**Legal guidance for social workers, team managers and IROs: court approved care plans and subsequent changes**

Requirement to adhere to the court approved court plan

1. The final care plan we present to the court should have been approved at a LAC review, including other contingency plans which might arise from the court’s decision e.g. a refusal to make a placement order.
2. The care plan we present to the court should be offered in good faith i.e. with the intention of following it through. There will sometimes be disagreement within the authority about the plan. For example an IRO may have a different view from the social worker. This is healthy and any disagreements should be fully explored and if necessary included in our evidence for the court.
3. If the court invites us to review the care plan and we do so, we have to honour that revision. If the court rejects part of our plan for example by refusing a placement order or making a contact order we have to do what the court says until further information or events provide good reasons for seeking a different order or applying to vary an order.

Duty to provide reasonable contact

1. The local authority must provide reasonable contact. In some cases the court makes a contact order and the authority must provide that contact. The authority can apply for permission from the court to refuse or suspend contact. **In an emergency the authority can only refuse or suspend contact for 7 days. Any period beyond 7 days is illegal, in all circumstances**
2. The authority must at all times act reasonably. Good reasons for stopping or suspending contact might be a parent’s aggressive behaviour during contact causing a child distress. Unacceptable reasons would be lack of venue or supervisor. Reasons should be discussed with the team manager who should record a their decision on the child’s case file, and with the IRO who should record their oversight on the child’s case file.
3. If contact normally takes place during school holidays (6 times a year) and the social worker after consultation with their team manager and IRO decides it is in the child’s interests for contact to be refused, we can do so for 7 days only, without a court order. This means the contact needs to be restored as soon as possible and we should not wait until the next school holiday.
4. A parent can agree to a suspension of contact but this agreement should be freely given and recorded on Mosaic. Workers should be careful to protect themselves from allegations that the parent did not feel able to refuse their agreement. Therefore, if there is any doubt about whether fully informed consent has been given, it is always best to heed caution and take legal advice about whether an application to refuse contact needs to be made to court.

Matters returning to court

1. There is no mechanism for taking a case back to court to seek approval for a change in care plan unless it is:-
   1. A change to a plan of adoption (in which case an application for a placement order will be necessary)
   2. A change from a plan of adoption where a placement order has been made (in which case an application to discharge the placement order is needed)
   3. Refusal of parental contact (in which case an application for permission to refuse contact is needed.)
   4. Where the plan has changed to a reunification and this has been achieved (in which case at the appropriate juncture an application to discharge the care order will be needed)
2. There are certain times when the authority’s actions will be considered by the court following the making of a care order. These are the applications above and:-
   1. When the prospective adopters apply for the adoption order;
   2. When a parent applies to discharge a care order;
   3. Where the parent applies for a contact order;
   4. Where a carer applies for an SGO; and
   5. Where someone makes an application for damages for a breach of human rights.
3. At these times the authority’s compliance with the plan will be considered. The court is likely to take a different view on matters where the plan has been frustrated by life events e.g. breakdown of kinship placement or death of a parent, compared tomatters where the authority has changed the plan from the original court agreed care plan.. If the authority has changed the plan, the process by which it has done so is likely to be scrutinised. As a result it is necessary to have a clear audit trail of decisions and evidence that processes have been properly adopted including but not limited to:- having appropriate, robust assessments to inform the change, the change being endorsed at a LAC review and evidence that the IRO has provided robust scrutiny and challenge.

Case example A

The authority goes to court with a plan finding a placement for the child nearer to their mother so they can have more contact. Immediately following the hearing, the authority changes its mind.  There is no clear mechanism for taking this back to court. However, if the mother takes advice and takes the matter back to court this decision and the process by which it has been reached will come under court scrutiny and may be criticised. The correct thing to do would have been that the plan should have been followed at least to see if it was viable. The mother should have been advised to consult a lawyer and possibly have initial advice funded as we had dealt with her so unfairly.  This would be a matter for an IRO to escalate.

Case Example B

We could go to court and have the court approve a plan for contact once a week. Unless the court makes an order we can, after the hearing, reduce it to once per month as we are under a duty to provide reasonable contact. Again, there is no mechanism for taking this back to court as we are not refusing contact. However, we would need to write to the parent to explain the change of plan for contact and why our view has changed since the court hearing. If we did not do this, or the IRO felt more contact was needed, it would be a matter for IRO escalation. If the IRO felt contact should be reduced, again, this might be for escalation but the IRO would need to explain why the court’s view was wrong perhaps because there had been an incident during contact since that decision had been made.

Lessons learnt from “twins” case

Following the principles above, the “twins” case attracted criticism because:-

* 1. the court plan was to seek a foster placement together for three months if no adoptive placement was found. This did not happen.
  2. the process by which the decision to place separately for adoption was not robust
     1. We did not go back to the expert who had conducted the first sibling assessment,
     2. We did not consider the damage of ending the legal relationship between the children.
     3. We did not consider ways of reducing the impact of placing separately for adoption.
     4. The together or apart assessment did not quote the evidence that went contrary to our plans.
  3. With the benefit of hindsight had we placed the children in separate foster placements whilst we searched for a foster placement together and commissioned an assessment from Anna Freud or similar, before we made the decision to place them separately for adoption, we might well have come to the same conclusion but without the difficulties.