

insideinformation – fact sheet

Care Proceedings

Information courtesy of Vicky Walker of Morgans Solicitors Cardiff

What happens when social services become involved with your family?

1 DUTIES OF LOCAL AUTHORITIES

‘To safeguard and promote the welfare of children in need and, so far as it consistent with that duty, to promote the upbringing of such children by their families’ – S. 17 Children Act 1989

Every Local Authority has a duty to provide services to support children and their families. This can range from offering a family support worker for a fixed period of time who assists with attending appointments or gives parenting guidance, to assisting with completing benefit applications.

Asking for help and support does not mean that your children will be taken into care. However if social services discover through the support they are offering that the children are at risk of suffering significant harm then further action may well be taken. Parents often complain that social services have only become involved with their children because they asked them for help, but unfortunately if their parenting is not good enough the Local Authority has a duty to intervene to protect the children.

‘To investigate’ – S. 47 Children Act 1989

Where a LA has reasonable cause to suspect that a child who lives in their area is suffering or is likely to suffer significant harm, they *must* investigate to enable them to decide whether they need to take any action to safeguard that child. They are entitled to take reasonable steps to get access to the child for the purposes of the investigations and local education authorities; local housing authority and health authority must co-operate and assist with those enquiries.

‘Reasonable cause to suspect’ can arise from referrals from a school; neighbour; family member or police. In particular if the police are called to an incident of domestic abuse where a child is present, they will automatically notify the local social services department which will trigger the duty to investigate.

The result of a S. 47 investigation can be:-

- concerns are not substantiated and there will be no further involvement;
- offer the family support under S. 17 (above);
- to convene a case conference to decide if the child’s name should be placed on the ‘At Risk’ register (see below);
- that there is a more serious risk which leads to a request that the child be voluntarily accommodated away from the family whilst more investigations are undertaken (see below);
- to take court action for an Emergency Protection Order; Supervision Order or Care Order (see below).

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'To provide accommodation' – S. 20 Children Act 1989.

- If the Local Authority believes that the child's welfare requires it they can ask a parent to agree to voluntary accommodation. This accommodation can be with foster parents or with another family member;
- The period of voluntary accommodation will vary in each case and withdrawing consent is a parents' right, but if you do withdraw consent the Local Authority may then decide to take court action.

2 CASE CONFERENCES

These are meetings involving all the professionals who are involved with the family and the purpose is to share information concerning any welfare concerns for the child;

The only decision a case conference can make is whether or not to place the child's name on the Child Protection Register. The categories are physical or emotional abuse or neglect;

3 POLICE INTERVENTION

Police Protection Order – S. 46 Children Act 1989

- Where a constable has reasonable cause to believe a child would suffer significant harm, he can seek a Police Protection Order and remove that child from the home;
- A Police Protection Order will last for no more than 72 hours and the officer must notify the Local Authority of the Police Protection Order being made, and the child's parents or guardian;
- A Police Protection Order does not involve an application to the court and is at the discretion of the officer attending the incident.

4 COURT INTERVENTION

Emergency Protection Order – S. 44 Children Act 1989

- Where the Local Authority has reasonable cause to believe a child is likely to suffer significant harm if it is not removed, or kept in Local Authority accommodation, it can apply to the court for an Emergency Protection Order;
- An Emergency Protection Order will give the Local Authority parental responsibility for the child, and allow them to remove the child, against a parents' wishes if necessary;
- An Emergency Protection Order will last initially for up to 8 days. It can be extended once for a further 7 days, and then expires;
- A parent, or the child, can apply to discharge an Emergency Protection Order but not until 72 hours after it was first made i.e. day 4.
- Within the duration of the Emergency Protection Order the Local Authority must decide whether it intends to make an application for a supervision order or care order, and make that application. The Supervision Order or Interim Care Order will then replace the Emergency Protection Order.

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Supervision Order – S. 31 + S. 35 Children Act 1989

- An order which does not give the Local Authority parental responsibility but a duty to 'advise, assist and befriend the supervised child';
- Supervision orders last for a year but can be extended before their expiry. If no such application is made then they expire at the end of the original period;
- A supervision order cannot be made unless the threshold criteria are met (see below);

Care Order – S.31 + S.33 Children Act 1989

- An order which gives the Local Authority parental responsibility for a child and the right to exercise it to the exclusion of all others with Parental Responsibility, and a right to accommodate the child;
- The court cannot make a care order unless the threshold criteria are met (see below);
- The court cannot make a care order on a child who is 17 (or 16 if married);
- A care order will last until a child is 18 unless a different order is made;
- A care order will discharge a residence order;
- If a care order is in force a Local Authority must hold a Looked After Child Review in relation to that child every 6 months;
- It is possible to have a care order and the child live at home, but many Local Authority's have a policy of not doing so and the most common situation would be a supervision order with the child at home.

Interim supervision or care orders – S.38 Children Act 1989

- Interim orders can be made at the first hearing if the LA believes this is necessary to protect the child whilst the proceedings are ongoing.
- The test for making an interim order is lower than a full order, the court only needs reasonable grounds for believing that the child is at risk of suffering significant harm, which is often not very difficult to prove bearing in mind the circumstances under which these proceedings often come to court. The Court is not going to risk a child coming to harm even if it has no evidence that it actually has, so an application for an Interim Care Order is notoriously difficult to oppose. Often the best you can do is try to negotiate good terms for contact, or that the child stays with a family member, or stays at home with a tight written agreement for daily visits or regular drug testing. The court has no discretion to give you these terms, the Court will either make the ICO or not, so negotiation is usually done outside of court.

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Threshold Criteria – S. 31 Children Act 1989

This is the basis upon which the court decides whether or not to make a S. 31 order. If it is not satisfied that these criteria are met, then it cannot make the order and the application fails.

- The criteria must be considered in 2 stages, firstly that the child is suffering, or is likely to suffer significant harm, AND secondly that harm, or likelihood of harm is due to the care of the parent not being what it would be reasonable to expect a parent to give, or the child is beyond parental control.
- The Local Authority must prove its case by satisfying the above criteria, if it does the court must then go on to consider what order it should make.
- The court can decide to make a different order within care proceedings, for example a residence order, instead of a care or supervision order;
- The standard of parenting the court is looking for is called 'good enough' parenting, that means the court is not looking for perfection and must allow for the fact that standards of parenting differ considerably;
- Significant harm means ill-treatment or impairment of health or physical, intellectual, emotional, social or behavioural development. It covers physical and mental health and includes sexual abuse or forms of ill treatment which are not physical. Being present when domestic abuse occurs has now been included in the definition of significant harm.

Children's Guardians

- In all care proceedings the court will appoint a Children's Guardian to represent the child;
- It is the Children's Guardian's role to investigate the case on behalf of the child and recommend to the court what the best outcome for the child is;

Crucial to the role of the Children's Guardian is that they are independent of the Local Authority and the family. The court is very likely to follow the recommendations of Children's Guardian.

5 FUNDING

Every parent, or person with parental responsibility, is entitled to legal aid to fund a solicitor to represent them within care proceedings.

If you find yourselves involved in these proceedings, or with any involvement in your family from social services, then it is important to ask for legal advice from a family solicitor.

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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