

 **2-4 Lower Mounts**

 **Northampton**

 **NN1 3DE**

**Section 37 Children Act 1989**

The section states:

***Powers of court in certain family proceedings***

*(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child’s circumstances.*

*(2) Where the court gives a direction under this section the local authority concerned shall, when undertaking the investigation, consider whether they should—*

*(a) apply for a care order or for a supervision order with respect to the child;*

*(b) provide services or assistance for the child or his family; or*

*(c) take any other action with respect to the child.*

*(3) Where a local authority undertakes an investigation under this section, and decide not to apply for a care order or supervision order with respect to the child concerned, they shall inform the court of—*

*(a) their reasons for so deciding;*

*(b) any service or assistance which they have provided, or intend to provide, for the child and his family; and*

*(c) any other action which they have taken, or propose to take, with respect to the child.*

*(4) The information shall be given to the court before the end of the period of eight weeks beginning with the date of the direction unless the court otherwise directs.*

*(5) The local authority named in a direction under subsection (1) must be—*

*(a) the authority in whose area the child is ordinarily resident; or*

*(b) where the child****[****is not ordinarily resident****]****in the area of a local authority, the authority within whose area any circumstances arose in consequence of which the direction is being given.*

*(6) If, on the conclusion of any investigation or review under this section, the authority decide not to apply for a care order or supervision order with respect to the child—*

*(a) they shall consider whether it would be appropriate to review the case at a later date; and*

*(b) if they decide that it would be, they shall determine the date on which that review is to begin.*

This section empowers the Court, of its own initiative, to direct the Local Authority to look into circumstances of a child with a view to the possibility of taking action with respect to the child and to report to the Court above what, if any, action it intends to take.

The Court is not limited to one s37 direction for each set of proceedings. Where a Judge is satisfied that the Local Authority has either not complied with a direction under s37 or failed to conduct an investigation that met the Court’s concerns, the Court may extend or renew its direction under s37.

An interim Order (Care or Supervision) may be made pending the results of the investigation (s38(1)(b) Children Act 1989).

Where an Order under s37 is made, the Local Authority will be sufficiently closely connected to the litigation to justify a non-party costs order against it in circumstances where failings on the part of the Local Authority reach the threshold for making such an Order.

**Procedure**

This is governed by Rule 12.17 Family Procedure Rules 2010 which states:

***Investigation under section 37 of the 1989 Act***

***12.17.****—(1) This rule applies where a direction is given to an appropriate authority by the court under section 37(1) of the 1989 Act.*

*(2) On giving the direction the court may adjourn the proceedings.*

*(3) As soon as practicable after the direction is given the court will record the direction.*

*(4) As soon as practicable after the direction is given the court officer will—*

*(a) serve the direction on—*

*(I) the parties to the proceedings in which the direction is given; and*

*(ii) the appropriate authority where it is not a party;*

*(b) serve any documentary evidence directed by the court on the appropriate authority.*

*(5) Where a local authority informs the court of any of the matters set out in section 37(3)(a) to (c) of the 1989 Act it will do so in writing.*

*(6) Unless the court directs otherwise, the court officer will serve a copy of any report to the court under section 37 of the 1989 Act on the parties.*

Furthermore, as per paragraph 14.13 Practice Direction 12B FPR 2010, it is a requirement of the Child Arrangements Programme (CAP) that the need for a s37 investigation be considered at the First Hearing Dispute Resolution Appointment (FHDRA).

**Best Practice Guidance on s37(1) directions**

* A direction under s37(1) is appropriate where the Court desires an investigation because ‘it appears that it may be appropriate for a Care or Supervision Order to be made’.
* A direction under s37(1) is not lawful unless it appears to the Court that a Care or Supervision Order may be appropriate. Thus, in private law proceedings, a direction under s37(1) should not be used as a device for the purpose of enabling the Court to appoint a Guardian. Unless ‘it appears to the Court that it may be appropriate for a Care or Supervision Order to be made’, any referral for a welfare investigation should be made under s7.
* The purpose of a s37(1) direction is to enable the Court to cause the Local Authority to assess whether a Care or Supervision Order is needed. It is not to obtain a general welfare report. However, the making of a s37(1) direction will also cause the Local Authority to consider whether and which child welfare support services should be provided by the Local Authority, or other action taken, as well as or instead of a Care or Supervision Order.
* Upon a direction under s37, the Local Authority must report back within 8 weeks unless the Court otherwise directs.

**Appointment of a Children’s Guardian**

There are certain cases that, upon issue, the Court is required to consider the appointment of a Children’s Guardian to represent the interests of the subject child/ren (S41 Children Act 1989). This applies as follows:

*(b) in which the court has given a direction under section 37(1) and has made, or is considering whether to make, an interim care order*

This requirement is time limited to when the s37(1) direction has been complied with.

(The question of whether a Children’s Guardian is required for a longer period is governed by r16.4 FPR 2010).

**Communication to Local Authority of a s37(1) direction**

It is important that whenever a Court makes a s37(1) direction, the Local Authority should be informed as quickly as possible. Thereafter, the rules require that a copy of the s37(1) direction shall be served on the Local Authority as soon as practicable. In addition, the Court must direct which parts of the documentary evidence should be served on the Local Authority.

Furthermore, the Court must spell out the reasons for making the s37 order very carefully and a transcript (or very full note) of the judgment should be made available to the Local Authority at the earliest opportunity. It is not sufficient for the Local Authority simply to be told that the Judge has Ordered a s37 report. The Court should be clear about how, and by whom, the Order is going to be communicated to the Local Authority.

**Risks**

The ‘child’s circumstances’ under s37(1) must be widely construed and should include any situation which might have a bearing on the child being likely to suffer significant harm in the future. However, the Court must not fetter the Local Authority in the execution of its statutory function under s37.

Section 37 can be used in intractable contact disputes to remove children who are being denied all contact with the parent with whom they are not living and are suffering significant harm because of the false and distorted belief system of the parent with whom the child is living about the other parent. However, the use of s37 in this type of situation must only be used when the circumstances truly justify it.

**What to avoid**

A s37 direction is not a s7 direction. The Local Authority is not being asked to consider child arrangements or to provide an overview of the s1(3) welfare checklist. S37 is prescriptive; helpfully setting out exactly what is to be considered.

The investigation to be undertaken should be completed by a Social Worker with a clear understanding of Care/Supervision proceedings. The Court cannot require a Local Authority to issue proceedings but the author of the report should set out their careful analysis of the risks identified by the Court. A report concluding with ‘no further role for the Local Authority’ is unlikely to be considered acceptable.

A s37 investigation requires multi-agency involvement. Liaison only with the adult parties and subject children will not enable the Local Authority to answer the question of whether public law proceedings need to be issued.

A s37 investigation is not a small piece of work; hence the Statute providing 8 weeks for the Local Authority to conduct their enquiries. Swift allocation of the case should occur following notification being provided to the Local Authority.

Upon completion of the report, the Local Authority must file a copy with the Court and serve a copy on the parties to the proceedings (unless Ordered otherwise).

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