

ADVICE REGARDING IMPLEMENTING A CSO WITHIN 21 DAYS



I know several local authorities take the view that they have 21 days to implement the Hearing's decision in relation to a Compulsory Supervision Order (CSO); this is not accurate. The local authority has a statutory duty to implement the decision of the Children's Hearing, without exception. There is no period of grace during which the local authority can mull over their responsibility.

This is clearly stated in the general duties of the implementation authority listed under Section 144 of the Children's Hearings (Scotland) Act 2011. The Authority must (not may or should but must) give effect to a CSO; furthermore it must (again, note the imperative) in particular comply with any requirements imposed on it by the CSO.

Where the CSO is not being complied with, the implementation authority must (again!) give notice to the Reporter for a review of the CSO to be arranged. -S 131(2) (b) of the Act

If it appears to a Children's Hearing at a review hearing that the Authority is in breach of its duty to implement the CSO, enforcement action can be taken under Ss.146, 147 of the Act. Something you would want to avoid. S 146(7) specifically states that the Hearing must not take account of any resourcing problems on the part of the Authority in their failure to implement the terms of the CSO.

I think where the notion of there being a 3 week period to implement arose is due to a misreading of a statutory instrument, namely. Regulation 6 of The Children's Hearings (Scotland) Act 2011 (Compulsory Supervision Orders etc.: Further Provision) Regulations 2013.

It places an obligation on the Authority to arrange the temporary accommodation of a child in a suitable place where the Authority has been unable to make immediate arrangements for the child's reception into the residential establishment named on the CSO.

The child can only stay in an alternative placement for 3 weeks from the date the CSO was made, continued or varied. So if a CSO is dated Monday 1 April 2019, the Authority can only accommodate the child in a place not specified on the CSO until Monday 22 April.

There will need to be a review Hearing on or before that date and the Reporter will need to have plenty of time to carry out the notifications of the Hearing for it to be legally convened.

That Hearing will want to know why the decision of the Hearing on 1 May had not been complied with; what efforts were made by the Authority to discharge their statutory obligations; how the alternative placement was adequately meeting the needs of the child; whether there had been any changes in the intervening period etc.

I am not being pedantic; my main worry is that in the intervening period when the child is not where he is legally supposed to be, the local authority would be held responsible if anything goes wrong.

So it is not the case that the Authority has 3 weeks to implement the Hearing's decision.

The above process is one of exception, not default in the event that the accommodation specified as where the child would live by the Hearing cannot for some reason be accessed. The Authority must implement the decision and I would think that a Hearing would take a pretty dim view if it appeared that the Authority was adhering to a practice of deciding when to follow the legal direction of the Hearing.

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