

**CARE PLANS: LA DUTIES; COURTS'  
POWERS  
AND  
SEPARATING SIBLINGS**

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1 KBW

# BASICS

- THE CARE PLAN

- CA 1989 s31(3A)

- (3A)A court deciding whether to make a care order—  
(a)is required to consider the permanence provisions of the section 31A plan for the child concerned, but  
(b)is not required to consider the remainder of the section 31A plan, subject to section 34(11).

(3B) For the purposes of subsection (3A), the permanence provisions of a section 31A plan are—

- (a) such of the plan's provisions setting out the long-term plan for the upbringing of the child concerned as provide for any of the following—
  - (i) the child to live with any parent of the child's or with any other member of, or any friend of, the child's family;
  - (ii) adoption;
  - (iii) long-term care not within sub-paragraph (i) or (ii);

# BASICS

(b) such of the plan's provisions as set out any of the following—

(i) the impact on the child concerned of any harm that he or she suffered or was likely to suffer;

(ii) the current and future needs of the child (including needs arising out of that impact);

(iii) the way in which the long-term plan for the upbringing of the child would meet those current and future needs.

# 2010 REGULATIONS

- Care plan must address family relationships (r5)
- Care plan must, where siblings are not placed together, set out arrangements for contact (Sch1 para 3)

# AUTHORITIES

- RE CH (Care or Interim Care order) 1998 1 FLR 402:  
“The interdisciplinary character of the family justice system emphasises the cooperation that should exist between the court and public authority. It is, from my perception, inconceivable that there should not be reciprocal respect between the court and public authority for their differing functions and differing views. Manifestly, the statutory responsibility post-care order remains solely with the local authority. It is equally manifest that the local authority will pay due regard to the function of the judge in giving judgment upon the care plan after careful appraisal.”

# AUTHORITIES

**Re S & Ors: Re W & Ors sub nom Re W & B (Children) : W (Child) (Care Plan)**  
[2002] UKHL 10

- “Starred care plans”
- Limits on the powers of the court: Lord Nicholls
- “Two preliminary points can be made at the outset. First, a cardinal principle of the Children Act is that when the court makes a care order it becomes the duty of the local authority designated by the order to receive the child into its care while the order remains in force. So long as the care order is in force the authority has parental responsibility for the child. The authority also has power to decide the extent to which a parent of the child may meet his responsibility for him: section 33. An authority might, for instance, not permit parents to change the school of a child living at home. While a care order is in force the court's powers, under its inherent jurisdiction, are expressly excluded: section 100(2)(c) and (d). Further, the court may not make a contact order, a prohibited steps order or a specific issue order: section 9(1). “

- “There are limited exceptions to this principle of non-intervention by the court in the authority's discharge of its parental responsibility for a child in its care under a care order. The court retains jurisdiction to decide disputes about contact with children in care: section 34. The court may discharge a care order, either on an application made for the purpose under section 39 or as a consequence of making a residence order (sections 9(1) and 91(1)). The High Court's judicial review jurisdiction also remains available.
- These exceptions do not detract significantly from the basic principle. The Act delineated the boundary of responsibility with complete clarity. Where a care order is made the responsibility for the child's care is with the authority rather than the court. The court retains no supervisory role, monitoring the authority's discharge of its responsibilities. That was the intention of Parliament.”

# BUT

- Re W (Care Proceedings: Functions of Court and Local Authority) [2014] 2 FLR 431
  - M had severe psychological problems
  - Judge determined that they would act to cause significant emotional harm and wanted a care order but placement with M
  - LA asked twice to reconsider care plan to add services but LA disagreed with risk evaluation – thought M posed no risk

- After two attempts to require LA to provide services and two refusals a care order made despite the care plan being inadequate
- M appealed

# HELD

- Delineation of functions well known (as above)
- But a court retains power over the proceedings and evidence required to fulfil its functions
- It is for the COURT and NOT the LA to evaluate risk
- The LA may not refuse to outline the services available to meet that risk

- Quotes Re B-S (Adoption: Application of s 47(5)) [2014] 1 FLR 1035, at para [29]:

‘It is the obligation of the local authority to make the order which the court has determined is proportionate work. The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order. Judges must be alert to the point and must be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority’s thinking.’

- Ryder LJ:
- The decision about the proportionality of intervention is for the court, the decision about the services which are necessary is for the local authority. Not all services will be practicable and it is for these reasons that the court needs to know what services are practicable in support of each of the placement options and orders that the court may approve and make. A local authority cannot refuse to provide lawful and reasonable services that would be necessary to support the court's decision because it disagrees with the decision or the court's evaluations upon which the decision is based. It should form no part of a local authority's case that the authority declines to consider or ignores the facts and evaluative judgments of the court. While within the process of the court the state's agencies are bound by its decisions and must act on them"

# IF NOT?

- Judicial review (often the threat is enough)
- See: *Re X; Barnet London Borough Council v Y and X* [2006] 2 FLR 998
- See also: *Re C (Adoption:Religious Observance)* [2002] 1 FLR 1119

# NEW CASE

- In re T (A Child) (Care Proceedings: Court's Function) 2018 4 WLR 121
  - Child removed shortly after birth and placed with MGM but did not approve her as a foster carer
  - After hearing court's evaluation was that MGM could care for child as foster carer; adjourned for reconsideration by LA
  - LA again did not recommend her as a foster carer
  - Court therefore made a placement order

- Allowing the appeal, that the judge had underestimated the powers that she could have exercised in order to call the local authority to account for its response to her assessment of risk and welfare, which included (i) making an interim care order or a care order rather than a placement order, (ii) directing the attendance of the local authority's agency decisionmaker to ensure that the court's conclusion had been properly understood, and to see whether there was scope for a different outcome in relation to fostering approval,

- (iii) considering the use of wardship, (iv) directing the local authority to produce a statement setting out how it could provide the necessary support and vigilance under wardship, (v) directing an up-to-date analysis of the new situation by the children's guardian and (vi) transferring the case to the High Court so that the local authority's decision-making process could be challenged within the proceedings

# SIBLINGS

There has been a principle for many years that siblings should be placed together where possible:

C v C (Minors: Custody) 1988 2 FLR 291

# CHILDREN IN CARE

Statutory Rule: CA 1989 S.22C(8)(C)

(8)The local authority must ensure that the placement is such that—

(a)it allows C to live near C's home;

(b)it does not disrupt C's education or training;

(c)if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;

BUT: “As far as is reasonably practicable” (Subs. (7))

# Adoption?

- 9A) Subsection (9B) applies (subject to subsection (9C)) where the local authority F7 ...—
- (a) are considering adoption for C, or
- (b) are satisfied that C ought to be placed for adoption but are not authorised under section 19 of the Adoption and Children Act 2002 (placement with parental consent) or by virtue of section 21 of that Act (placement orders) to place C for adoption.

- (9B)Where this subsection applies—
- (a)subsections (7) to (9) do not apply to the local authority,
- (b)the local authority must consider placing C with an individual within subsection (6)(a), and

- (c) where the local authority decide that a placement with such an individual is not the most appropriate placement for C, the local authority must consider placing C with a local authority foster parent who has been approved as a prospective adopter.
- (9C) Subsection (9B) does not apply where the local authority have applied for a placement order under section 21 of the Adoption and Children Act 2002 in respect of C and the application has been refused.

# AUTHORITIES

- Re S-C (Children) [2012] EWCA Civ 1800 the court declined the invitation to give guidance on the approach to be taken when determining the configuration of the placement of children who are part of a sibling group. Baron J said that,

'5. The grounds of appeal also contemplate that this court should lay down general principles in relation to the way that sibling groups should be dealt with in the context of care proceedings. Speaking for myself, I would decline to make any pronouncements of a general nature because each case is unique and different on its facts. The court will always be required to provide bespoke solutions targeted on the needs of each particular child. Accordingly general guidance in this field would not be in point.'

# Weight?

- Re B (A Child) (Sibling Relationship: Placement for Adoption) [2018] 2 FLR
  - 2 options for placement at the end of proceedings
  - One option: placement with cousin of F
  - Second option: adoption with a sibling already adopted

- Result: Judge placed with adopted sibling
- Family appealed:
- Appeal dismissed:
- “The judge below correctly recognised that a kinship placement was a viable and realistic option but went on to find that the balance tipped in favour of a placement with the adopters. The judge’s approach was careful, thoughtful and nuanced. Her findings, her reasoning and her conclusions were plainly open to her on the totality of the evidence and other materials before her. They were unassailable” (see para [13]).

- Northants v AB and CD [2017] EWHC 3695
  - Care proceedings based on denied domestic abuse – 4 children
  - Abuse admitted and separation of parents late in the proceedings
  - LA and Guardian sceptical
  - LA and Guardian sought care and placement orders – bound to result in separation of siblings

- Ordered: despite risks, children to be rehabilitated to their loving mother:
- “in reality the only prospect of keeping all four children together was if they were re-united with their mother. The local authority and to a somewhat lesser degree the children's guardian asserted, notwithstanding the parents' admissions, that the correct plan was to place all four children for adoption. I was greatly troubled by that plan. Sibling relationships are most likely to be the most enduring relationships that a child will have, and the prospect of separating these four girls from one another for the whole of their minority and potentially the rest of their lives was very stark and, in my judgment, not in their welfare best interests.”

# Illustrations

- **Re A, B, C, D, E (Children: Placement Orders: Separating Siblings) 2018 WL 01367676**
  - Complex 5-sibling case
  - Judge analysing and using case management powers to require new care plans to avoid 5-way separation
  - Faced with new care plans but no definite outcome
  - Makes placement orders

- Re B-P (Children) (Adoption or Fostering) [2018]  
EWCA Civ 2042
  - Sibling group of 5 split into older (2) and younger (3)
  - Older 2 to remain in foster care
  - Younger 3 – LA sought placement orders
  - Judge refused placement orders and made care orders for long-term fostering
  - LA successfully appealed – Judge’s reasoning insufficient

# LESSONS

- Each case turns on own facts, but
- Courts will strive to keep siblings together
- Judge needs evidence of the benefits of retaining bonds or danger of breaking them
- Judge needs to be reminded of powers to require services from LA
- Judge needs to be convinced of viability of scheme
- Judge must be helped to come to a fully reasoned judgment.