

Appendix for Report to IMG – LA duties in respect of Children’s Social Care

The Key Duties

As a unitary Authority, SCC is subject to the full range of responsibilities in terms of Children’s Social Care, including:

- The general duty to support Children in Need within the area (section 17 Children Act 1989)
- The specific duty to investigate when children in the area may be at risk of significant harm and to take appropriate protective measures when such a risk is identified (s47 CA1989).

Arising out of these duties the LA is obliged to provide service to enable it to look after children who require accommodation as a result, and who may need long term alternative plans in the form of adoption. The LA is therefore obliged to operate a Fostering Service (s22G and Sch 2 Pt 1 CA1989), an Adoption Service (s3 Adoption & Children Act 2002), and a Looked After Children’s service (Sch 2 Pt 1 CA1989). As an operator of such services the LA is obliged to comply with the detailed individual Regulations which apply to each type of responsibility, covering such matters as required assessments and visits etc.

Beyond the above, further legal duties arise out of the activities the Authority is obliged to undertake. These include:

- A duty to promote contact in respect of Looked After Children (s 34 and Sch 2 Pt 1 CA1989)
- A duty to comply with Court rules in relation to proceedings which it has had to bring to protect children, including rules which require connected assessments to be undertaken and proceedings to be completed within a specific period of time (s32 CA 1989 and Family Procedure Rules 2010).

Consequences and Sanctions for Breaches of Duties

The consequences of failure to comply with the responsibilities vary depending on their nature, but most are severe. For example:

- A failure to assess and intervene appropriately may lead to a vulnerable child suffering serious harm, which could result in Serious Case Reviews, reputational damage, and claims for damages in civil proceedings
- A failure to comply with a Court’s requirements in respect of proceedings may result in delays for children (which is considered to be automatically prejudicial, S32 CA 1989), judicial criticism, costs orders, and adverse (and potentially unsafe) outcomes for children.

APPENDIX 1

- A failure to comply with contact obligations may result in emotional damage to children and an impairment of the LA's ability to plan effectively for all possible outcomes for them, and time and money spent on additional applications by family members to enforce their rights. This is an area of risk for LA's. Courts have been very critical of LA failings in this area in a number of publicly reported cases.
- Failures to comply with regulatory requirements around services may result in impaired outcomes for children, increased risks due to reduced monitoring, adverse findings from assessments by external regulatory bodies, and in certain circumstances liability to prosecution.

Impact of CV19 on legal obligations to children

The majority of the obligations referred to above have not been relaxed to any significant degree as a result of the current public health emergency. For example, the obligations with regard to contact still applies albeit that the Courts have been tolerant of LA's acting creatively in difficult circumstances on a temporary basis, such as by providing indirect contact through SKYPE etc.

Where the LA is a party to care proceedings it is still subject to the onerous requirements of an applicant in relation to providing assessments and must lead proactively in terms of getting the case ready for a conclusion as soon as possible. There have been some minor relaxations in relation to regulatory matters such as the quoracy of the adoption panel or the visiting requirements for looked after children, but these have been minor and in any event it has been signalled that these will not be extended beyond September.

Children's Social Care are therefore required to continue the majority of its 'business as usual' despite the limitations in terms of use of facilities, use of contact venues, and social distancing requirements CV19 has imposed. The need to comply with these requirements can create a conflict between these duties and, for example, an employer's health and safety obligations to staff, carers and other users of facilities. There has been a degree of tolerance of these difficulties on the part of the Court to date, but it is clear that that any flexibility shown will reduce as we move out of the first lockdown period, and the likely implications of failures to comply will increase.