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SOLICITORS LLP

**FAMILY**



**CHILDREN IN CARE**

# FOREWORD

This document considers the public law system established by the Children Act 1989, by which Local Authorities are empowered to take Proceedings in respect of children. This document examines the legal proceedings, the Orders available to the Court, the criteria of which the Court must be satisfied before it can make Care or Supervision Orders, and contact with the child in care.

The Social Services Department, through their Solicitors, may apply to a Family Proceedings Court for either a Care Order or Supervision Order where they believe that a child has suffered or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child, or likely to be given to him not being what it would be reasonable to expect a parent to give him, or the child being beyond parental control.

The above sounds somewhat complicated and the conditions have come to be known as the “Threshold Criteria”.

The Court must be satisfied, on hearing all of the evidence, that the Threshold Criteria has been met. The Court cannot make the Order unless the Threshold Criteria has been met.

It is open to parents to challenge the evidence of the Local Authority and oppose an Application for a Care or Supervision Order.



There has been much case law to define precisely what is meant by the words of the “Threshold Criteria” and in simple terms the following definitions have been made:-

### **Significant Harm**

In the context of considering whether a child has suffered or is likely to suffer significant harm, harm is defined as ill-treatment or the impairment of health or development and it can include sexual abuse, physical abuse and emotional abuse. It can include neglect, either physically or emotionally.

### **The harm must be attributable to the care given or likely to be given**

A test of reasonableness is imposed. This requires a test to be applied as to whether a hypothetical reasonable parent would provide adequate care. Therefore harm caused solely by a third party which a parent was not able to prevent would not be sufficient to meet the Threshold Criteria.

### **Welfare Checklist**

It is only if the Court finds that the Threshold Criteria has been met that it may go on to consider whether or not to make any Order or no Order at all. To do this the Court will consider what is known as the “Welfare Checklist”. This includes:

- a) The wishes and feelings of the child concerned (considered in the light of his/her age and understanding);
- b) His/her physical, emotional and educational needs;
- c) The likely affect on him/her in any change in his/her circumstances;
- d) His/her age, sex, background and any characteristics which the Court considers relevant;
- e) Any harm which he/she has suffered or is at risk of suffering;
- f) How capable each of his/her parents and any other person in relation to whom the Court considers the question to be relevant, is of meeting his/her needs;
- g) The range of powers available to the Court.

The Court may then go on to consider the various types of Order it can make.

### **Orders Available To The Court**

It is usual for a Local Authority Social Services Department to apply for either a Care Order or a Supervision Order.

At the very initial stages of the Proceedings no final Orders will be made and Interim Orders will be made for a holding period of time until all of the parties involved have gathered sufficient information to place before the Court for the Court to make a fully informed decision on what final Order, if any, it should make.

At the beginning of the Proceedings on the first hearing it is likely that the Local Authority would be applying for either an Interim Care Order or Interim Supervision Order. The first Order may only last for a maximum of eight weeks and thereafter must be returned to the Court for consideration and renewal. Renewals thereafter may last for a maximum of four weeks. There is no limit as to how many renewals there may be before final hearing. Nevertheless, the Courts are always keen to ensure that Care Proceedings are dealt with as swiftly as possible and that matters do not drift.

It is usual at the interim stage of the Proceedings, whether it be an Interim Care Order or Interim Supervision Order, that the Court will give directions for the preparation of the final hearing to include dealing with a request by any of the parties to the Proceedings to instruct Experts, to file Statements and to carry out Assessments.

The effect of a Care Order is that the Local Authority is required to receive the child and keep him/her in their care while the Order is in force. The Local Authority acquires Parental Responsibility, but the parent does not cease to have Parental Responsibility but shares it during the course of the Order. However, a parent with Parental Responsibility is not entitled to act in any way which would be incompatible with the Local Authority's Parental Responsibility. Under a Care Order, a child may be placed in foster care, with a family relative or indeed with the parents even though the Care Order remains in force. If a final Care Order is made it will last until the child is 18 years of age unless it is discharged on Application by the parent at a later date or indeed by Application by the Social Services Department.

A Supervision Order does not grant to the Local Authority Parental Responsibility in respect of the child and merely imposes a duty on the Social Services Department:-

- a) To advise, assist and befriend the supervised child;
- b) To take such steps as are reasonably necessary to give effect to the Order;
- c) Where the Order is not wholly complied with or the supervisor considers that the Order may no longer be necessary to consider whether or not to apply to the Court for its variation or discharge.

A Supervision Order lasts for up to a maximum of one year after which it expires automatically. It may be made for a shorter period by the Court and it is subject to discharge on Application by the parents or the Local Authority. A Supervision Order may be extended for up to a total of three years upon Application by the Local Authority to the Court.

## **Contact With Children In Care**

A Local Authority has a general duty to promote contact between any child they are looking after and his/her parents and others who have Parental Responsibility and relatives, friends and other connected persons. Indeed s.34 of the Children Act requires the Local Authority to allow a child, who is subject to a Care Order, reasonable contact with his/her parents. Reasonable contact implies contact which is agreed between the Local Authority and the parents or in the absence of an agreement, contact which is objectively reasonable

Where parents wish the Court to define the contact then parents may make an Application to the Court to extend any contact offered to them.

## **The Proceedings And The Hearings**

The Local Authority will issue an initial Application for Care Order in the Family Proceedings Court. This may have been preceded by an Application for what is known as an Emergency Protection Order which is a very short holding Order where emergency measures are needed to remove a child from a family without delay. The Proceedings will commence in the Family Proceedings Court which is a Magistrates Court but with a special Court convened exclusively for family matters. If the final hearing is likely to be complex or of a lengthy duration then the Proceedings may, at some stage, be transferred to a County Court.

When the initial Application is lodged by the Social Services Department the Court will appoint an independent specially trained Professional called a "Guardian ad Litem".

The Guardian ad Litem is selected from a specialist Panel whose duty is to instruct a Solicitor on behalf of the child and to prepare Reports for the Court as an entirely independent person on behalf of the child. The Guardian ad Litem should not be biased or influenced by either the parents or the Social Services who are likely to be in disagreement. However, the Guardian ad Litem will consider all of the evidence presented by both the parents and child.

It is usual on the first directions hearing for the parties to get together at the Court, i.e. the Social Workers and their Solicitors, the parents and their Solicitors and the Guardian ad Litem and his/her Solicitor and discuss the way forward in preparing the case for Final Hearing. The initial Application for an Interim Care or Supervision Order may be contested at that stage or at any stage during the Proceedings. The only restriction upon this is that if an Application for an Interim Order has been contested and there has been no change in circumstances since the decision of that contest was made, then no further Application may be contested until such time as there is a change in circumstances.

By consenting to any Interim Care Order or Interim Supervision Order, parents are not to be considered as giving consent to a final Order. The Courts are not permitted to take into consideration the fact that parents have consented to Interim Care Orders if they object to a final Care Order being made. However, this is always a matter which should be considered in each and every case and on the specialised circumstances which are present at the time.

The directions which are likely to be given throughout the Proceedings will be for all parties to file Statements and for the Guardian ad Litem to file a Report. At an early stage the Social Services Department will file a Statement setting out the reasons for their Application and they will file further Statements as the Proceedings progress, setting out the results of any Assessments and their proposed plans for the children.

The parents will file their own Statements of Evidence setting out facts and answering the Statements of the Social Services and possibly commenting upon any further Reports. Usually it is not until the very end of the Proceedings towards the final hearing that the Guardian ad Litem will file his/her Report. It is likely that the Guardian ad Litem will give a view as to the Local Authority's Care Plan during the course of the Proceedings and may well wish to instruct Experts on behalf of the children.

It is not uncommon for various Assessments to be required by the Social Services before they are able to formulate a Care Plan and to decide whether or not to pursue the Application for either a Care Order or Supervision Order. At the end of the Assessments they may wish to withdraw the Application or pursue the matter to a full Care Order.

## Assessments

The most common Assessments are known as "Comprehensive Risk Assessments" or sometimes called "Orange Book Assessments". These are conducted by a Social Worker who will speak in detail and at length with the parents to assess any risks which the children may be faced with if placed back in the parents' care. This can also comprise a Parenting Skills Assessment which usually takes place at a specialist centre where trained employees of the Social Services Department observe contact between parents and children to look at parenting skills and the attachment between children and parents.

Where there are allegations of possible sexual abuse, physical abuse (which may also be referred to as non-accidental injury - N.A.I), emotional abuse or deprivation then medical Experts may be required to assess and report to the Court. These may include Child Psychiatrists/Psychologists, Paediatricians, Adult Psychiatrists/Psychologists or Alcohol/Drug Counsellors.

It is this Firm's policy to keep clients apprised of all progress and to advise throughout the Proceedings as to the need for parents to instruct their own Experts if and when necessary.

## Confidentiality

To protect children, Care Proceedings are highly confidential. The Court dealing with these Proceedings are not open to the public. At all times the only persons who are entitled to be in the Court or to see the papers filed in the Proceedings are the parties to the Proceedings. In order for any other person to attend in Court or to see the documents, the Court must first be asked to give permission for the documents to be disclosed. It is therefore always important that parents do not discuss the Care Proceedings or documents with third parties and that all documentation is kept strictly confidential and not shown to any other person.

The above is only to be used as a general guide and outline to the Care Proceedings system and each case will have its individual merits and needs to be carefully considered with the conducting Solicitor at each and every stage of the Proceedings. If you have any queries or concerns with regard to anything which has been set out in this document, you should speak with your Solicitor as he/she will be pleased to discuss it with you.

Perhaps the most important matter to bear in mind is that the Social Services do not have rights over children until such time as an Interim Care Order has been made and even then any proposals that the Local Authority may have for those children can be challenged through the Courts at any interim stage or at final hearing.



## **FAMILY**

Below is a list of all of our family services, if you would like a copy of any of these documents please contact us on 01702 339222

**>> Children Matters**

**>> Divorce Information**

**>> Domestic Violence**

**>> Financial Matters**

**>> Children In Care**

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