

Social work law problem question



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Melanie, a social worker working for the social service department of the local authority, has just been assigned a possible child protection case as the nursery school attended by a child called Sophie aged 3, has alerted them about their concerns about her. The school are worried about Sophie as she has recently become withdrawn and has not been playing and interacting with the other children. She also comes to nursery sometimes looking rather unkempt and dirty and a couple of weeks ago when the children were discussing what they eat for breakfast, Sophie said she doesn't have breakfast. Sophie has not been at nursery for the past week.

Melanie arranged to pay a visit to Vicky, Sophie's mother and discovered the following by way of background. Sophie's father is Darren who lives with them intermittently. Darren has been violent to Vicky when she was pregnant with Sophie and she obtained an injunction against him and they separated before Sophie was born. However, they resumed their relationship when Sophie was 6 months and since then Darren has lived either with Vicky and Sophie or he often stays with his mother when there has been an argument. Vicky seemed depressed and said there had been an incident at the weekend and Darren has gone back to his mothers. The house is dirty and Sophie is home is still home from nursery. Melanie notices how thin Sophie was and also that she had bruises on her right arm which Vicky says were as a result of a fall in the playground at nursery.

Melanie arranged to pay Vicky a visit again the same time the following week and when she turned up no-one answered the door. She asked a neighbour passing by whether they had seen Vicky and/or Sophie. They replied they hadn't seen them for a few days but heard Vicky shouting and swearing at

Sophie in the garden the other day. They said they saw Darren outside the house yesterday.

Melanie is seeking your advice as to how the local authority could proceed next. Advise her as to the duties of the local authority in this situation, and what her legal options are, whether or not Vicky co-operates. Ensure that you provide Melanie with information not just on the measures that can be taken in the short term, but also, in the long term if necessary.

Following a referral from the school, the local authority need to consider what harm Sophie may be facing and the appropriate solution needed. Clearly, concerns are expressed in the instant case as to whether Vicky and Darren are properly fulfilling their parent responsibility. Just as the Children Act 1989 imposes duties on parents, it also imposes duties on the local authority. The Children Act 1989 s47 requires the local authority to investigate cases where there is reasonable cause to suspect that the child or children concerned are suffering or are likely to suffer significant harm. The Act requires the local authority to act, wherever possible, in partnership with the parents of the children. Encouraging co-operation between parents and local authority and maintaining, wherever possible, the care of the child within the family are the guiding philosophies of the Act. Sophie satisfies the test for children in need, hence, the local authority has a statutory duty under the Children Act 1989 s17(10)(a) as it would appear that both Darren and Vicky seem unconcerned about the difficulties that their child is suffering; the issue is how to endorse Sophie's welfare long term. There are two long-term child protection measures in the Children Act 1989, the care

order (Children Act 1989 s33) and the supervision order (Children Act 1989 s35). It is suggested that the care order is the more appropriate order.

As Sophie's parents are not considerate, the more coercive powers of the care order, including the local authority gaining parental responsibility under Children Act 1989 s33(3) may be necessary. It seems working with the family by providing support would be ineffective and instead a more coercive approach might be necessary under Children Act 1989 Part IV to assist parents and children in need. This general duty to children in need requires the local authority to safeguard and promote the welfare of children.

Sophie has not been attending school, she is physically thin and has been verbally and physically abused. In order to obtain a care order in respect of Sophie, the local authority will first have to satisfy the threshold criteria in the Children Act 1989 s31. These are that they are satisfied that the child, here Sophie, is suffering or is likely to suffer significant harm due to lack of parental care or to be being beyond parental control. This test does seem to be satisfied. Harm is defined in the Children Act 1989 s31(9) and it is clear from *Re O (A Minor) (Care Order: Education: Procedure)* (1992) that this can include truancy. Any application made under the Children Act 1989 will have the child's welfare as the paramount consideration s 1(1) and the court will be reluctant to intervene unless it can be shown that the making of an order is better than leaving things as they are s1(5). An education supervision order is made on application, usually to the Family Proceedings Court, where the local education authority acts in consultation with the social services. The Children Act 1989 s36 requires children of compulsory school age to attend school or else an education supervision order may be made. Sophie is

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of compulsory school age and it does seem that she is not being properly educated according to her needs, age and ability, given the amount of time during which she is absent from school. Section 36(5) creates a presumption that a pupil at a school who is not attending regularly is not being properly educated. Thus, it would seem that it would be possible to show to the court that Sophie is not being properly educated. If the court was satisfied of this, it could appoint a supervising officer to ensure that the child attends school. This supervising officer takes responsibility for guiding and assisting both the child, Sophie, and her parents, Vicky and Darren, in understanding the importance of education and laying down certain guidelines to ensure that Sophie does attend school.

The order will usually last for one year but it can be extended or conversely it can be discharged on application by the child, Sophie, or her parents or, if all is going well, by the education authority. If, however, the supervision order does not succeed in getting Sophie to attend school, then the local authority may need to consider the more drastic step of seeking a care order. A care order is available under the Children Act 1989 s31 and is only available once the local authority has carried out preliminary investigations to see if any action is necessary to safeguard or promote Sophie, see, 47(1). Generally, the local authority must consult both Sophie and her parents but, if the case is an urgent one or consultation may prejudice Sophie's welfare, the local authority may act without consultation. In any application for a care order, both Sophie and her parents must have notice and be made respondents to the application. Since Sophie is a child it is usually necessary to appoint a children's guardian to act to safeguard her interests. The

children's guardian will talk with Sophie and try to ascertain Sophie's feelings and wishes in regard to the present position. Sophie is obviously entitled to be consulted and clearly her co-operation will be essential for the smooth running of any future plans concerning him. The statutory grounds for a care order are found in the Children Act 1989 s31.

The Family Proceedings Court must be satisfied that the child is suffering or is likely to suffer significant harm. This does not require proof on the balance of probabilities that there will be harm in the future; it is enough to show a real, significant likelihood of harm see, *Newham London Borough Council v AG* 1993. Harm includes ill-treatment or impairment of health and development. In the present case, it does appear that Sophie is being ill-treated at home and her lack of attendance at school, and her parent's apparent unconcern of the situation, do seem to indicate that maybe his health and development are being impaired. The second criterion under s 31 is that the harm or likelihood of harm is attributable to the care being given to the child or likely to be given to her if the order is not made, not being what it would be reasonable to expect a parent to give him, or secondly, the child being beyond parental control. This is an objective standard based on what a reasonable parent could or could not do, *Lancashire County Council v A* (2000). In *Re O (A Minor) (Care Order)* (1992) the persistent truancy of a child was deemed suitable for a care order to be made and this would be the case here. Since neither Darren nor Vicky is able to control Sophie to ensure that she attends school, or they do not particularly concern themselves over her attendance, this would show that it is not reasonable for them to behave in that way concerning the education of their 3-year-old daughter. Again, as

with any Children Act 1989 order, the child's welfare is the paramount consideration see, s1(1) and, in order to determine what would be in Sophie's best interest, the s1(3) checklist would be examined.

The first consideration in the checklist would be the wishes of the child, Sophie. She is still a child and definitely at the age where the court would consider her wishes. However, this does not mean that she would be able to dictate to the court what she wished to do. Definitely, her disinclination to attend school would not result in the court deeming any care order unnecessary. In fact, her inability to behave maturely in respect of her education may indicate that her wishes will not carry a great deal of weight. The second criterion on the checklist is the child's physical, emotional and education needs. Clearly Sophie is in need of some guidance, and the fact that she is not attending school, she is a child who seems to be drifting through life. The apparent unconcern of her parents seems to indicate that something must be done for Sophie. However, whether this would necessarily require her to leave her home and be taken into the care of the local authority is another matter. The court may decide that a less draconian measure would be more suitable. If Sophie wishes to remain at home it may be that the shock of being threatened with removal will be enough to make her mend his ways. If the court is of the view that Sophie and her parents may be able to correct the defects with a little assistance from other persons, then maybe the education supervision order discussed earlier, or a supervision order, will be more appropriate. The supervision order under the s 31 criteria requires the threshold of harm in s 31 to be satisfied. However, the effect of a supervision order is very different. A supervision order does

not vest parental responsibility in the local authority; instead, a supervising officer, either a local authority officer or a probation officer, is appointed to assist and befriend and advise the child and his parents (s 35(1)). The supervising officer will do what is necessary to ensure that the child is guided and that her welfare is promoted. Usually a supervision order lasts for one year but it can be extended up to three years by one application; to continue beyond the three-year period another application would be necessary. The supervising officer will try to give directions to Sophie: telling her to attend school; possibly also requiring her to participate in certain activities; and imposing obligations with the consent of Darren and Vicky to help them deal with Sophie and promote her welfare.

In *Oxfordshire County Council v L* (1998) a supervision order was considered appropriate for six children. This was because the parents wanted to meet their obligations to their children, and with help from the local authority they were likely to be able to do so. Another issue is the verbal and physical abuse Sophie had. The incidents at school, the physical abuse and the verbal abuse at the garden, gives considerable cause for concern over Sophie's health and well-being. Nevertheless, it is not clear that there is any actual abuse and the local authority should proceed with caution in this very delicate area.

For now, regarding Sophie a case conference should be held in which the child's welfare and situation should be discussed. On the other hand, there is the concern that consultation with the parents and with Sophie may increase Sophie's unease and could be detrimental by causing delay. Consequently,

the local authority needs to act to get to the bottom of the problem and found out exactly what is concerning Sophie.

If Sophie has been abused. One option would be to apply to the court for a child assessment order. Such an order is available to the local authority and will enable it to find out exactly what is going on in relation to the child.

However, full notice must be given by the local authority to both the child and the child's parents and, at the hearing, the court must be satisfied that the local authority has reasonable cause to suspect that Sophie is suffering or is likely to suffer significant harm; that an assessment of Sophie's health and development is required in order to establish whether or not she is suffering harm; and that it is unlikely that an assessment will be made or made satisfactorily without a child assessment order. In this case the school report of Sophie's behaviour does give rise to concern that Sophie has suffered some kind of harm. Her responses do not seem to be those of the average child in such a situation, her personality, gives for concern. There is no need to show on the balance of probabilities that Sophie is likely to suffer significant harm, just that there is a real likelihood. Vicky and Darren's response is somewhat dismissive and it does not seem likely that the local authority will be able to assess Sophie without a child assessment order. Such an order, if made, will only last for seven days and it does not affect Vicky and Sophie's parental responsibility. The local authority has no parental responsibility during the lifetime of this order; the order merely requires Vicky and Darren to produce Sophie so that she can be assessed. This may mean that Sophie continues to live at home although it is possible for her to be assessed as an in-patient in hospital. If Sophie is to remain in

hospital, then contact will usually be allowed under s43 between Sophie and her parents. There is the possibility that a child of such an age may refuse to consent to the assessment. Clearly, Sophie is a disturbed and upset child, but hopefully, with proper explanation and reassurance, she will be happy to comply with the order. If the local authority is frustrated in its enforcement of the child assessment order or if concern exists that more immediate protection is required for Sophie, then an emergency protection order under s44 of the Act may be sought. The basis of such an application is, first, that the local authority may apply if it has reasonable cause to believe that Sophie is likely to suffer significant harm if either she is not removed to accommodation provided by the local authority or she does not then remain in the place where she is being accommodated. A further option open to the local authority is to apply under s 44(1)(b) on the basis that enquiries are being made with respect to the child and that those enquiries are being frustrated by access to Sophie being unreasonably refused by the parents and the applicant will also need to show that they have reasonable cause to believe that access to the child is required as a matter of urgency.

The emergency protection order is a very draconian measure; it gives the local authority parental responsibility for the duration of the order (s 44(4)) and the local authority can take such action as is reasonable to safeguard or promote Sophie's welfare. The court will authorise the child's removal to local authority accommodation or it will order that the child remains in any hospital or other place where the child is being accommodated prior to the order being made.

The court will consider whether contact should be allowed between Sophie and her parents and also whatever medical and psychiatric assessment is necessary. Usually the child will have contact with her parents but if it is considered that this would be detrimental to her welfare then contact can be refused and this refusal cannot be challenged. An emergency protection order lasts for eight days (s 45(1)), although it can be extended once more for a further seven days s45(6) if the court has cause to believe that, if it is not extended, Sophie will suffer significant harm. The emergency protection order can be challenged by the child and her parents and anyone else having parental responsibility for her, after 72 hours have expired. However, a challenge is not possible if the parties were given notice of the hearing and were present at it s45(11). Since the emergency protection order is a very dramatic step to take, the court will consider long and hard whether it is in the child's best interest for such an order to be made. Clearly, in this case there are concerns as to what is troubling Sophie and it would seem that the parents' attitude is somewhat ambivalent, given the concerns expressed by the local authority. Whether this is sufficiently significant to give rise to the need for an emergency protection order is debatable. Concern has frequently been expressed at the hasty removal of children from their parents' care by local authorities; therefore, it may be that the local authority would be best served by making an application for a child assessment order in the instant case, since the evidence of abuse is not sufficiently overwhelming to justify the application for the emergency protection order. An emergency protection order should only be sought if the child assessment order is being thwarted by Vicky and Darren. If either the child assessment order or the emergency protection order produces

evidence that Sophie is in fact being abused, then the local authority will need to consider more long-term measures. The appropriate measure to take would be the care order under s 31 of the Act. The local authority may apply for a care order if it can establish the threshold criteria in s 31. The local authority must first satisfy the court that Sophie is suffering or is likely to suffer significant harm and, secondly, that the harm or likelihood of harm is attributable to the care being given to Sophie or likely to be given to her if the order is not made, not being what it would be reasonable to expect a parent to give her; or that the child is beyond parental control. The evidence of Sophie's distress at school and her change in personality, either under the child assessment order or emergency protection order, may substantiate the claim that Sophie is suffering significant harm. Harm under the Act means ill-treatment or impairment of health and development. Ill-treatment includes sexual abuse as well as physical and mental ill-treatment. If Sophie has indeed been sexually abused by either or both of her parents, then the criterion of harm will be satisfied and clearly, if nothing is done, Sophie will continue to suffer this significant harm. It is also necessary to show that the harm is because of the care being given to the child by her parents. If the parents are responsible for the abuse or are failing to act to protect Sophie from it, then their actions are not those of the reasonable parent and the s 31 criteria will be established. Sophie's welfare under s 1(1) of the Act is the crucial consideration and is paramount throughout. In cases of serious sexual abuse, it will be necessary to remove the child from the family environment so as to ensure that the abuse does not continue. The s 1(3) checklists must be applied and Sophie's wishes must be ascertained. If she is being abused she will obviously have confused feelings about her parents and whether she

wishes to remain with them or be removed into local authority care. This is not a case where the court can stand back and do nothing. The non-interventionist policy enshrined in s 1(5) of the Act will have to be put to one side as something needs to be done to ensure that Sophie's well-being is safeguarded. Any care order that is made will last until Sophie is 18 unless it is discharged earlier either on application by the child, by her parents or by the local authority. Even though a care order is made, the local authority should consider the question of contact, especially in relation to the parents of the child. Usually contact will be allowed even though a parent may have abused the child. It will usually always be possible for the other innocent parent to see the child. Even the abuser may have limited supervised access to the child since it is often in the child's best interest for the relationship to be given the opportunity to be repaired. However, it is crucial to try to ensure that any abuse is not repeated. If Sophie is taken into care by the local authority, the local authority has a duty under s 22 of the Act to promote the child's welfare and to consider Sophie's wishes and those of her parents at all stages.

The parental responsibility of Vikcy and Darren does not end on the making of the care order and the local authority will still try to keep them involved in the upbringing of their child where this is still in the child's best interest. The local authority will consult Sophie to see how she wishes her future to unfold and it will also consult her parents if possible. In making any decisions about the child, s 22(5) of the Act requires the local authority to take into account the wishes and feelings of the child and her parents, and also to take into account the child's religion, racial origin and cultural background. In

conclusion, therefore, it can be seen that appropriate measures for the local authority are an education supervision order and, failing that, a care order or possibly a supervision order under s 31 of the Act, however, more stringent measures may be needed. First, an investigation by way of a child assessment order will be required or, in an emergency, an emergency protection order. If either of these measures discloses that Sophie is being abused then it will be necessary to make a care order under s 31 of the Act. In relation to both children any application must have their welfare as the paramount consideration, and consequently it will only be when the full facts are known about Sophie and Jack that the appropriate order can be sought.