

**LEVEL 3 - UNIT 18 – THE PRACTICE OF CHILD CARE LAW  
SUGGESTED ANSWERS – JUNE 2017**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the June 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

**Question 1**

- (a) Kevin should apply for a child arrangements order under s.8 Children Act Order 1989 to ensure that he sees Olivia regularly.

This is an order that regulates who a child lives with, spends time with or has contact with. It also regulates when the child lives with, spends time with or has contact with that person.

Contact can be direct contact, or indirect contact e.g. by telephone or letter.

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

- (b) The key principle that the court must consider when exercising its powers under the Children Act 1989 is the paramountcy, or welfare, principle, s.1(1) Children Act (CA) 1989.

This principle states that the welfare of the child is the paramount consideration when the court is using its powers to make a decision regarding a child. There is also a presumption that parental involvement is important.

Here, Olivia's contact with her father is intermittent. She is upset, with problems sleeping and her progress at school is being affected.

In Olivia's case, the court may decide that some contact with her father will be beneficial. However, the court may decide that indirect contact is more appropriate to maintain the relationship but to minimise the disappointment caused by Kevin's unreliability. This may not be what her father wants.

## Question 2

(a) The initial procedure to be followed now that the school has made a referral is as follows:

- the school must confirm its concerns in writing within 48 hours;
- a written acknowledgement must be sent by the local authority within 1 working day;
- an initial assessment must be made;
- a decision on whether further action is required should be made.

(b) 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
- a child who will suffer significantly impaired health or development unless she receives assistance from the local authority; or
- a child who is disabled;
- s.17(10) CA 1989.

Here, Molly's health appears to be affected by trying to support her mother and attend school. Her education is also being affected by her absences from school and by the impact on her health.

Molly is a child in need.

(c) The general duty owed by Kempston County Council to Molly is the duty to safeguard and promote the welfare of children in need in their area and to promote the upbringing of such children by their families provided it is safe, s.17(1) CA 1989.

In Molly's case, her intellectual development (education) is being affected. Her emotional development is also being affected as she has taken on the role of carer for her mother without support.

Kempston County Council must therefore help Molly by providing support and assistance. For example, by providing carer support for Molly's mother, or a new school uniform for Molly.

(d) Any two of the following key personnel will be involved in providing assistance to Molly:

- Social worker;
- Teachers;
- Doctor;
- The educational welfare officer;
- Family support worker.

## Question 3

(a) An Emergency Protection Order (CPO) will provide short term protection by:

- authorising the removal of a child to a place of safety; or
- preventing the removal of a child from a place where they are currently accommodated.

Here, it could stop Amy from taking Charlie out of hospital, or it could enable the local authority to place him in accommodation where he is safe.

- (b) The statutory ground for applying for an EPO in this case is the common ground, s.44(1)(a) CA 1989.

This ground applies where there is:

- Reasonable cause to believe that the child is likely to suffer significant harm unless he is moved to accommodation provided by or on behalf of the applicant; or
- Reasonable cause to believe that the child is likely to suffer significant harm if he does not remain in his current accommodation.

Here, it is unsafe for Charlie to return home as he has experienced violence from Ted and there is further risk. Charlie needs to remain in hospital as long as necessary and then needs to be discharged to accommodation where he is safe, not his home.

- (c) If an EPO is applied for in this case, Charlie will be represented by:

1. A children's guardian who will be appointed by the court. The court will ask CAFCASS to allocate and the guardian will usually be a social worker with experience of working with children and families.

Their role is to:

- Advise court of course of action in best interests of child;
  - Meet and talk with child and family;
  - Advise child in an age appropriate way.
2. A solicitor appointed by the children's guardian who represents the child in court. Their role is to provide legal advice and advocacy for the child. The solicitor must also represent the child's best interests.

- (d) The effect of an emergency protection order is that:

- it confers parental responsibility on local authority limited to what is sufficient to promote and safeguard child's welfare;
- parental responsibility will be shared with mother (Amy);
- EPO last 8 days but can be extended by a further 7 days;
- Local Authority can prevent Amy from taking Charlie home and can place him in safe accommodation.

#### **Question 4**

- (a) The grounds for an interim care order are stated in the threshold criteria, s.38 CA 1989:

- is the child suffering (or likely to suffer) significant harm? 'Significant' means the harm is considerable or important 'Harm' includes both impairment of health, and also of development;
- and is the harm attributable to the care given being below the standard of care a reasonable parent would provide?

Here, Ellie has suffered sexual abuse, which is serious, and is harm that is likely to affect her health and her development. This harm is due to

inadequate care given by her mother, who was aware of the abuse but did not take action to prevent it.

In Ellie's case the threshold criteria are met.

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

### **Stage 1**

Issue and Allocation

- Application filed by Local Authority;
- Application reviewed by court and relevant action taken;
- Application and supporting documents (for example a social work chronology, a genogram etc.) 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.
- This hearing can be used as a final hearing.

### **Stage 3**

Issues resolution hearing

- To confirm issues to be decided.

### **Final hearing**

- Experts may give evidence.
- To decide any issues not already agreed by parties.

## **Question 5**

(a) A Special Guardianship Order is a semi-permanent solution, which can allow a child to be placed with extended family i.e. Betty. It provides the carer with a more permanent status without severing the relationship of the child and their mother, or other family members. The special guardian does have parental responsibility, which can be exercised to the exclusion of others. A special guardianship order is not permanent as it can be varied or discharged.

Here, Betty as Ellie's grandmother could be appointed a special guardian as she had regular contact with Ellie during her early years. Kempston CC would provide support services e.g. advice, counselling, financial support.

(b) To apply for a special guardianship order, the applicant must be:

- over 18;
- not a parent.

Section 14A Children Act 1989.

Various people are entitled to apply without permission e.g. a guardian or relative with whom the child has lived for 12 months.

In this case, Betty is over 18 and is not a parent but she would need the permission of the court to apply as she does not fall into any of the categories of applicant who can apply without permission.