

Judicial decisions in care proceedings: law, prediction and choice

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Protecting children: overview of the law

A shared responsibility:

Parliament, Local authorities and the courts

Local authorities:

assess, plan, decide, prepare and apply

Courts:

consider evidence, apply law and decide order

‘ a risk-based judgment call based on principles’

Ryder J

Care proceedings – Law (principles)

Proved on the ‘balance of probability’:

‘Threshold’ = actual or likely significant harm,
attributable to care or likely care... (Children Act 1989, s.31)

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Intervention in family life is proportionate (ECHR, art 8)

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Order is necessary and in child’s best interests
(welfare + minimum intervention) (s.1)

Care proceedings: Prediction

- Is harm (sufficiently) likely?
 - Predicted harm x size of risk
- Will parent/relative provide care the child needs?
 - Prediction based on assessments
- What (permissible) intervention is best for child?
 - Prediction of child's future

Care proceedings: Choice

- Judicial independence
 - Contested proceedings present competing histories and views of the future, supported by varying evidence
 - Uncontested (lesser contested) cases also involve evaluation and application of the principles
 - Justice
 - Individual decisions on the facts
 - Like cases treated alike
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Who bears the risk?