

Care Proceedings

Parents' and carers' legal rights



*Community
Legal Service*



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This leaflet outlines your legal position if social services are concerned about your child's welfare and are considering care proceedings. The leaflet is written mainly for parents and carers, but the information in it is also for other people, including other family members, who are involved in the welfare of a child and may become involved in care proceedings. It explains:

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 19 for sources of information and advice.

Who can make decisions about my child's care?

The right to decide how a child is raised and cared for rests with people who have 'parental responsibility' for him or her. Parental responsibility is the legal term used to describe all the rights and duties that parents (and sometimes other people) have towards their children. For example, it gives you the right to agree to medical treatment for your child, or to choose the school they attend.

When a child is born, the mother automatically has parental responsibility. So does the father, if:

- he is married to the mother when the child is born; or
- he is registered as the father on the baby's birth certificate (for children born after 1 December 2003).

However, later in the child's life, the unmarried father of the child can get parental responsibility by:

- marrying the child's mother;
- making a Parental Responsibility Agreement with the mother;

- re-registering the child's birth (if the father was not on the birth certificate and if the mother signs a statutory declaration that he is the child's father);
- getting a parental responsibility order from the court; or
- getting a residence or special guardianship order from the court.

Adoptive parents get parental responsibility when they adopt their child.

Other people caring for children may get parental responsibility if they obtain a court order. For example, the local authority will get parental responsibility if it obtains a care order from the court (see 'What types of order can a court make?' on page 15).

Why would social services get involved in my child's care?

The social services department in your local authority (council) is responsible for making sure that children are safe and are well cared for by their parents or the person looking after them.

Sometimes social services receive information that makes them worried about a child's welfare. If social services believe that your child may be harmed, they have a duty to take action to protect your child. Social services must get the court's permission to take any action you do not agree with. Here 'court' means judges or magistrates who make decisions about children.

If social services believe that your child is suffering serious harm or is likely to suffer serious harm, they can apply to the court for a care order.

Before social services apply for a care order, they may call a meeting called a 'child protection case conference' to see if your child could be properly protected without a care order being made – for example, by providing you and your family with support services. All the professionals, organisations and agencies involved with your child, such as doctors and schools, will be invited to the meeting. Social services should apply to the court for a care order only if they think it is the best way to ensure your child is properly protected.

Where can I get help and advice?

If social services have become involved or want to become involved with caring for or protecting your child, and you need help and advice, contact the Family Rights Group, your local Citizens Advice Bureau or a solicitor. See 'Further help' on page 19 for contact details.

What if social services think my child is in immediate danger?

If social services think your child is in immediate danger and needs to be made safe straightaway, they can take a number of steps to protect your child. They can:

- ask the person they believe is a danger to your child to leave the home or keep away from the child;
- discuss with you having your child looked after by the local authority in a way you agree to;
- ask the police to take your child into police protection for up to 72 hours (three days); or
- apply to the court for an emergency protection order.

If the person who social services believe is a danger to your child says they will leave the home in the short term, social services can help that person to find somewhere else to stay.

If it is not possible for the person to move out, social services can ask you to put your child in 'voluntary accommodation' under their care, normally in a foster home or with other family members. They might also do this if they have other concerns about your child remaining at home. You should always seek legal advice before agreeing to voluntary accommodation. If you do agree to it, social services must draw up a plan about how your child will be cared for. The details of this plan should be discussed and agreed with you first.

If you do not agree to have your child put in voluntary accommodation, but social services believe that your child needs urgent protection, they can ask the police to take your child into police protection. This means the police can:

- take your child from your home; or
- stop your child being taken from where they are living.

If the police take your child from your home, social services must then find your child somewhere to stay while under police protection. This would normally be with foster carers or with other family members. Your child can be taken into police protection for at most 72 hours. If social services think your child should be taken away from home for longer, they need to ask the court for an order.

Social services can ask the court for an emergency protection order (EPO). This gives them some parental responsibility, including the right to:

- take your child into their care;
- keep your child from returning to your care – for example, by keeping him or her in hospital or with foster carers; or
- see your child when, without a good reason, you or someone else with parental responsibility have refused to let them.

An EPO lasts up to eight days, but social services can ask the court to extend this for up to seven more days.

Under an EPO, the court can also make an 'exclusion requirement'. This means that, instead of your child having to leave their home, an adult who social services believe is a danger to the child can be ordered to leave the home. But this kind of order can be made only if you agree, and you must make sure that person leaves, and stays away.

What happens when social services start care proceedings?

Social services may tell you that they are going to start care proceedings, but if they do not, you will find out when you receive a notice from the court telling you when and where the first hearing will be.

It is very important that you get legal advice. You may be upset or angry or feel that nobody is listening to you. It is important to have a solicitor who knows the law about children and how the courts make decisions in these types of case. These solicitors are usually members of the Law Society's Children Panel, and you should try to get a solicitor who is a member of this panel. You can get details of Children Panel solicitors from:

- a Citizens Advice Bureau;
- the Family Rights Group; or
- the Law Society.

See 'Further help' on page 19 for contact details.

People who are involved in care proceedings, including parents and people with parental responsibility, can get public funding (legal aid) to pay their solicitor's fees. You can get this however much income or capital you have. See 'Further help' on page 19 for contact details.

What happens when social services apply for a care order?

The local authority will apply to the court for a care order on the grounds that your child has suffered serious harm or is at risk of suffering serious harm in the future, because:

- the care you are giving or have given your child is not what it would be reasonable to expect a parent to give; or
- your child is out of your control.

Care proceedings are started in the Family Proceedings Court and are dealt with under guidelines known as the Protocol for Judicial Case Management in Public Law Children Act Cases. These are meant to make sure cases are dealt with fairly and without unnecessary delay. The guidelines say that care proceedings should be finished within a maximum of 40 weeks of the local authority asking the court for a care order, unless the case is very complicated.

If you are a parent or carer of the child, you will be a 'party' to the proceedings so you will receive a copy of the application and will be told the date, time and place of the first hearing.

If you have not already got a solicitor, you should go and see a solicitor on the Children Panel (see 'What happens when social services start care proceedings?' on page 6). The solicitor will act on your behalf and represent you in court (although they may decide that you need a barrister to represent you in court).

What happens at the first hearing?

The court will not make a final decision on the local authority's application for a care order at a first hearing. At this hearing, which must take place within six days of the local authority's application, the court must:

- decide whether to make an interim care order or some other interim order (an order that will say where your child should live and who should look after him or her until the final hearing takes place). If there is a dispute about an order, the court should set a date for the dispute to be decided;
- appoint a guardian and a solicitor to represent your child in the proceedings;
- decide whether the case should be transferred to another court; and
- decide how the case should be prepared for the final hearing.

It is very important that you attend this hearing as it sets the stage for how the case will progress until the final hearing.

What orders can the court make at the first hearing?

The court can make several types of interim order:

Interim care order (ICO)

The court can make an ICO only if it decides there are good reasons to believe your child has been seriously harmed or is likely to be seriously harmed, and that an ICO is the best thing for your child. The order can last for up to eight weeks to begin with, and can be renewed for four-week periods after that.

When social services make an application for an ICO, they must have prepared an interim care plan that sets out where and with whom your child should live until the final hearing. This plan will include arrangements for contact between the child and you and other people who are important in the child's life. Social services will ask the court to agree to this plan.

An ICO means that social services share parental responsibility for your child with you. This includes the power to decide where he or she will live, even if you don't agree with the decision. The court can also make an 'exclusion requirement' alongside the ICO, which can force an adult to leave the child's home if the court believes this person is a danger to the child. However, this can happen only if you agree to make sure the person does leave, and stays away.

Social services must show that they have discussed the care plan with you and your child (if this is possible) and that the plan will match your child's racial, cultural and religious heritage. If you do not agree with the care plan and you feel that someone in your family could look after your child up to the final hearing, you should tell social services, your solicitor and the court so that the court can consider what is best for your child.

Interim supervision order (ISO)

An ISO does not give the local authority parental responsibility but it does mean that social services must monitor how your child is being cared for, either by you or by someone else in the family who is looking after them. The court can make this type of order only if it decides that there are good reasons to believe your child has been seriously harmed or is likely to be seriously harmed, and that this is the best thing for your child.

Interim residence order

The court can make an interim residence order if it agrees that someone in your family can care for your child until the final hearing. You then share parental responsibility for your child with the person named in the order, and the local authority does not have parental responsibility.

Interim contact order

The court must consider what arrangements are proposed or have been made for your child to see members of his or her family if he or she is not living at home. The court must also invite the people involved to comment on the arrangements.

If there is any disagreement about these arrangements or the court is not satisfied that what is proposed is best for your child, then it can make a contact order setting out what the arrangements for contact should be. If you are not happy with the contact arrangements, discuss them with your solicitor so that your views are presented to the court.

Who will represent my child during proceedings?

The court appoints an independent person, called a guardian, to give information and an opinion about what is best for your child. This person is from CAFCASS (Children and Family Court Advisory and Support Service). The guardian does not work for the social services department applying for the court order – they work for the court and represent your child in the case. Their job is to find out what social services have done to help you and why they are worried about your child. The guardian will talk to your child about the situation (if he or she is old enough), and what he or she would like to happen. The guardian will also read social services' files on the case.

The guardian will want to see you to find out what has happened. It is important to talk to your solicitor before you do this. You may want to make a list of all the important things you want to say. You may also want to ask a family member or friend to be with you at the meetings for support. You can also ask the guardian to talk to other people who know you and your child.

The guardian must prepare a written report for the court. Your solicitor should receive a copy of this report at least 14 days before the final hearing. The court will normally follow the recommendations in the guardian's report. If the court does not follow the guardian's recommendations, it should explain why.

Either the court will appoint a solicitor to represent your child in the proceedings or the guardian will choose one. The solicitor's job is to ensure that your child's views are presented to the court.

If your child is very young, the solicitor will talk to him or her but will also work closely with the guardian to make sure they know what your child wants and how this should be presented to the court. However, if your child is old enough to understand what is happening, the solicitor should take instructions directly from him or her, and present these to the court, even if the guardian doesn't agree with them.

What happens after an interim order is made?

There will be a series of interim hearings, where the court will continue to look at:

- where your child will live;
- who he or she will see; and
- how the case will proceed.

At these hearings the court will consider whether or not orders and directions already made should be renewed or changed.

You should keep in close touch with your solicitor about what is likely to happen at the interim hearings. If you think the current arrangements are wrong for your child, you should discuss with your solicitor whether or not to ask the court at an interim hearing to reconsider, for example the arrangements for your child to see members of the family.

The court will also hold a meeting called a Case Management Conference. This is the main meeting to decide what evidence it will need for the final hearing, and here it will make directions about, among other things:

- what statements, reports and assessments it needs, and who should prepare them – this may include social workers or family centre workers, teachers and other school staff, doctors, health visitors and any other professionals working with the child or your family;
- when these should be filed (given to the court), so that there is enough time for everyone involved to respond to them before the final hearing;
- which experts can see the child (if any are needed) and when their reports must be filed at court;
- whether the case should be transferred to a higher court; and

- any other procedures that need to be followed before the final hearing.

If you think any family members would be willing to care for your child, you should discuss this with them, and give their names to your solicitor. It is important that you do this as soon as possible, because they will need to be assessed by social services, and this assessment must be completed for the final hearing.

How do I prepare for the final hearing?

Your solicitor will receive copies of all the statements and reports filed during the case and also a copy of the local authority's care plan, which sets out its plans for how your child should be cared for in the long term. It is important to read all these papers and talk to your solicitor about them. You should ask your solicitor to explain anything that is not clear.

If English is not your first language, you can ask for a written translation or use an interpreter to help you. If you are disabled, your solicitor should arrange for you to get help, if you need it, to understand what is in the statements. This help could be, for example, having an advocate or large-print text.

The court will ask you to make a statement too. You can also ask family members or friends to make a statement and come to court as witnesses if you think they have information about your child, or if they are willing to care for them if the court says you cannot.

Sometimes the court thinks that a professional who has expert knowledge about children should provide information. This means you may be asked to:

- attend a family centre with your child for an assessment; or
- go to appointments at a hospital to see a specialist.

Your solicitor can ask the court for permission to get a specialist to help with your case. Any specialists should make a report to the court. You will see any reports and your solicitor will help you go through them.

Sometimes your solicitor will talk to you about whether to give the court information about your health. Your GP or other health professional can give the court information about you only if you agree. If you allow them to give a report to the court, then social services, the guardian and their legal advisers, as well as the court, will see the report.

Working with your solicitor

You can help your solicitor and yourself by doing the following:

- Have a folder or a special place at home where you keep all the information about the case, like notices from the court and letters from the social worker or your solicitor.
- Have a book to keep a note of telephone calls, conversations or meetings that you have with social services and any other professionals involved with the case. Include the date and a brief note of what was said.
- Keep your own notes about what happened at a contact visit or session at the family centre.
- Always let your solicitor know about letters, special appointments or conversations with social services, including changes to arrangements, such as arrangements for you to see your child.
- Before you go to a meeting, see your solicitor or go to court, make a note of the important things that you want to say or ask.

- If you have agreed to see a specialist, talk to your solicitor about what you can expect to happen at this meeting. If English is not your first language, check that social services have arranged an interpreter for the meeting.
- Try to get to court at least half an hour before the time of the hearing so you can talk with your solicitor and take part in any discussions that take place before the court hearing starts. Wear tidy, comfortable clothes to court.

Social services should help you with transport to get to meetings and special appointments, if you need it.

If you have a problem getting around, or some other disability, talk to your solicitor to make sure that all meetings and visits are at a suitable place.

It is very important that you work closely with your solicitor and any other professionals involved throughout the proceedings. It is also very important that you go to court. If you don't, the court may be forced to make the order without taking into account your views.

What happens at the final hearing?

Before the final hearing, the court may hold a pre-hearing review, two weeks before the hearing, to consider how the remaining issues can be narrowed so that the final hearing will deal with them effectively.

Whether or not there is a pre-hearing review, the court will read all the papers, statements, reports and the care plan before the hearing starts. You will be represented at the hearing by your solicitor unless he or she arranges for a barrister to represent you. Before the hearing starts, your solicitor or barrister may have an informal meeting with the solicitors or barristers working for social services and the guardian to see whether they can reach an agreement, or whether social services want to make any last-minute changes to the care plan. After that meeting, your solicitor or barrister will discuss with you what was said, and any new plans put forward. It is important that you understand what they are suggesting before you respond. It is your solicitor or barrister's job to explain this to you.

If you agree with their plans, the solicitors or barristers will write out the agreement and give it to the court. The court may ask some questions before deciding whether to agree to the plans. If the court approves the plans, this is known as a 'consent order'.

If everyone cannot agree, the court will hear evidence from any witnesses who have been called by either side. The local authority will put its case and you will have the chance to put any evidence yourself if you want to. The court listens to everyone's evidence so it can decide what order, if any, to make.

How does the court make its decision?

The court can make a care or supervision order only if it believes that the 'threshold criteria' have been reached. The 'threshold criteria' mean that:

- your child has been seriously harmed or is at risk of being seriously harmed in the future; and
- this harm is because the care you have given your child has fallen below what would be reasonable to expect a parent to give, or because your child is out of your control.

Harm includes not just the child being ill-treated themselves, but also a child 'seeing or hearing the ill-treatment of another'.

If the court finds that the threshold criteria have been met, it will then decide what order to make after considering:

- the local authority's care plan; and
- what you and the guardian say would be best for your child.

The court can make an order only if it believes that this will help your child. In most cases, the court will look at whether:

- it thinks that the harm or risk of harm is likely to happen again; and
- you are willing and able to take steps to deal with social services' concerns about your child's care.

If the court believes an order should be made, it will decide what is in your child's best interests according to the 'welfare principle' and a list of factors known as the 'welfare checklist'. The order should be the minimum needed to protect your child. The fact that the court feels that the threshold criteria have been reached does not necessarily mean you have done anything wrong. The court may accept that you have been trying your hardest but you still can't provide the right care for your child.

What types of order can the court make?

There are several final orders the court can make.

Supervision order

This means you remain responsible for your child's care but social services have the power to 'supervise' how you care for your child. A supervision order lasts up to one year unless the local authority asks the court for an extension (which can be at most two more years). If a supervision order is made, the local authority will generally agree a 'contract' or supervision plan with you. This will set out what is expected of you, and the services the local authority will provide.

Care order

This is an order that places your child in the care of a particular local authority and gives parental responsibility to that authority. This does not mean you will lose parental responsibility but it does mean the local authority can override your wishes if it believes this would be best for your child. However, they must have consulted you first.

For this order to be made, your child must be under 17 years old. The local authority that looks after your child is usually the local authority for the area where your child lives.

The court must also decide how and when you and other family members, such as brothers and sisters, will see your child if he or she is not returning to live with you. You will be able to comment on the contact arrangements the local authority suggests. If you are unhappy about them, tell your solicitor what you want. If you disagree with what is decided and you want the arrangements changed, you can apply for a contact order. You may be able to apply for public funding (legal aid) for this but if you apply for it after the proceedings have finished, you will not automatically get it.

Once a care order is made, the local authority will decide where your child will live. At some point this may be back with you. The local authority will also be responsible for maintaining your child (making sure they have money to live on).

The local authority should support you so that, unless the risks to your child are too high he or she can be returned to your care, or to the care of other members of your family if that is not possible.

The local authority must hold regular case reviews every six months to consider how their plans for your child may need to change. An Independent Reviewing Officer (IRO), who is 'independent from the management of the case' (in other words, is separate from the people dealing with your child), will be appointed to look at the care plan. At your child's review meetings, the IRO should make sure your views are heard, even if you cannot attend or you have not been invited. Your other commitments should be taken into account when arranging a date and time for the review meeting. If you do not speak English, the local authority should make sure you have an interpreter. They should also make sure that you can get to the meeting if you are disabled. The local authority should tell you about all the decisions made at the meeting, if you aren't able to attend.

The law on adoption changed at the end of 2005. Since then, local authorities can place your child for adoption only if they have a care order, and:

- you give your formal consent (agreement) to the placement; or
- the court makes a placement order.

There are special rules for cases begun before the end of 2005. For more about this, contact the Family Rights Group (see 'Further help' on page 19).

Residence order

This order would mean your child would live with someone else, such as a member of your family, without social services being involved. It would give that person parental responsibility for the period of the order.

Special guardianship order

This is a new type of order that the court can make to place a child for longer periods with someone who is not their parent. It is meant to be more permanent than a residence order because a parent cannot apply to revoke (cancel) the order without the court's permission. However, a special guardianship order does not break the legal relationship between a parent and child.

If a special guardianship order is made for your child, the special guardian will gain parental responsibility for him or her. You will still have parental responsibility as well, but the special guardian has the right to override your wishes if you cannot agree. For more about how special guardianship orders work, contact the Family Rights Group (see 'Further help' on page 19).

Contact order

Under this order, the court should consider the arrangements for you to see your child if they are not returning to live with you, and for your child to see their brothers, sisters and other relatives, if that would be good for him or her. The court can make a contact order setting out the contact arrangements, if these are not agreed.

How long does a care order last?

A full care order remains in force until your child is 18 years old, unless the court:

- makes a residence or special guardianship order;
- ends (discharges) the care order when it decides that it should not continue;
- makes a supervision order instead; or

- makes an adoption order.

If the court makes a placement order to allow the local authority to place a child for adoption when a care order has also been made, the care order remains in force but does not have effect while the placement order exists.

How can I apply to end a care order?

You can ask the court to discharge (end) a care order. You may be able to receive public funding (legal aid) to pay your solicitor's costs for helping you with this but you will not automatically get it.

If you have already asked the court to discharge the care order in the last six months, but want to ask again, you must get the court's permission.

You will have to show the court that it is in your child's best interests for the care order to be discharged. The court will then look at any current risk to your child.

The court may decide to replace the care order with a supervision order, which means the local authority will no longer have parental responsibility for your child but will supervise how you care for your child instead.

If the court discharges the care order, you and any other person with parental responsibility will take over caring for your child. If you cannot agree about the arrangements for the care of your child with anyone else who has parental responsibility for them, the court can order:

- who your child should live with; and
- arrangements to be made for your child to spend time with other people they know.

Further help

Community Legal Service Direct

Provides free information direct to the public on a range of common legal problems.

Call 0845 345 4 345

If you qualify for legal aid, get free advice from a specialist legal adviser about benefits and tax credits, debt, education, employment or housing. Also find a high quality local legal adviser or solicitor.

Click www.clsdirect.org.uk

Find a high quality local legal adviser or solicitor, link to other online information and see if you qualify for legal aid using our calculator.

The Law Society of England and Wales

phone: 020 7242 1222

www.lawsociety.org.uk

Family Rights Group

phone: 0800 731 1696 (10am to 12 noon and 1.30pm to 3.30pm Monday to Friday)

www.frg.org.uk

Citizens Advice

Your local Citizens Advice Bureau is listed in the phone book

www.citizensadvice.org.uk

Parentline Plus

Support and advice for parents

phone: 0808 800 2222

textphone: 0800 783 6783

www.parentlineplus.org.uk

The Grandparents' Association

Support and advice for all grandparents, especially those who care for grandchildren full-time, are losing contact with their grandchildren or have an education or welfare interest in their grandchildren

phone: 01279 444 964

www.grandparents-association.org.uk

Resolution

(formerly the Solicitors Family Law Association)

phone: 01689 820272

www.resolution.org.uk

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the website: www.clsdirect.org.uk

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The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

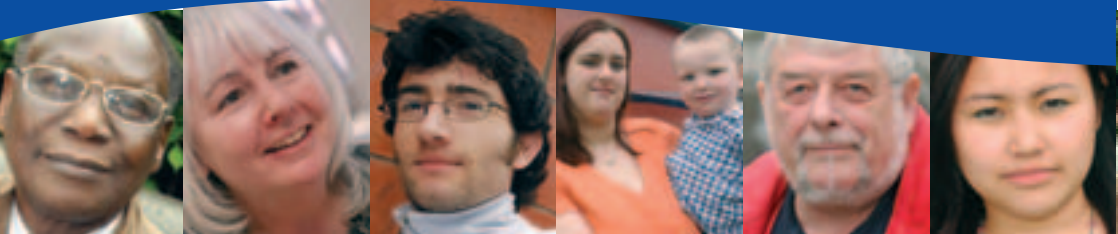
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The leaflets are also available online at: www.clsdirect.org.uk

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The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343** or email LSCLeaflets@ecgroup.uk.com or Fax 020 8867 3225



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