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Care (and related) proceedings

References

AA: *Adoption Act 1976*
ACA: *Adoption and Children Act 2002*
CA: *Children Act 1989*
FPC(CA)R: *Family Proceedings Court (Children Act) Rules 1991*
R&G: *Regulations and Guidance*
Vol 1 Guidance: *Children Act 1989 Regulations and Guidance, Volume 1 Court Orders* <http://www.justice.gov.uk/guidance/careproceedings.htm>
PLO: *Public Law Outline* <http://www.justice.gov.uk/guidance/careproceedings.htm>

Introduction

This advice sheet gives you information about what will happen when children's services start court proceedings. The information will help you work with your solicitor so you can tell the court what you think is best for your child. It is quite a complicated process and you may want to ask a friend or your solicitor to explain anything you don't understand in it. You can also call Family Rights group advice line for further information and advice.

Contact FRG advice line – details at the end of this advice sheet.

Who can normally make decisions about my child's care?

The right to decide how a child is raised and cared for belongs to anyone who has 'parental responsibility' for them.

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 instance, it gives you the right to agree (or not) to medical treatment for your child, or to say whether or not s/he can go outside the UK.

s.3 CA

When a child is born, the mother has parental responsibility. The father also does, but only if he is married to the mother at any time after the child is born or is registered as the father on the baby's birth certificate (for children born after 1 December 2003). However, the unmarried father of the child can subsequently obtain parental responsibility, either by:

s.2 CA

s.4 (as amended by s.111 ACA)

- 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) or
- getting a parental responsibility and/or residence order from the court.

In some circumstances a second female parent can also have parental responsibility if they are named as parent on the birth certificate or if they were in a civil partnership before the child was born.

S4ZA CA

S2(1)(1A)

Other people caring for children may get parental responsibility if they are appointed in a parent's Will and following the death of the parent before the child is 18, (a "testamentary guardian") or by obtaining a Guardianship Order, a Residence Order or a Special Guardianship Order.

s.5, s.8, s.14C CA

s.31 & s.44 CA

The local authority also acquires parental responsibility if it gets an emergency protection order or a care order (see below).

ss.25&39 AA

If proposed adoptive parents are approved as adopters and a child is placed with them for adoption by an Adoption Agency, they will have limited parental responsibility. After a Court makes an Adoption Order, the birth parent no longer has parental responsibility. That is now held by the adoptive parents.

For further advice see FRG advice sheet on Parental Responsibility.

When can the local authority get involved in my child's care?

Children's services (previously known as social services) is a department in the local authority (council) which is responsible for making sure that children are safe and are well cared for by their parents or the person looking after them.

Sometimes the local authority receives information which makes them worried about a child's welfare. If they believe that your child may be harmed, they are under a duty to take action to protect your child. The local authority must get the permission of the court to take any action you do not agree with. Here 'court' means judges or magistrates who make decisions about children.

The local authority can ask the court for a type of care order,

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depending on the information they have and why they are worried about your child.

Before the local authority applies for a care order, they may have a meeting called a 'child protection case conference' to see if your child could be properly protected without a care order being applied for – for example, by providing you and your family with support services and monitoring the situation. They 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.

For further information see FRG advice sheet on Child Protection procedures.

As from 1st April 2008, when a local authority applies for a care or supervision order, the Court will require it to file documents and provide evidence of what steps it has taken to support the parents and the wider family to resolve the concerns before care proceedings are issued. This will include an expectation that in all but emergency cases, the local authority will have sent the parents (and others with PR) a **letter prior to the issue of proceedings setting out their concerns** and what they need to do to address those concerns in order to avoid proceedings. They will normally invite parents to a meeting to discuss this.

Vol 1 Guidance and PLO

If you have received such a letter you should immediately seek legal advice. You should take the letter with you to a solicitor who will then be able to advise and assist you under a Legal Advice scheme and negotiate on your behalf with the Local Authority before any proceedings are started. This is separate from Legal Aid (now called "Public Funding") granted to a parent after proceedings are commenced.

You will find details of how to find a solicitor at the end of this advice sheet.

Family Group Conferences:

If the local authority informs you that they have concerns about your children and you think they may be considering taking legal action, you should also think about whether you may want to have a Family Group Conference (FGC) so that you and your family can be proactive in making safe plans for your child.

For more information see advice sheet on Family Group Conferences

A Family Group Conference (FGC) is a decision-making process in which the whole family makes plans and decisions for children who, because of difficulties in the family, need a plan that will safeguard and promote their welfare. It offers parents and other family members a chance to get together, to discuss how to sort out any problems and find safe solutions, with professionals who are involved with the family only being involved in *part* of the

meeting.

The Government is developing the use of FGCs and Government guidance says they are a useful tool to help families make safe plans for their children. They are now available in many Local Authorities so it may be a good idea for you to ask the Social Worker if s/he can set a FGC up.

*Vol 1 Guidance,
Chapter 3*

What if the local authority considers my child is in immediate danger?

If the local authority considers that your child is in immediate danger and needs to be made safe straightaway, they can take a number of steps to protect your child:

- hold a child protection conference to make plans to keep your child safe
- ask the person endangering the child to leave the home or keep away from the child;
- discuss with you whether you will agree for your child to be looked after by the local authority on an agreed basis;
- take your child into police protection for up to 72 hours; or
- apply to the court for an emergency protection order.

These are discussed below.

If the person they believe is a danger to your child agrees to leave the home in the short term whilst investigations are carried out and protective plans made with you, the local authority can help that person to find somewhere else to stay.

*Para 5, schedule 2
CA*

If that is not possible, the local authority can ask you to put your child in '**accommodation**' with them. This is a voluntary service and if your child is accommodated, you retain parental responsibility and the local authority does not acquire it.

s.20 CA

If you are not sure whether to agree to this, you should seek legal advice. If you do agree to it, the local authority should draw up a plan about how your child will be cared for. The details of this plan, including any arrangements for contact with your child, should be discussed and agreed with you first.

*Reg 3 APCR 1991
For more information
see advice sheet on
'Making plans for
looked after children'*

If you do not agree for your child to be in voluntary accommodation, but the local authority believes that your child needs urgent protection, they can ask the court for an **emergency protection order** (EPO). This gives them limited

s.44 CA

parental responsibility, including the right to:

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

An EPO lasts up to eight days (which includes any period of police protection); the local authority can ask the court for an extension of this for up to seven days. As a parent, you can apply to discharge an EPO after it is made provided you (or any other person with parental responsibility) were not present when the order was made.

As part of the EPO, the court can also make an ‘exclusion requirement’. This means that, instead of the child having to leave their home, an adult who the local authority believes is a danger to the child has to leave the home. But this kind of order can be made only if another other adult caring for the child agrees. If the other person caring for the child does not agree, the court may authorise the local authority to remove your child. The exclusion requirement can only last as long as the EPO itself.

s.44A CA

If there is such an emergency and your child is at risk of harm that they do not have time to apply to court for an order, then they can also ask the police to take your child into **police protection**. The police may also do this if they become involved before the local authority, such as when they are called to the home in an emergency.

s.46 CA

This means that the police can:

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

The local authority must then find your child somewhere to stay. Your child can be taken into police protection for at most 72 hours (three days). If the local authority considers that your child should be taken away from home for longer, and you do not agree with this, they need to ask the court for an order – see above.

What information should I be given when my child is taken into police protection or made

the subject of an emergency protection order?

Police protection

When the police take a child into police protection, the police officer in charge must tell the parents and any person with parental responsibility and any person with whom the child was living immediately before they were taken into police protection:

S46(4) CA

- What steps the police have taken,
- Why they took those steps
- What they plan to do next

Emergency Protection Order

A child who is provided with accommodation by the local authority under an emergency protection order is a 'looked after' child, which means that the local authority have certain powers and duties in respect of them. In particular they have a duty to consult parents and others with parental responsibility about their plans for the child, and to draw up a written care plan setting out the arrangements for the child. This plan should be made either before, or as soon as practicable after the child becomes looked after. A copy of this plan must be given to the parents, the child, others with PR and other relevant people.

S46(9) CA

These duties are set out in detail in FRG advice sheet 'Making plans for children in the care system'.

Can I see my child if they are in Police Protection or subject to an EPO?

Police protection

44(6)

While the child is in police protection, the police officer in charge must allow the following people to have contact with the child, if it is in his opinion both reasonable and in the best interests of the child :

- parents
- any person with parental responsibility
- any person with whom the child was living immediately before she/he was taken into police protection

S44(13)

- any person with a contact order made by court

If the child has been moved to accommodation provided by the local authority while the police protection order is still in force, then these duties are on the local authority.

Emergency protection order

When the emergency protection order is made by the court, a direction may be added that contact takes place between the child and any named person, and conditions can be attached to that contact if appropriate, such as where it takes place, or that it should be supervised. A parent, a person with parental responsibility or any person with whom the child was living may apply to the court to vary the directions about contact.

If the court doesn't make a direction about contact, the local authority must allow the child reasonable contact with

- parents
- any person with parental responsibility
- any person with whom the child was living immediately before she/he was taken into police protection
- any person with a contact order made by court

What should I do if the local authority gets involved?

The local authority should normally tell you that they are going to start care or emergency protection order proceedings, and, unless there is an emergency, they will send you a letter informing you of this. 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 is.

- It is very important that you ***get legal advice immediately***. You may be upset or angry or feel that nobody is listening to you. That is why it is important to have a solicitor who knows the law about children and how the courts make decisions in these types of cases. These solicitors are usually members of the Children Panel of the Solicitors Regulation Authority, and you should try to get a solicitor who is a member of this panel. You can get details of

Children Panel solicitors from your local citizens advice bureau or the Law Society.

If you are a parent or a person who has parental responsibility, you are entitled to public funding (legal aid) to pay your legal fees after proceedings are issued (and to a limited extent beforehand once you have received the local authority's letter informing you that they intend to issue proceedings (see page 3 above). You will normally be able to receive this however much money you have.

When children are looked after by the local authority under an emergency protection order or care order, the local authority has certain powers and duties to make sure that children are well cared for and that they remain in contact with their families if this is in their best interests. They should involve families in all the decisions they make about all children they are looking after, whether they are in accommodation or in care. For further information on the duties of the local authority to look after children, see FRG advice sheet '***Making plans for children in the care system***'.

What happens when the local authority applies for a care order?

If the local authority believes there is reasonable cause to believe that your child is suffering or is likely to suffer significant harm, either because the care you are giving him/her is not adequate or because your child is out of your control, then they will apply to the court for a care order.

s.31 CA

Care proceedings are dealt with by the court under a new system known as the Public Law Outline. This system places a lot of emphasis on local authorities:

PLO

- supporting parents to resolve the issues in dispute before the proceedings are issued and where this is not possible,
- exploring whether there is anyone in the child's wider family who is able and suitable to care for the child.

The court will closely manage the progress of the case and set a time table which best meets the child's needs and ensures there is no avoidable delay.

If you are a parent or carer of the child, you will be a 'party' to the proceedings. 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 immediately**. The solicitor will act on your behalf and represent you in court (although the solicitor may decide that you need a barrister to represent you in court). As a parent you will not have to pay as you will be entitled to free public funding to pay the solicitor's fees.

If you are not a parent or carer and wish to be joined as a 'party', it is possible to do this but you will need to ask the court for permission to join in the proceedings. You may be entitled to Public Funding (Legal Aid) to cover your legal costs but you may have to make a financial contribution towards your Legal Aid. You should take advice about from a solicitor on the Children Panel or from the FRG advice line.

What happens when care proceedings are issued?

When care proceedings are issued, the court will check that various documents have been filed with the court showing what work has been undertaken with the family to help them to address the local authority's concerns about the child.

One of the documents the court will look for is a **record of discussions with the family**. This could include a note of any meetings you have had with the local authority and it could also include any plan your family has made if you had a Family Group Conference. If you have not had one but would like one you should discuss with your solicitor immediately whether this can still be arranged.

Immediately after proceedings are issued, the Court will also appoint a solicitor for your child and a Children's Guardian, both of whom will represent your child in the proceedings. Their roles are discussed further below

First Appointment

The court will then list the hearing date for what is known as the First Appointment. This takes place within 6 days of the application being made.

The court will not be in a position to decide the outcome of the local authority's main application at the first appointment as there will not have been enough time for all the necessary paperwork

and legal steps to be completed. Therefore, at the first hearing the court has two key tasks:

- to decide where your child will live and who s/he sees up until the final hearing of the case; and
- to give directions about things like what steps need to be taken by when and what evidence needs to be gathered for the case to proceed

It is very important that you attend this hearing as the court will make temporary arrangements for your child and give directions about how the case will progress to the final hearing.

Arrangements for my child:

The local authority will make proposals about where your child should live and whom s/he should see whilst the case is pending in court. This will be set out in an **interim care plan** which they will normally ask the court to agree by making an interim order to last until the final hearing of the case.

The local authority must show that they have discussed the care plan with you and your child and that the plan will meet your child's racial, cultural and religious heritage.

If you do not agree with the proposals in the care plan and you feel that someone in your family could look after your child up to the final hearing, you should tell the local authority, your solicitor and the court so that the court can consider what is best for your child.

Interim orders: There are several types of interim order the court can make.

- **Interim care order (ICO):** The court can make an ICO only if it decides there are good reasons to believe your child has been significantly harmed or is likely to be significantly 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.

Re L-A(children)
(2009)EWCA Civ 822

s.38 CA

When the local authority applies to the court for an ICO, they must provide a social work statement setting out their concerns and their plans for where your child will live and who he or she will see and the interim care plan.

An ICO means that the Local Authority have parental responsibility, which includes the power to decide where your child will live, (either at home or elsewhere), even if you don't agree with the decision. It will also allow the Local Authority Social Worker to come into the home where your child is.

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 him or her. But this can only happen if the other adult caring for the child agrees. If the other person caring for the child does not agree, the court may make the interim ICO to allow the Local Authority to remove the child from his/her home.

s.38A CA

- **Interim supervision order (ISO):** The court can make this order only if it decides that there are good reasons to believe your child has been significantly harmed or is likely to be significantly harmed, and that this is the best thing for your child. The ISO does not give the local authority parental responsibility but it does mean that they must monitor how your child is being cared for, either by you or someone else in the family who is looking after them.

s.38 CA

- **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 happens. You then share parental responsibility for your child with the person named in the order.

s.8 & s.11(3)CA

- **Interim contact order:** If an ICO is made, the court must consider what arrangements are proposed or have been made for your child to see members of his or her family if s/he is not living at home. The court must also invite the parties to comment on them. 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. Therefore, if you are not happy with the contact arrangements, discuss with your solicitor so that your views are presented to the court.

s.34 CA

Directions: In order to ensure all the necessary evidence and paperwork is ready for the final hearing, the court will make a number of "directions" (plans) about how the case should be prepared, for example:

- which court will hear the case and whether it should be transferred to a higher court;
- whether arrangements need to be made for a contested interim hearing where you do not agree with the local authority's plans for the care of your child up to the final hearing;
- what needs to be done and by when for the case to proceed to a final hearing;
- whether anyone else who is important to the child, such as a relative, should be joined as a party in the proceedings and/or might become a carer for your child if s/he cannot remain at home with you;
- which statements, reports, and assessments should be prepared and by whom – this might include social workers or family centre workers; teachers and other school staff; and doctors or health visitors and any other professionals working with your child or your family – and when these should be filed (sent to the court) so as to give enough time for all the parties to read and respond to them before the final hearing;
- which experts (for example doctors, psychologists, psychiatrists) can see your child and when their reports must be filed;
- whether you and your child can go to a residential unit to be assessed together but note that any residential assessments will normally have to be funded by the local authority as your public funding will not cover the costs of this;
- whether evidence needs to be obtained about your child's ethnicity, language, religion and culture;
- asking the Guardian to prepare an initial analysis of the case and make initial recommendations; and
- any other procedural steps which need to be taken before the final hearing.

s.38 (6) CA

These kind of directions may arise where the court thinks that a professional who has expert knowledge about children should provide information. This means that 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 also ask the court for permission to get a specialist to help with your case, for example, by assessing your ability to care for your child, and make a report to the court. You will see any reports and your solicitor will help you go through them. If you think this would be helpful you need to discuss this

with your solicitor straight away.

Also the Court may well direct that the Local Authority should to write to you and all known family members, asking them to state by a set date whether there are family members or friends etc who would be willing to put themselves forward as long term carers. Therefore, it is very important that you tell your solicitor and social worker as soon as possible about **anyone in your family network** (with names and addresses, if at all possible) who would be willing to put themselves forward. If this is left until too late in the proceedings, suggestions may not be taken into consideration at the final hearing.

Who is appointed as the guardian and solicitor to represent your child?

Your child's Guardian:

The Court appoints an independent Social Worker called a "Children's Guardian" (sometimes called, just a "Guardian"¹). The Children's Guardian will give information and an opinion about what is best for your child. This person is appointed from CAFCASS (Children and Family Court Advisory and Support Services). The Children's Guardian does not work for the Local Authority that is applying for the Court Order.

The Guardian represents your child in the case. His/her job is to advise the court on what is in the best interests of your child. To do this, he/she must find out what the local authority have done to help you and why they are worried about your child.

The Guardian will always see your child and if s/he is old enough to talk, the Guardian will discuss the situation with him/her to find out what he or she would like to happen. The Guardian will also read the case files.

In addition, the Guardian will also need to see you to find out what has happened. It is important to talk to your solicitor before you do this. You might want to make a list of all the important things you want to say. You may want a family member or friend to speak to the Guardian and you can also ask the Guardian to talk to other people who know you and your child.

¹ The Children's Guardian should not be confused with the Guardian of the child in the event of the parent's death or a "Special Guardian" made by the Court under a Special Guardianship Order.

The Guardian must prepare a written report for the court. Your solicitor should receive a copy of this report and will discuss it with you. 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.

Your child's solicitor:

The Guardian will work with the solicitor s/he has chosen, or who has been appointed by the Court, to represent your child in the proceedings. This solicitor is selected from a list of solicitors who are on the Children Panel because they specialise in representing children in care and other similar proceedings.

If your child is very young the solicitor will talk to him/her but will also work closely with the Guardian about what your child wants and needs and how this should be presented to the court. However if your child is old enough to understand what is happening, and s/he does not agree with the Guardian's views, the solicitor must take his/her instructions from the child directly. In these circumstances, the Guardian will still report to the court, but will no longer be represented by the same solicitor as your child.

FPC(CA)R 11A, 12

What happens at other interim hearings?

At later interim hearings, the court will continue to monitor who your child sees and lives with in the short term up to the final hearing.

The court will also closely manage the progress of the case to make sure all the paperwork is ready for the final hearing without undue delay. There will be two further important interim hearings:

Case management conference:

This will normally be held within 45 days of the proceedings being started. The purpose is for the court to scrutinise the care plan, identify key issues, see what direction given at the first appointment have been complied with and what further directions are still needed to prepare the case for the final hearing.

*PLO practice
direction, paras 13-14*

Your solicitor should meet with the local authority's solicitors and any other solicitor representing any other parties in the case at least two days before the case management conference to see what issues are agreed and what is not agreed and whether further experts need to be instructed etc.. It is really important

that you work closely with your solicitor before this meeting so that s/he knows what you think and has your clear instructions about what you agree/do not agree.

If you think the current arrangements are not benefiting your child you should also discuss with your solicitor whether or not you should apply for any other orders at an interim hearing, for example regarding the arrangements for your child to see members of the family.

If you do not have a solicitor and are representing yourself, the court will give directions about how you can be involved in this advocates meeting. You should not be entirely excluded from it.

Issues Resolution hearing:

- This will normally be held between 16 and 25 weeks after the proceedings first started. The purpose is for the court to:
- scrutinise the care plan,
- see what directions have already been given and what further directions are still needed to prepare the case for the final hearing,
- identify the issues which are still not agreed that need to be decided by the court at the final hearing; and
- see whether there can be an agreement reached about any issue such as your child's final / future placement, and contact. Such an agreement might make a final hearing unnecessary.

*PLO practice
direction, para 15*

Again, your solicitor should meet with the local authority's solicitor and any other solicitor representing any other parties in the case between 2 and 7 days before the Issues Resolution hearing to prepare for it, so it is really important that you work closely with him/her before this meeting so that s/he knows what you think and has your clear instructions about what you agree/do not agree.

If you do not have a solicitor and are representing yourself, the court will give directions about how you can be involved in this advocates meeting. You should not be entirely excluded from it.

*PLO practice
direction, para 18*

Alternative dispute resolution:

All the way through the case the court will be encouraging all parties to try to find solutions without the need for a contested hearing and it will advise about alternative dispute resolution, although the court cannot insist on this.

If you have not already had a Family Group Conference before the case started in court, it is not too late to ask for one now. For more information about this, contact Family Rights Group.

What can I do to prepare for the final hearing?

Your solicitor will receive copies of all the statements and reports filed during the course of the case and also a copy of the **care plan** filed by the local authority which sets out the local authority's plans for how your child should be cared for in the long term if the care order is made. 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 assist you in getting help to understand what is in the statements. This could be, for example, an advocate or large print text, dependant on your disability.

The court will ask you to make a statement too. You can also ask anyone in your family, or friends, to make a statement and come to court as your witness if you think they have information about your child, or are willing to care for him/her if you are not allowed to. You should give your solicitor the names of these people **as soon as you can**.

Sometimes your solicitor will talk to you about whether to give the court information about your health. Your GP or another health professional you have seen cannot give the court information about you unless you agree. If you decide to give permission for reports to be given to the court, the local authority and the guardian and their legal advisers will see the report as well as the court.

s.38 (6) CA

Working with your solicitor

The information contained in this advice sheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact Family Rights Group

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

- Get 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 the local authority 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 the local authority, including changes to arrangements, such as arrangements for you to see your child.
- Tell your solicitor as early as possible in the proceedings about anyone in your family network who would be willing to care for your child if you are unable to.
- Before you go to a meeting, see your solicitor or go to court make some notes 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 make sure that you know what the local authority has done to make sure there is an interpreter at the meeting.
- The local authority 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.
- 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 may take place before the court hearing starts. Wear smart, comfortable clothes to court.

What happens at the final hearing?

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 they arrange for a barrister to represent you.

Your solicitor or barrister may have another informal meeting before the hearing with the solicitor or barrister working for the local authority and the solicitor working for the guardian. Your solicitor or barrister will talk to you about what the local authority and the guardian are going to say about what is best for your child. It is important that you understand what they are suggesting and that you do not agree to things without understanding the full consequences before you respond. It is your solicitor or barrister's job to explain this to you.

If the case goes ahead, the court will hear evidence from the witnesses called by the local authority or anyone else involved in the case. You might also have to speak in the witness box. The purpose of the court listening to everyone's evidence is to decide what order, if any, to make.

How does the court make its decision?

Although this has often been agreed beforehand, the court can make a care or supervision order only if it believes that the 'threshold criteria' have been reached. The 'threshold criteria' means that:

- your child is suffering or is likely to suffer significant harm; and that
- this harm is due to the care being given to your child before the case started not being 'what it would be reasonable to expect a parent to give to him/her' or because s/he is out of your control.

Harm in this context means "ill-treatment or the impairment of health or development including for example impairment suffered from seeing or hearing the ill-treatment of another", such as witnessing violence in your home.

If the court finds that the threshold criteria have been proved, it should still make an order only if it believes that it 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 change.

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. If the court considers that the threshold criteria have been reached, it may well consider that an order has to be made because, although you have been trying your hardest, you still can't provide the right care for your child.

There are several possible final orders the court can make:

A care order: This is an order which places your child in the care of a particular local authority and which gives parental responsibility to that authority. This does not mean that you will lose parental responsibility but it does mean that the local authority can over-ride your wishes if it believes that this would be best for your child.

For this order to be made, your child must be under 17 years old, or under 16 if they are married. The local authority that looks after your child is usually the local authority for the area where your child lives.

If the court decides to make a care order, it must also decide on contact arrangements for you and other family members, such as siblings, to see your child if your child is not returning to your care. You will be able to comment on the contact arrangements the local authority suggests and can oppose them by applying for a contact order. If you are unhappy about the proposed contact arrangements, make sure you discuss with your solicitor what you want.

A care order means that the local authority must provide a place for your child to live for example with relatives or foster carers, and maintenance (money to support) for your child. Occasionally the plan may be for a child to remain living at home with his/her

parents under a care order. The plans which the local authority has for your child (if a care order is granted) will be set out in the care plan filed at court. This plan must be reviewed regularly and you should be consulted about this.

A supervision order: This means you have parental responsibility and remain responsible for your child's care, but the local authority has 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.

A residence order: This order would mean your child would live with someone else, such as a member of your family, without the local authority being involved. It would give that person parental responsibility for the duration of the order.

The court may also 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 them. Again the court can make a contact order setting out what the contact arrangements will be where these are not agreed with the person holding the residence order.

A 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 (discharge) the order without the court's permission and this will only be granted where s/he can prove a significant change in circumstances. 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.

A 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 his/her 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; s.39 CA
- 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.

What are the duties on the local authority once a care order is made?

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

The local authority must always make plans which will keep your child safe and make sure s/he is well cared for. They 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. A **family group conference** may be considered at this stage if one has not already taken place (for more information see above).

If that is not possible, the local authority is likely to arrange for other people to care for your child on a long term basis. This might be with foster carers, or in rare cases they may even consider that your child should be placed for adoption. In these circumstances, there are specific legal steps which the local authority must take before placing a child for adoption. ***If adoption is raised as a possibility in your case you should seek legal advice immediately.***

Contact a childcare solicitor or Family Rights Group advice

Whatever the arrangements for your child, the local authority must hold regular case reviews every six months to consider how their plans for your child may need to change, whilst s/he is under a care order. You should be involved in making these plans.

How can I apply to end a care order?

You can ask the court to discharge a care order but this is unlikely to happen unless there has been a real change in circumstances from when the order was made.

You may be able to receive public funding (Legal Aid) to pay your solicitors' costs for helping you with this, but, it is not automatically granted - you will have to show a good case - and you may have to make a financial contribution towards your Legal Aid, depending upon your financial circumstances.

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.

These are known as residence and contact orders.

s.91(15) CA

s.8 CA

Where can I get further help?

Community Legal Service Direct

Will work out if you are eligible to legal aid, and if so provide confidential legal advice.

Tel: 0845 345 4345 Mon-Fri 9am-6:30pm

www.clsdirect.org.uk

The Law Society of England and Wales

Can search their website for details of local solicitors who are members of the Children Panel.

113 Chancery Lane

London WC2A 1PL

Tel: 020 7242 1222

Minicom: 0870 600 1560

Fax: 020 7831 0344

E-mail: info.services@lawsociety.org.uk

www.lawsociety.org.uk

Solicitors Regulation Authority

Ipsley Court

Redditch

Worcestershire B98 0TD

Telephone : 0870 606 2555

Family Rights Group

The Print House

18 Ashwin Street

London E8 3DL

Advice Line: 0808 801 0366

Monday-Friday 10am-3:30pm

Office tel: 020 7923 2628

Fax: 020 7923 2683

E-mail: advice@frg.org.uk

Website: www.frg.org.uk

Parentline Plus (London)

520 Highgate Studios

53-79 Highgate Road

London NW5 1TL

Tel: 020 7284 5536

Helpline: 0808 800 2222

textphone: 0800 783 6783

www.parentlineplus.org.uk

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