

**CHIEF EXAMINER COMMENTS WITH
SUGGESTED ANSWERS**

JANUARY 2021

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 2021 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

Performance for this session was mixed. Candidates who were well prepared were able to show both knowledge of the relevant law and understanding through application of the relevant law to the situations described in the scenarios of the pre-release case study materials.

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

Candidates are advised to ensure that they should:

1 Provide evidence of knowledge of the relevant law in their answers (key citation, definitions and explanations) AND

2 Apply knowledge and, advise as instructed, to the situation in the case study materials. Marks are achieved through both aspects.

Some candidates will fail to show evidence of knowledge but discuss the case study facts or will write about the law but fail to state how it applies in the

scenario. In both cases, valuable marks cannot be awarded as an examiner can only credit what is actually written.

Candidates should refer to the section on Question 2(c) below.

Candidates should therefore ensure that they have:

- Good knowledge of all the topics covered by the specification as any topic can be examined, and so selective learning may put a candidate at a disadvantage.
- Good working knowledge of the case study that is pre-released.

Developed the exam skills required – the ability to read questions carefully and to answer as instructed, and to do this by showing knowledge and application in their answer.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1 – Emergency powers

Good knowledge of police powers, disappointing knowledge of the emergency protection order – what it is and why it would be appropriate in this case.

Question 2 – Interim care orders

A number of candidates were able to perform very well on this topic. They did this by showing knowledge of the ground for applying for an interim care order and knowledge of the procedure, which they were then able to apply to the case study.

Candidates should note that for Question 2(c) the answer required involved:

1- Knowledge of who would be a party i.e., the applicant will be the local authority, the respondents will be all those with parental responsibility and the child and, because care orders are “specified proceedings”, the child represented by a children’s guardian and a solicitor, and then;

2- Application – Kempston CC would be the applicant, Tracey and Mary and Roger all having parental responsibility, would be respondents. Polly, the child, would also be a respondent.

To simply suggest Tracey, Mary and Roger would be parties with no reason given was not sufficient to earn a mark.

Question 3 – Initial intervention

The level of performance for this question was disappointing. In particular, candidates’ knowledge of the care plan and of further action that is necessary if a care plan does not result in the outcomes required.

Question 4 – permanent options

Candidates' knowledge of the effect of adoption was not good, and knowledge of placement orders was either good, or poor.

Question 5 – private law

This area has been examined in past exam series.

Candidates needed to identify the relevant s8 children orders, explain them and then state why they would be appropriate in Stewart's case. Generally, it was the application that was missing.

The final part of the question involved the welfare checklist factors. What was required here was:

1. The clear identification of a factor,
2. An explanation of what the factor involved, and
3. How it might apply in relation to Stewart's application.

SUGGESTED ANSWERS**LEVEL 3 - UNIT 18 – THE PRACTICE OF CHILD CARE LAW****Question 1(a)**

The police have exercised their power under s.46(1) Children Act (CA) 1989, to take children into police protection if the situation requires urgent action.

Under s.46(1), if a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm the officer can either:

1. remove the child to suitable accommodation and keep him/her there; or
2. take such steps as are reasonable to ensure the child's removal from any hospital, or other place in which he/she is being accommodated, is prevented.

Here the police needed to place Polly in suitable accommodation as there were no responsible adults (her grandparents) present to care for at her home and she was dazed and in need of care.

(b)

An emergency protection order provides short term protection. It will either:

1. Authorise the removal of the child to a place of safety, or
2. Prevent the removal of a child from the place where (s)he is currently being accommodated.

Kempston County Council should apply for an emergency protection order (EPO) because the police protection will only last a maximum of 72 hours.

However, Polly will require continuing protection while Kempston County Council decides what is the best option for her care. An emergency protection order will authorise Kempston County Council to provide this and to keep Polly in a safe environment.

In Polly's case, it is unclear when or whether her grandparents will be able to care for Polly. Her mother is now saying that she wishes to take Polly to live with her. Unless an emergency protection order is obtained, Tracey will be able to take Polly home with her when the police protection expires, but it appears that this is not appropriate and further enquiries need to be made. An emergency protection order will enable these enquiries.

Question 2(a)

The statutory criteria for an interim care order under s.38 CA 1989, is the threshold criteria. To obtain an interim care order, the local authority must satisfy the court that there are reasonable grounds to believe that the threshold criteria are met.

The threshold criteria are satisfied where the child is suffering or is likely to suffer significant harm, and the harm is attributable either:

1. the care being given to, or likely to be given to, to the child being below the standard of care a reasonable parent would provide; or
2. the child is out of control.

Harm includes ill treatment, health concerns, development matters, emotional harm and neglect. To be significant, the harm must be serious harm.

Here, Polly is missing school, she is wandering the streets late at night and she is refusing to do as her grandparents ask.

It appears that Polly is out of control. But there are concerns that she would be likely to suffer significant harm if Tracey, her mother, was allowed to take her away as the care given by Tracey, given her lifestyle, is likely to be below that of the care of a reasonable parent.

(b)(i)

The form to commence proceedings is Form C110A.

(ii)

The additional documents that must be filed with the application are:

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

(c)

The parties to proceedings will be:

- Applicant – the local authority
- Respondent - every person with parental responsibility will be a respondent and the child, represented by a children’s guardian and a solicitor.

In this case Kempston CC will be the applicant. Tracey, Mary and Roger, who all have parental responsibility, will be the respondents. Polly will also be a respondent.

Question 3(a)

A child in need is defined in 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 assistance from the local authority; or
3. A child who is disabled.

Katie’s development is being affected by the lack of stimulation and social interaction and her health will be affected by her unhealthy eating. Therefore, Katie is a child in need.

(b)(i)

A child protection conference is an inter-agency meeting. The purpose is to share information and to decide how best to safeguard and promote the welfare of the child. It will be attended by all the professionals involved with the child and the family, family members and, where appropriate, the child.

Here, a child protection conference needs to be arranged to discuss Katie’s care because Freya and Benjie are not providing Katie with the care that she requires. It will be attended by the parents (Freya and Benjie), health care professionals, such as the health visitor, early years professionals and local authority staff.

(ii)

A child protection plan is devised to ensure that a child is safe, and their future welfare is promoted. It is devised where a child is considered to be at risk of harm. The plan will:

1. Identify the harm being suffered and the support required to reduce that harm; and
2. Set out the action, which is required, who will provide it and it will set target dates; and
3. Identify those responsible – a lead professional, and the core team.

In this case, for example, Freya needs support in managing the home (cleanliness), in cooking and in managing a young child (personal hygiene, stimulation). The care plan should enable the support required to be provided.

(c)

If the child protection plan does not result in an improvement, the local authority should obtain legal advice and communicate with the parents and the child (if of sufficient age and understanding). A letter before proceedings should be sent to the parents to:

1. Explain concerns and identify actions required to avoid court proceedings; and
2. Invite parents to a pre-proceedings meeting to discuss concerns and possible actions.

The parents should be advised to get legal advice.

At or after the meeting, the local authority should provide the parents with a revised care plan – stating agreed actions and the outcome if the actions are not followed. This information should be confirmed in a follow up letter.

In this case, Freya and Benjie are said to be difficult parents to work with and they may not co-operate with implementing the child protection plan. If they do not, they will need to be given a final chance and be told that if they do not work to improve Katie's living conditions an application may be made to take Katie into care.

Question 4(a)

When a child is adopted, that the child ceases to be a member of its natural family and becomes a permanent member of its adoptive family and the adoptive parents gain parental responsibility. The parental responsibility of the natural parents is extinguished.

Adoption can be open or closed and contact between the child and its natural parents depends on the type of adoption.

Open adoption allows some contact with the parents, if it is considered that it would be beneficial to the child. In contrast, closed adoption results in no on-going contact. Closed adoption is the preferred option.

In Jade's case, because she is of mixed heritage, open adoption might be considered to help her to maintain a sense of her identity. However, in Jade's case, closed adoption is likely to be preferred as her mother wants no contact with her and her father has a serious record of domestic violence.

(b)

Kempston County Council should apply for a placement order, s.21 Adoption and Children Act (ACA) 2002. This is an order that authorises the local authority to place a child for adoption, irrespective of whether the natural parents agree. The order gives the local authority parental responsibility for the child, which is shared with the parents. The local authority can decide that parents' parental responsibility is restricted so that it is able to make day to day decisions regarding the child's care. A placement order also prevents the natural parents from opposing any application to adopt. When a child is placed with prospective adopters, the placement order will give them parental responsibility until adoption is completed.

This order will allow Kempston Social Services to place Jade with adoptive parents, as her mother's consent cannot be obtained as Alesha has left the country.

Question 5(a)(i)

Stewart should apply for a child arrangements order to ensure that he has regular contact with the children.

This is 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. The contact can be direct contact, or indirect contact e.g., by telephone or letter.

This order would allow Stewart to have contact as specified by the court and Julie must comply.

(ii)

Stewart should apply for a specific issue order to resolve the disagreement with Julie over the planned holiday.

This is an order to resolve a particular dispute relating to the child where two or more people who have parental responsibility for a child disagree on how this should be exercised.

Here, Stewart wishes to take the children away on holiday and Julie does not agree. If they cannot agree, Stewart may have to ask the court for a decision.

5(b)

Any **two** of the following:

- **Ascertainable wishes and feelings of child (considered in light of age and understanding)**
- How much weight is placed on a child's wishes depends on child's age and maturity.
- Here, the children are of varying ages. Dylan is 11 so his wishes may be taken into account. Layla and Nancy are younger so their wishes may not hold much weight.
- **Child's physical, emotional and educational needs**
- Court will consider a range of factors including relationships and the effect of having no contact.
- Here, Dylan, Layla and Nancy appear to have a good relationship with their father, so continuing contact is likely to be considered beneficial.
- **Likely effect on child of change in circumstances**
- Courts are reluctant to upset the status quo.
- Dylan, Layla and Nancy's parents have split up, but Stewart has maintained regular contact as far as Julie has allowed. The court is likely to favour continuing regular contact.

- **Child's age, sex and background**
- Age is relevant in the weight given to expressed wishes. Sex is relevant if a teenager. Background is becoming increasingly important due to multicultural relationships.
- Dylan is approaching his teenage years and would benefit from contact with his father.

- **Capability of parent**
- How capable are the parents in meeting the child's needs?
- Stewart appears to be capable of meeting the children's needs and has the support of his parents in this.

- **Any harm the child is at risk of suffering**
- Harm may be physical or emotional. It may include harm through witnessing domestic violence.
- Julie may be causing the children emotional harm by not telling them the truth about why they are not seeing their father, and by stopping the visits and the holiday.