



Local authorities have a duty to safeguard and promote the welfare of children within their area who are "in need" (according to the definition in the Children Act 1989) and so far as it is consistent with that duty, to promote the upbringing of such children within their families by providing a range and level of services appropriate to those child's needs.

However the only way that a Local Authority may compulsorily obtain the care of a child, is as a result of an Order made by a Court in Care Proceedings. There are a range of Orders that a Local Authority can seek in respect of a child.

Public Funding (What used to be called 'Legal Aid' is available for the parents to be represented.

The Local Authority must have grounds for making an application for a Care Order. These grounds are known as the Threshold Criteria. They must prove to the Court on the balance of probabilities (51% likelihood):

- 1) That the child concerned is suffering, or is likely to suffer, significant harm and;
- 2) That the harm, or likelihood of harm, is attributable to:
 - a) The care given to the child, or likely to be given to the child (If the Order is not made,) is below a standard it would be reasonable to expect a parent to give, or
 - b) The child being beyond parental control.

The Court must appoint a Children's Guardian (formerly known as the Guardian Ad Litem). The Guardian will be appointed by CAFCASS to safeguard the interests of the child. The duties of a Guardian include instructing a Solicitor on behalf of the child and preparing a report with the assistance of the court. The Guardian's paramount consideration is to have regard to the need to safeguard and promote the best interests of the child.

The Court must draw up a timetable to dispose of the application.

The Court should ask itself whether an order would be better for the welfare of the child, than making no order at all.

Before making a Court Order, the Court must consider the arrangements made or proposed for contact with the child by the parents and other specified persons. There is a presumption that there will be some reasonable contact, unless the welfare of the child dictates otherwise.

Emergency Protection Orders (EPO) - Section 44 Children Act 1989

The Local Authority or other authorised body would make an application to the Court for an Emergency Protection Order often referred to as an 'EPO' where they believe that there is an immediate danger to the child and it is considered necessary that steps need to be taken urgently to protect that child.

The court will only make the order if it is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if:

- 1) he is not removed to accommodation provided by the local authority or
- 2) he does not remain in the place where he is currently being accommodated e.g. in hospital.

The court will only make an order if it considers that doing so would be better for the child than not making an order.

It is only in exceptional circumstances that these orders can only be obtained from the court by the local authority without notice to the parents/carers of the child. An exceptional circumstance would be where there is evidence of danger to the child if notice were to be given to the parents that an application was being made or that the situation is so urgent that there is no time to give notice. (An "Ex-Parte" application.) An emergency protection order is only a short order granted for up to a maximum of 8 days. The order confers parental responsibility on the Applicant but only permits him to take such action as is reasonably required to safeguard the welfare of the child. If longer term plans are required for the child then an application for another order within the 8-day period must be made. These applications are made "on notice" and give all parties time to consult solicitors and prepare for the court hearing.

A Care Order or a Supervision Order may be made in Care or Supervision proceedings, or in any other family proceedings.

A Care Order results in the Local Authority having parental responsibility for the child. Parents will retain their parental responsibility, but the Local Authority has power to determine to what extent the parents may exercise their parental powers. The Authority may only do this if it is necessary to safeguard or promote the child's welfare.

Sometimes children who are the subject of care orders will remain at home being cared for by their parents, however it is more usual for children who are the subject of care orders to live with foster carers or in residential establishments. If the local authority want to suspend or stop contact for a period longer than 7 days they need to obtain a court order to do so. If there is a dispute between the local authority and parents about contact, either party can seek a court order to define contact.

Although the local authority has parental responsibility there are some things that they cannot agree to for the child, these include:

- 1) agreeing for the child to be adopted;
- 2) causing the child to be brought up in any religious persuasion other than that which they would have been brought up if the care order had not been made;
- 3) allowing the child to live outside the UK for more than 28 days without the consent of everyone with parental responsibility or a court order.

Supervision Orders - section 31 Children Act 1989

These orders are made on the same basis as care orders i.e. that the child is suffering or is likely to suffer significant harm.

These orders do not give parental responsibility to the local authority, but when there is a supervision order in force it is the duty of the supervisor to:

- 1) advise, assist and befriend the supervised child
- 2) take steps that are reasonably necessary to give effect to the order and
- 3) where the order is not wholly complied with or the supervisor considers that the order is no longer necessary, to consider whether or not to apply to the court to vary or discharge the order.

A supervision order may require the supervised child to comply with directions given by the supervisor to do things such as:

- 1) live at a place specified by the supervisor;
- 2) present themselves to specific people at specific places or times e.g. to meet with the social worker;
- 3) to participate in activities specified on certain days.

A supervision order can also require the child to submit to a medical or psychiatric examination as directed by the supervisor. This requirement will only be included where the court is satisfied that such examination is indeed necessary.

Initially, a supervision order lasts for 1 year. The Supervisor can apply to the court to extend the supervision order, but the supervision order can only be in place for a maximum of three years. In contrast to a care order, during the life of the supervision order the child is usually living at home with the parents who retain parental responsibility.

Where there is an application for a Care Order, the Court may make a Supervision Order. Similarly, on an application for a Supervision Order, the Court can make a Care Order.

The Court must decide which Order, if any, will better serve the child's welfare. This is known as the Paramountcy Principle.

The paramountcy principle requires that the child's welfare shall be the Court's first and foremost consideration in deciding whether or not to make an order and if so, what type of order.

The Non-Intervention Principle requires that the Court shall not make any order unless it considers that doing so would be better for the child than making no order at all.

The Court must consider whether or not the parents are prepared to work with the Local Authority so that compulsion and the making of an order may not be necessary.

In deciding whether or not an order is the most effective way of promoting a child's welfare, the court will need full information from the Local Authority as to its plans for the child. This document is the Care Plan.

Only a Care Order vests parental responsibility in the Local Authority. The Court must assess whether the risk of harm to the child is such that the Local Authority ought to have additional powers and responsibilities, rather than simply rely on the parental agreement associated with the Supervision Order. If the balance is equal between a Care Order and a Supervision Order, the Court should prefer a Supervision Order.

A Supervision Order should only be made if a child needs more protection than can be obtained under a voluntary arrangement. This would be for example if a Local Authority believes that in the absence of a Supervision Order, the parent will not co-operate, or the Local Authority needs some continuing involvement with the family because of continuing difficulties.

Instead of making a Care Order or a Supervision Order, the Court may make a Residence Order instead, for example in favour of a relative. The Court can also make a Contact Order, a Prohibited Steps Order, or a Specific Issues Order (see Fact Sheet 5).

A Care Order, unless it is brought to an end earlier, will continue in force until the child reaches 18.

No application can be made in respect of an unborn child.

No Care or Supervision Order can be made in respect of a child who has attained the age of 17 years (16 if married).

On an application for a Care or Supervision Order where the Court directs the Local Authority to investigate the child's circumstances, the Court may make an interim Care or Supervision Order.

The Court must be satisfied that there are reasonable grounds for believing that the threshold criteria are made out (see page 1). Interim Orders, which are renewable, may not extend for more than 4 weeks at a time (except for the initial order which may be up to 8 weeks).

An Exclusion Order may be part of an Interim Care Order, and order, for example, that a named person should leave a house in which a child is living, or be prohibited from entering a house where the child is living, or to be excluded from an area in which house is located. For such an Exclusion Order to be made, the Court must find that the Threshold Criteria are made out and the Court has reasonable cause to believe that if someone is excluded, the child will cease to suffer significant harm and there is someone else living in the house who consents to the exclusion and is able and willing to give the child reasonable care.

Instead of making an Exclusion requirement, the Court may accept an Undertaking to the same effect from the person affected. An Undertaking is a solemn promise to the Court. If the promise is broken, a breach of Undertaking is a contempt of court, and can be dealt with by a fine, imprisonment, or both.

A Care Order may be discharged or a Supervision Order varied or discharged on the application of:

- A person with parental responsibility for the child
- The child himself/herself
- The Local Authority designated in the Order

On discharging a Care Order, a Supervision Order may be substituted.

There is also an obligation on the person with parental responsibility or with whom the child lives, to take reasonable steps to ensure that the child complies with these requirements. The making of a Supervision Order brings to an end any earlier Care Order.

Sometimes the Local Authority will have the choice of either rehabilitating a child with the natural family within a strictly limited time framework, or adoption outside the family. Where those are the likely options, the course taken is "Twin Track Planning". What this means is that the Local Authority makes the plans for either option being selected by the Court, so that when a decision is made by the Court, it may move swiftly. However, comparatively few cases involve situations so grave that such twin track planning is necessary.

The Avoidance of Delay Principle requires that the court draws up a tight timetable with a view to dealing with the application without delay.

Once a Care Order has been made it is for the Local Authority to decide whether or not it is reasonably practicable or consistent with a child's welfare to promote Contact. The expectation is that this should continue undisturbed except where such contact is not in the interests of the child. Normally the Local Authority endeavors to reach a contact agreement which is written down and a copy given to the parties.

If you are dissatisfied with the extent of your contact with a child in Care, you can apply to the Court and the Court may make such order as it considers appropriate.

Similarly the Local Authority or the child can apply to the Court for an Order refusing to allow contact between the child and a parent.

Dunn & Baker – Here to help you

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.