**Statute**

Children Act 1989 Section 39

Discharge and variation etc. of care orders and supervision orders.

(1)A care order may be discharged by the court on the application of—

(a)any person who has parental responsibility for the child.

(b)the child himself; or

(c)the local authority designated by the order.

(2)A supervision order may be varied or discharged by the court on the application of—

(a)any person who has parental responsibility for the child.

(b)the child himself; or

(c)the supervisor.

(3)On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

F1[(3A)……..

(3B)……

(4)Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

(5)When a court is considering whether to substitute one order for another under subsection (4) any provision of this Act which would otherwise require section 31(2) to be satisfied at the time when the proposed order is substituted or made shall be disregarded.

**Case Law**

**Lead case now Re TT children 2021 where the Court of appeal reviewed previous authority. A case where the mother was making application to discharge the care order.**

The Child’s welfare is the Courts paramount consideration.

The Court will use the welfare checklist as an analysis tool which includes current harm that the child is suffering or at risk of suffering.

(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question

Previous factual matrix that led to the making of the care order is relevant, but it is not necessary for a parent to prove that threshold criteria are no longer met or for the LA opposing a parent to prove that the facts found to satisfy the threshold at point of making of the care order persist.

The Court should follow the Re F(placement order: proportionality [2018] EWCA) approach when assessing risk of current harm and ask itself these questions:

* Type of harm that might arise,
* The likelihood of it arising
* The consequences if it arose,
* Measures that could be taken in mitigation.

Appropriate weight should be given to all the relationships important to the child and there can be expert advice on attachment in cases of difficulty.

The Court should consider the potential benefits to the child of discharge and the continuing effect of the care order on the child.

The welfare evaluation includes consideration of S1(5) no order principle namely that the court should not make the order unless to do so would be better for the child than making no order.

Court needs to cross check that the outcome is proportionate with the child and parents Article 8 rights. Public care of a child should in principle by regarded as a temporary measure to be discontinued as soon as circumstances permit and the positive duty to take measures to facilitate family re-unification must be balanced against the duty to consider the best interests of the child. In judicial decisions where the article 8 rights of parents and child are at stake the child’s rights must be the paramount consideration, if any balancing is necessary the interests of the child must prevail.

An applicant must bring evidence to show that the discharge of the order is in the child’s best interests. A party asserting a fact has the burden of proving it.

Another important case is:

**Re C (:Care Discharge of Care Order [2009] EWCA Civ 955** – LA application to discharge. Mother opposed on basis that she wished her child to have the benefits of the leaving care regulations.

This was a case where all the LA plans for the child were frustrated by the family and child. The LA position was that the CO could not be effective in the face of determined resistance from Mother (M) and child. M made the application. The LA indicated it did not oppose. M changed her stance at last minute and wanted the discharge adjourned until after child sixteen so that child could qualify under leaving care provisions. Judge discharged in any event and mother appealed.

It is not the case that a Local Authority applicant must show a positive benefit to the child from the order being discharged. Judge can take into account continuing effect or lack of effect of a care order.

Leaving care provisions did not apply even if the child reached the age of sixteen because he fell outside the regulations having been living with his parent for a continuous period of 6 months or more.

The recent case of **JW child at home under a care order [2023] EWCA Civ 944** was about making a care order at home at the end of care proceedings but should also have relevance in applications to discharge care orders.

Important points are:

1. the analysis of Hale J/LJ in *Oxfordshire County Council v L* [1998] 1 FLR 70,and in *Re O (Supervision Order)* [2001] EWCA Civ 16; [2001] laid particular weight upon the need for the authority to have power to remove the child instantly if circumstances required it, or to plan for the child to be placed outside the family.
2. since *Oxfordshire* and *Re O*, the High Court decision in Re DE (Child under Care Order: Injunction under Human Rights Act 1998) [2014] EWFC 6, containing guidance endorsed by the President, has been widely accepted so that, in all but a true emergency, the local authority power to remove a child from their home under a care order should not be exercised without giving parents an opportunity to bring the issue before a court.
3. the difference concerning removal of a child from home either under a care order or where there is no care order is now largely procedural. In all but the most urgent cases, the decision on removal will be taken within the umbrella of court proceedings, rather than administratively within a local authority.
4. sharing of parental responsibility by the local authority with parents is an essential element, but, as Hale J/LJ stressed, the fact that considerable help and advice may be needed over a prolonged period is not a reason, in itself, for making a care order.
5. it is wrong to make a care order in order to impose duties on a local authority or use it to encourage them to perform the duties that they have to a child in need.
6. the protection of the child is the decisive factor, but proportionality is key when making the choice between a care and supervision order for a child who is placed at home.

The case also quoted the Public Law Working Group

35. If the making of a care order is intended to be used a vehicle for the provision of support and services, that is wrong. A means/route should be devised to provide these necessary support and services without the need to make a care order. Consideration should be given to the making of a supervision order, which may be an appropriate order to support the reunification of the family.

36. The risks of significant harm to the child are either adjudged to be such that the child should be removed from the care of her parents/carers, or some lesser legal order and regime is required. Any placement with parents under an interim or final order should be evidenced to comply with the statutory regulations for placement at home.

37. It should be considered to be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order but, nevertheless, the risks can be managed with a care order being made in favour of the local authority with the child remaining in the care of the parents/carers. A care order represents a serious intervention by the state in the life of the child and in the lives of the parents in terms of their respective ECHR, article 8 rights. This can only be justified if it is necessary and proportionate to the risks of harm of the child.

**Application of the Law to the Social Work Statement.**

**Bear in mind in SGO cases you will follow the same approach as the statement will form part of the lead care discharge application.**

**In SGO cases as your statement will not be supporting re-unification you will be considering the proportionality of continuing to support the separation of the children from their parents.**

An updated statement template with some additional guidance is now available in Tri.x practice guidance.

**Have Right Help Right time in mind.**

**Understand Positive and Vulnerability/Risk Factors. See the extracts from RiP and Cleaver Unell et al in the attached.**



**Part 5 Statement reasons for the application and order**

**This is a short statement of your case. This is an executive summary of what will follow.**

**Sample points where child at home on CO.**

X was made subject to a care order at home/with connected carers on xx/xx/xxxx

The reason the Court made a care order was due to the seriousness of the parents’ difficulties and the harm the children had suffered and the view that the LA needed to share PR with the parents as they could not be left with sole PR.

Since the making of the order this has been kept under review using our Right Help Right Time approach and the welfare checklist. The current situation is that parent’s capacity has improved. (examples) X is not currently experiencing harm and it is not considered likely to arise in the future. There are many positive factors and few vulnerability factors. (examples)

The Right Help Right Time analysis is that the family’s needs now are for universal services.

The Trust seeks the discharge of the Care Order and no other order.

**Part 6 Matters which led to the Care Proceedings – get the bundle from the legal team if not on the child’s file.**

for this you need to read about the final threshold document or judgment.

Read the final CG report, Final Statement and Final Care plan.

Read any experts reports.

Read the Final Order of the Court

It is not necessary to go back and read all the evidence.

It is important that you set out why the Care Order at home was made and set this out.

Set out what was in the Care Plan and the support offered.

**Part 7 – Family History since the Care Proceedings.**

This is about what happened next.

Go from CiC review to CiC review telling the story of the family.

Show how we implemented the care plan and provided the services.

Focus on how harm has reduced, parenting capacity has improved in applications to discharge where child at home with parent.

Focus on the child and any change in circumstances.

**Part 8 Current Circumstances**

This section is about the child’s needs and how they are being met.

It is important to deal with each of the subheadings in the statement.

Later this will be summarised at the Welfare Checklist section in the statement, but this is the opportunity to set things out in full.

It is important here to deal with the harm and likelihood of harm question in full. Remember harm is about ill treatment and the impairment of health and development. It is important for the application that you spell this out. If there are still some issues, then say how these will be handled, what services will be provided where the family fits in RHRT.

It is important here to be clear about important relationships and how they support the child.

**Part 9 – Position of the parents/carers**

This is all about welfare checklist point (f) the capability of parents to meet the child’s needs.

Be specific about parenting capacity now. How things have changed. How we know.

If there are still some concerns the services and plans will be dealt with at 12.

This section should again make specific reference to RHRT.

This informs the plan for the involvement of the parents where the application is Care Discharge/SGO

Include information about obtaining their written consent to the application.

**Part 10 the proposed future arrangements for the care and upbringing of the child.**

Where there are still needs there should be a CiN plan.

Once again reference RHRT in this.

if there is a need for an order then set this out here – e.g., CAO to F – The SGO if a Care Discharge SGO case.

The rationale for the SGO will be set out in the SGO assessment and can be summarised here.

**Leaving care support should be dealt with here. This is often an area of confusion and contention so the Law and Guidance is briefly summarised next along with specimen points which could be made.**

**Arguments About** **Leaving Care Support**

**All of this only applies to children over the age of sixteen.**

*General DfE guidance CA 1989 Transitions Guidance*

*page 5*

*Designed to ensure care leavers are given the same level of care and support that their peers would expect from a reasonable parent.*

*Para 1.7 page 8*

*While most young people know that they can call on the support of their families through unforeseen difficulties care leavers may not be able to rely on unqualified support if things do not work out as they make their journey to adulthood*

It is necessary to understand the categories and what a child is entitled to.

|  |  |
| --- | --- |
| Qualifying Child | Entitlement |
| Eligible Child  16-17  **Currently looked after.**  Has been looked after for 13 weeks since age 14 | Personal adviser  Needs assessment.  Pathway plan  All care and support entitled to until they leave care |
| Relevant Chid  Age 16/17  Looked after for a period of 13 weeks since age 14.  Looked after for a period of time after 16th Birthday.  **No longer looked after.**  **But**  **Reg 3 of Care Leavers Regs 2010 provides:**  **A child who has lived for a continuous period of more than 6 months with a parent or someone else with PR is not a relevant child.**  **If the living arrangements break down the child may become a relevant child again** | Personal adviser  Needs assessment.  Pathway plan  Accommodation and maintenance  Financial support to meet education training and employment needs.  A child aged 16/17 living at home with parents on a care order for more than 6 months will not be entitled to the services above after the care order is discharged. |
| Former Relevant Child  Age between 18 – 21 or 18-25 if still in full time education.  Previously an eligible child and or a relevant child | Personal adviser  Pathway plan  Assistance with employment education and training  Assistance with accommodation  Help with living costs.  A child who lives at home with parents under a care order until age 18 will be entitled to these services as a child who was previously an eligible child. |
| Qualifying care leaver  Age between 16 and 21 or 16 and 25 if in full time education  Looked after on or after their 16th Birthday but no longer looked after.  Spend less than 13 weeks in care since 14th Birthday – do not fulfil criteria for eligible or relevant child.  Also, a qualifying care leaver under this heading.  Child Aged 16 – 20 ceased to be looked after on making of SGO.  Still being cared for under SGO (16 –17-year-olds)  Order remained in force until they reached eighteen. | Help with living expenses and if they are in higher education may also have help with securing vacation accommodation.  Advice and assistance which may be in cash.  A child living at home with parents for more than 6 months where care order has been discharged and they are therefore not a relevant child would qualify for support in this category. |

Positions may be taken by parents or Child’s Guardian including:

1. Seeking Trust commitment to providing full care leaving support even though the child does not qualify.
2. Delaying the making of the order to allow a child to qualify.
3. Opposing the making of the order due to the fact child will not qualify if the order is not made.

The Social Work statement should cover this at paragraph 12 under the heading “proposed future arrangements for the care and upbringing of the children.”

1. Set out the legal position for the child using the table above as a guide.

Examples

X has been living with his parents for more than 6 months and as a result will not be entitled to services as a former relevant child on the discharge of the order. He will be entitled to services as a qualifying child.

Or

When the SGO is made x will cease to be looked after but will be eligible for support after the age of sixteen as a qualifying child.

1. & c) Delaying the making of the order will only allow a child to qualify for full leaving care provision as an eligible child if the child stays subject to the order up to his 18th Birthday.

The Regulations specifically provide that if a child lives at home with parents for 6 months, then they cannot qualify for full leaving care services as a relevant child.

A similar position is in place for children subject to SGO.

It is important to say that these regulations providing for more limited provision are in place because as the guidance sets out these services are for care leavers who don’t have a level of care and support that they could expect from a reasonable parent or they can’t call on the support of their families (CA 1989 Transitions Guidance pages 5 & 8.

The Trust position is that x can look to his family to support him as he makes his journey to adulthood and that in line with the guidance and regulations there can be access to the level of support to which he is or may become entitled if for any reason the family relationship breaks down in the future.

On that basis the decision to discharge the care order/to make the SGO should not be delayed or not made for reasons relating leaving care services.

**Part 11 Children’s and other family members Views**

There should have been recent discussions with the parents and child and their views should be set out here.

Consent should have been sought and obtained where possible and the date given should be recorded here.

**Part 12 Views of Key Professionals**

Views of key professionals with a paragraph for each setting out their support/reservations if any.

It is essential to be entirely accurate and not to mis describe views.

Each professional/agency should have a paragraph.

Where an agency has reservations, this should be addressed here with reference back to the plan at part 12 as to how mitigated.

If we disagree set out the reasons why this is the case.

It is good practice to have short reports from agencies to include with the statement as part of the applciation

**Part 13 Analysis using the Welfare Checklist**

This is especially important as it is what the Court will use.

You can cross reference to the sections you have already completed and summarise in short here.

**Part 14 Conclusion and recommendation.**

Sample conclusions and recommendation can be found in the draft statement template.