may have witnessed it. So it is unlikely that Mick would be considered a suitable parent.
- **The relationship the child has with relatives**
- Lucy's father appears to have been responsible for her mother's death so her relationship with him is unlikely to be good.
- Paula and Tony are her mother's closest relatives.
- **The ability and willingness of any relevant person to provide the child with a secure environment**
- Paula and Tony are known to Lucy and are willing to adopt her and to give her the support and security she needs.

Question 5

- (a) Parental responsibility (PR), as defined in s.3(1) CA 1989 is 'All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.'

Examples of parental authority include the parent having a say in matters such as medical issues, education, living arrangements.

- (b) The natural mother has automatic parental responsibility. But the unmarried father only has parental responsibility if he is registered as father on birth certificate after 1 December 2003.

Rachelle has automatic PR as she is Darren's natural mother.

Adam does not have PR as he was not married to Rachelle and has not been named on the birth certificate.

- (c) The order that Adam should apply for to ensure he maintains contact with Darren is a child arrangements order. This is an order regulating arrangements relating to with whom a child is to live, spend time or otherwise have contact, and when a child is to live, spend time or otherwise have contact with any person.

In Darren's case, it would allow Adam to have regular contact and Rachelle would have to comply.