

## 11 LEGAL

### 11.1 INTRODUCTION

- 11.1.1 The contents of this Module should not be taken as a complete statement of all the relevant legal provisions. Rather, it is a descriptive review of the Children Act 1989 plus other allied references and guidance.
- 11.1.2 This written material should not be relied upon solely; where information, advice or action is needed it is essential to consult management and Legal Services.
- 11.1.3 This Module also describes the role of the Corporate Legal Team with respect to Children's Services staff and in what circumstances and how, legal advice, support and representation must be sought.

### 11.2 ACCESSING LEGAL ADVICE

- 11.2.1 Child care casework requiring legal advice and/or action is provided by the Corporate Legal Team. Throughout these procedures they are referred to as 'Legal Services'.

#### INSTRUCTIONS

- 11.2.2 Where Children's Services are supporting an application by another person, e.g. for a Residence Order or an Adoption Order, Legal Services may advise social work staff but cannot give direct advice to the applicant. If necessary, the applicant should be advised to contact a solicitor with a view to applying for Community Legal Service Funding (previously known as Legal Aid).
- 11.2.3 Telephone requests for advice do not require written instructions, just a note on the file. Any other procedure or matter, including policy issues, should be referred to Legal Services in writing.

#### ROLE OF SOCIAL WORK STAFF IN RESPECT OF COURT WORK

- 11.2.4 The role of day time social work staff in respect of Court work is as follows:
- To fully brief and instruct staff from Legal Services
  - Provide full information for Legal Services

- Advise Legal Services of those persons with parental responsibility, biological fathers and significant others
  - Prepare Court documents in accordance with the protocol for Judicial Management of Public Law Children Cases (The Protocol)
  - Provide relevant information to Legal Services for the completion (in the name of the Council) of Court forms
  - Discuss with Legal Services directions which should be applied for in proceedings
  - Attend Court to instruct lawyers and give evidence unless agreed otherwise
- 11.2.5 Out of office hours the Out of Hours service will have informal access to Legal Services for urgent advice.

## **URGENT COURT BUSINESS OUTSIDE OF WORKING HOURS**

### **IOW Family Proceedings Court**

- 11.2.6 If an application needs to be made outside of normal working hours this should be done via the Out of Hours Service and Duty Clerk system.
- 11.2.7 On all occasions staff must prepare in advance the required paperwork and bring sufficient copies as well as a means of identification.

## **11.3 GENERAL PRINCIPLES**

- 11.3.1 The Children Act 1989 outlines a number of general principles, which need to be borne in mind when considering any part of the legal framework.
- 11.3.2 The child's welfare shall be the Court's paramount consideration (s1(1)).
- 11.3.3 The Court shall have regard to the general principle that any delay in determining a question with respect to the upbringing of a child is likely to prejudice the welfare of a child (s1(2)).
- 11.3.4 The Court shall have regard in particular to a number of matters set out in the welfare checklist in s3.2. This applies to consideration of making, varying and discharging of contested Section 8 Orders under Part IV of the Act.

- 11.3.5 The Court shall not make an order unless it considers that doing so would be better for the child than making no order at all (s1(5)).
- 11.3.6 For any child who is being looked after or who is in need, the local authority, in making any decision in respect of a child, shall give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.
- 11.3.7 For more detailed guidance reference should be made to the Children Act Guidance and Regulations Volume 1 -Court Orders and 'Protocol for Judicial Case Management in Public Law Cases'. This protocol is to ensure consistency in the application of best practice by all Courts dealing with care cases and, in particular, to ensure:
- That care cases are dealt with in accordance with the overriding objective
  - That there are no unacceptable delays in the hearing and determination of care cases; and
  - That save in exceptional or unforeseen circumstances every care case is finally determined within 40 weeks of the application being issued

## **11.4 THE WELFARE CHECKLIST**

- 11.4.1 Once the threshold criteria are established the Court must consider whether to make an order and if so what order.
- 11.4.2 The Court shall have regard in particular to:
- The ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding)
  - The child's physical, emotional and educational needs
  - The likely effect on the child of any change in circumstances
  - The child's age, gender, background and any characteristic that the Court considers relevant
  - How capable each of the child's parents, and any other person in relation to whom the Court considers the question to be relevant, is of meeting the child's needs
  - The range of powers available to the Court under this Act in the proceedings in question

## **11.5 PREVENTATIVE MEASURES – INCLUDING ACCOMMODATION**

- 11.5.1 All parts of the Children Act carry the same statutory responsibility. S17 has as much legal weighting as s47.

- 11.5.2 There is a duty under Schedule 2, paragraph 1 of the Children Act 1989 to take reasonable steps to identify the extent to which there are children in need within the local authority's area.
- 11.5.3 Under paragraph 4 every local authority has a duty to take reasonable steps by providing services under Part III of the Act to prevent children within their area suffering ill treatment or neglect.
- 11.5.4 There is a duty to share information about any child who is likely to suffer harm between local authorities where appropriate.
- 11.5.5 Paragraph 7 provides that every local authority shall take reasonable steps to reduce the need to bring proceedings for care or supervision orders or criminal proceedings in relation to children.
- 11.5.6 Similarly, there is a duty to encourage children not to commit criminal offences and to avoid the need for children in their care to be placed in secure accommodation.
- 11.5.7 S17 of the Act makes it a general duty of every local authority:
- To safeguard and promote the welfare of children in their area who are in need; and
  - So far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs
- 11.5.8 Alternatively, they may arrange for others to provide the services. Such assistance may include assistance in kind or, in exceptional circumstances, in cash.
- 11.5.9 Under the Local Government Act 2000 local authorities have a corporate responsibility to address the needs of children and young people living in their area.
- 11.5.10 The 2000 Act outlines a broad cross-government expectation that there should be a concerted aim to improve the well being of people and communities. To achieve this, there should be effective joint working by education, social services, housing, leisure, in partnership with health, Police and other statutory services and the independent sector.

## **PROVISION FOR THE ACCOMMODATION OF CHILDREN**

- 11.5.11 The duty of the local authority to provide accommodation for any child in need within their area is contained in s20 of the Children Act 1989 as follows:

- Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of:
  - There being no person who has parental responsibility for him; his being lost or having been abandoned; or
  - The person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care

11.5.12 It must always be remembered that the provision of accommodation carries risk, and these risks need to be weighed against a child's short term and longer term needs. Family breakdown can be more devastating than working to minimise abuse within families.

## 11.6 DUTY TO INVESTIGATE

11.6.1 S37 Children Act 1989 provides that:

11.6.2 *“Where in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made.....the court may direct the appropriate authority to undertake an investigation of the child’s circumstances.”*

11.6.3 In these circumstances, the following action must be taken:

- The Team Manager must allocate an appropriate Social Worker to carry out the assessment
- The Team Manager must ensure that the request is treated and recorded as a formal referral by Children’s Services in respect of each child named in the order
- The Team Manager must notify the Court and the lawyers acting for the parties of the identity of the manager and the Social Worker
- Any assessment, including a Core Assessment must be undertaken within 35 working days
- The Social Worker must consult with the family, the child and all relevant agencies before making decisions about a plan for the child. The Social Worker must record the response of each agency and person consulted
- The Social Worker, in consultation with the Team Manager and Service Manager, must decide whether to apply to the Court for a statutory order

- Where Children's Services decide not to apply for a Care or Supervision Order they must as part of their report set out the decisions they have made and the reasons for those decisions and any plan they have made for the child, including the services to be provided

11.6.4 S47(1) gives the local authority a duty to investigate where they:

- Are informed that a child who lives, or is found, in its area
  - Is the subject of an Emergency Protection Order: or
  - Is in Police protection; or
  - Has contravened a ban imposed by a curfew notice imposed within the meaning of Chapter 1 of Part 1 of the Crime and Disorder Act 1998: or
- Have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer significant harm

11.6.5 The authority must make, or cause to make, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the welfare of the child or call upon other local authorities, health authorities, education authorities etc. for assistance and it shall be the duty of such authorities to assist unless it would be unreasonable in the circumstances.

11.6.6 S47(8) provides that where as a result of such enquiry they conclude that they should take some action, they must do so as far as is practicable.

11.6.7 In offering support to families it is more likely that s17 will be used for undertaking Initial and Core Assessments. S47 refers only to those children in need of protection.

## 11.7 EMERGENCY PROTECTION ORDERS

11.7.1 The Court may make an Emergency Protection Order if it is satisfied that:

- There is reasonable cause to believe that the child is likely to suffer significant harm unless s/he is removed to accommodation provided by the applicant (i.e. by Children's Services), or
- There is reasonable cause to believe that the child will suffer significant harm unless her/his removal from present accommodation is prevented, or

- There is reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm, and enquiries into the child's welfare are being unreasonably refused and there is reasonable cause to believe that access to the child is urgently required
- 11.7.2 In all cases the Court must be satisfied that making the order would be better for the child than making no order at all (Children Act 1989 s44(1), 1(5)).
- 11.7.3 The Welfare Checklist does not apply (s3(2)).
- 11.7.4 The effect of an Emergency Protection Order is to authorise the removal of the child or the prevention of the removal of a child if, and only if, this remains necessary to safeguard the child's welfare. It also operates as a direction to any person able to do so to comply with any request to produce the child to a representative of Children's Services (Children Act 1989 s44 (4) (a), (b)).
- 11.7.5 While an Emergency Protection Order is in force Children's Services holds parental responsibility for the child, but this may be exercised only as far as is reasonably required to safeguard and promote her/his welfare, and in the context of the duration of the Order.
- 11.7.6 The Court may also give specific directions about contact with any named person, and about medical or psychiatric examination or other assessment of the child. (Children Act 1989 s44 (4) (c), (5), (6) and (8)).
- 11.7.7 If no specific directions are made about contact between the child, their parents and other members of their family, it is presumed to be at a reasonable level.
- 11.7.8 Where contact is not considered to be in the child's best interests, the local authority must seek a Court direction to this effect.
- 11.7.9 If, at any time while the Order is in force, it appears to be safe to allow its effect to be suspended, the Children's Services must return the child to the care of the person from whose care s/he was removed, or, if that is not reasonably practicable, to the care of a parent or other holder of parental responsibility.
- 11.7.10 With the agreement of the Court the child may also be placed in the care of any other appropriate person. This would require a direction from the Court unless the Court has already given its agreement (Children Act 1989 s44 (10) (11)).

- 11.7.11 While the effect of an Emergency Protection Order is suspended, the Order remains in force, and its effect may be reactivated at any time before it expires if it appears that a change in circumstances makes this necessary (Children Act 1989 s44 (12))
- 11.7.12 The maximum length of an Emergency Protection Order is 8 days unless the 8th day is a Sunday or a public holiday, in which case it is until the next day which is not a Sunday or public holiday (NB Concessionary days following bank holidays are not regarded as public holidays).
- 11.7.13 The Court may extend the order, once only, for s further 7 days but is likely to do so only in exceptional circumstances.
- 11.7.14 If the child was in Police protection before making the Emergency Protection Order, time limits are calculated from the day on which s/he was taken into Police protection (Children Act 1989 s45 (1)-(6)).
- 11.7.15 If a person attempting to exercise powers under an Emergency Protection Order has been, or is likely to be prevented from doing so, the Court may issue a warrant authorising the Police to assist, using force if necessary (Children Act 1989 s48(9)).

## **APPLICATION PROCESS**

- 11.7.16 All applications for an Emergency Protection Order must have the authorisation of the Service Manager – Family Services or another Service Manager in their absence. This only applies so long as to seek such authorisation will not leave/place the child in danger.
- 11.7.17 The Social Worker must initiate a strategy discussion immediately to discuss planned emergency action or as soon as possible after immediate protective action has been taken and ensure there is clear recording of the decisions made and the reasons for those decisions. Where possible, Legal Services should attend the meeting.
- 11.7.18 Wherever possible the child must be seen as part of deciding how best to protect her/him, including deciding whether to seek an emergency order.
- 11.7.19 When considering whether emergency action is necessary, consideration must also be given as to whether action is required to safeguard other children in the same household.
- 11.7.20 After seeking the agreement from the Team Manager and Service Manager, the Social Worker must discuss the case with Legal

Services who will advise on whether the criteria for an order is met and will liaise with the Family Proceedings Court.

- 11.7.21 Police protection powers should only be used in exceptional circumstances where there is insufficient time to seek an Emergency Protection Order or for reasons relating to the immediate safety of that child.
- 11.7.22 If time permits, a Statement of Oral Evidence, a Chronology and Interim Care Plan should be completed by the Social Worker although it is acceptable in emergency situations for oral evidence to be presented to the Court.
- 11.7.23 For details required in the preparation of these documents, Social Workers should ensure that full reference has been made to the 'Protocol for Judicial Case Management in Public Law Children Act Cases' and refer to Care and supervision Order Section 3.9 for further clarification.
- 11.7.24 Further guidance can be obtained from Legal Services but only if the Team Manager or Service Manager is unable to advise.
- 11.7.25 It is essential that the Team Manager ensures that the Social Worker has appropriate support and advice both in the preparation of Court documents and throughout the Court process.

## **ACTION FOLLOWING OBTAINING OF EPO**

### **Removal of Child/Young Person**

- 11.7.26 The Social Worker, accompanied by a colleague, or, where appropriate by the Police, must (ensuring they have proper identification and a copy of the order):
- Visit the home/relevant location
  - Explain the situation to the parent/s and seek her/his/their co-operation in removing the child/young person
  - Where relevant, inform other parties that any person who obstructs the child/young person's removal or retention at a safe place is committing an offence
- 11.7.27 An EPO does not sanction the use of force for the purposes of entering and searching premises.
- 11.7.28 If entry to the home or access to the children/young person/s is refused, or if it is likely that the Social Worker will be prevented from exercising her/his powers under the EPO, renewed legal advice must

be sought about an application for a Warrant. (Social Workers should consider the need for such a Warrant when applying for the EPO).

### **Information for Parents and Children/Young Persons**

- 11.7.29 Social workers must explain to parent/s and where possible the child/young person, what action they are taking and why, and should refer to the explanatory notes on the back of the EPO itself.

### **Medical, Psychiatric and Other Assessments**

- 11.7.30 If it appears that the child/young person may have injuries or otherwise appears to be in poor health, s/he should be taken for a medical examination.
- 11.7.31 Subject to their expressed views, the child/young person must be assessed as per any direction of the Court.
- 11.7.32 The child/young person must be informed about how any examination or assessment will be conducted beforehand and be accompanied by the Social Worker.

### **Contact**

- 11.7.33 Clear contact arrangements as described in the EPO must be made and where these include contact with a person likely to be prosecuted for an offence against the child/young person, close supervision by a member of staff should be provided.

### **Care of Child/Young Person**

- 11.7.34 Social workers must provide clear instructions about contact and freedom of movement to foster carers / residential social work staff with whom the child/young person is placed.

### **WARRANTS (S48 CHILDREN ACT 1989)**

- 11.7.35 Warrants authorise the Police, using reasonably force if necessary, to assist the Social Worker in exercising powers granted to her/him by virtue of an EPO.
- 11.7.36 Decisions to apply for a Warrant should be taken by the Social Worker in consultation with her/his supervisor and Legal Services.
- 11.7.37 The Social Worker must consider whether:
- The application should be made with the EPO application

- It is necessary to request that the Warrant include directions relating to the assistance of a registered medical practitioner, Nurse or Health Visitor

11.7.38 Where the application is for a Warrant to be issued in respect of other children/young persons on the premises who may be at risk, the Social Worker will be required to provide either the names of those children/young persons or a description of them.

### **CHALLENGE TO EMERGENCY PROTECTION ORDER**

11.7.39 Where the person wishing to make the challenge was not present at, or given notice of, the hearing, an EPO can be challenged after 72 hours by:

- Child/young person
- Child/young person's parent/s
- Any person with parental responsibility for the child/young person
- Any person with whom the child/young person was living immediately before the Order was made

11.7.40 If an EPO is extended (i.e. by up to 7 days), a challenge cannot be made during the period of the extension.

11.7.41 If an EPO is challenged, Legal Services will present the case for the local authority.

11.7.42 An application for an Interim Care Order may or may not be made concurrently.

## **11.8 LEGAL PLANNING MEETINGS**

### **AUTHORISATION OF THE NEED TO CONVENE A LEGAL PLANNING MEETING**

11.8.1 If a worker feels that a legal discussion is required pending care proceedings in relation to a child/children they are involved with they must discuss the matter with their line manager.

11.8.2 The line manager must make the decision as to whether or not a Legal Planning Meeting is required.

11.8.3 The Social Worker or manager must arrange a Legal Planning Meeting via administration support of the Service Manager

responsible for the service area and also to invite a legal representative.

- 11.8.4 The decision from any subsequent legal planning process must be recorded on SWIFT by administration support officer responsible to the Service Manager.

### **LEGAL PLANNING MEETINGS FOLLOWING OBTAINING OF EPO**

- 11.8.5 In cases where an EPO is granted and Legal Services was not involved in the application, a Legal Planning Meeting must be convened by the end of the next working day. The purpose will be to instruct Legal Services and co-ordinate the collation of evidence where an application for an Interim Care Order/Care Order is under consideration.
- 11.8.6 The time-scale is tight because parties may request the Order be discharged after 72 hours and firm evidence will be needed to resist this. In any case, an EPO will only last for up to 8 days, and the earliest preparation is essential to successful presentation of the case.
- 11.8.7 Three clear days notice of an application for an Interim Care Order must be given and the application must be accompanied by the Protocol documents.
- 11.8.8 Social workers must attend this meeting with case files, which must be up-to-date and include a chronology and Initial or Core Assessment. It is essential for the following staff to attend this meeting:
- Team Manager (Chair)
  - Social worker
  - Social worker's supervisor
  - Lawyer
  - Any staff, or other agency workers, e.g. medical personnel with substantive evidence
  - Out of Hours service staff, as appropriate

### **LEGAL PLANNING MEETINGS IN CP ENQUIRIES AND PLANNED CARE/SUPERVISION PROCEEDINGS**

#### **Child Protection Conferences**

- 11.8.9 Legal Services will not ordinarily attend Child Protection Conferences.

- 11.8.10 Should the relevant manager conclude that there are exceptional reasons which justify a lawyer they must negotiate this with Legal Services.

### **Initiating Legal Proceedings**

- 11.8.11 The increasing need to explain to Courts the basis and timing of decisions and the need to record on case files management decisions require a standardised and transparent process as described below.

- 11.8.12 Prior to proceedings being initiated, a Legal Planning Meeting should be convened and attended by a legal representative, the Team Manager and the Social Worker.

- 11.8.13 They should consider the circumstances of the case, establish that all alternatives to Court have been considered or tried, and decide if proceedings are appropriate or not.

- 11.8.14 A record of the meeting must be completed and a copy placed on the case file.

- 11.8.15 In addition this meeting would record:

- Date proceedings to be initiated
- Date by which Statement, chronology (if not already available) Initial or Core Assessment and interim Care Plan are required
- Date by which interim Care Plan will be produced
- Other tasks to be carried out
- Dates and need of further meetings
- Specialist assessments needed for proceedings
- Need to involve the Fostering and/or Adoption Service and when

- 11.8.16 Given the resource impact and costly nature of proceedings, this meeting would be chaired by the Service Manager who will ultimately make any decision to initiate proceedings.

### **Ongoing Legal Planning Meetings**

- 11.8.17 These would occur throughout the proceedings as required. Their frequency would depend upon issues such as if the case was complex or Children's Services was represented by Counsel.

### Final Hearing Planning Meeting

- 11.8.18 These must be convened prior to the Final Hearing to ensure all is in hand, normally six weeks before the Final Hearing or a week before the deadline for final statements.

## 11.9 POLICE POWERS OF PROTECTION

- 11.9.1 In some circumstances the Police may be the first to discover that a child is suffering, or is likely to suffer, significant harm.
- 11.9.2 The 1989 Act provides them with powers of protection to remove a child or to authorise the child remaining in a particular place such as hospital (s46 (1) (6)). This power can be exercised for up to 72 hours.
- 11.9.3 This action should only be necessary where the urgency is so great the child's safety would be compromised by the delay involved in an application for compulsory powers by Children's Services.
- 11.9.4 After taking a child into Police protection, the officer must inform Children's Services and will normally ask them to provide suitable accommodation.
- 11.9.5 While Children's Services is accommodating a child in Police protection, it must allow as much contact as is both reasonable and in the child's best interests, between the child and:
- Her/his parents and anyone else holding parental responsibility
  - Anyone with whom s/he was living immediately before being taken into Police protection
  - Anyone in whose favour there is a Contact Order under s8 or s34 of the Children Act 1989
  - Anyone acting on behalf of any of the above people
- 11.9.6 Decisions regarding releasing a child from Police protection lie completely with the Police.
- 11.9.7 The maximum length of time that a child may remain in Police protection is 72 hours.
- 11.9.8 If a greater length of time is required, an Emergency Protection Order must be applied for.
- 11.9.9 Such an application may be made by Children's Services, or by the Police acting on behalf of Children's Services.

- 11.9.10 Workers should note that Police protection does not authorise the carrying out of a medical examination against the wishes of the parents, but an Emergency Protection Order does carry this power.
- 11.9.11 Good practice is to ask the Court to make such a direction. This will give the parent(s) or those with parental responsibility to argue against such a measure should they wish. Where this is an issue, Police protection can be used to prevent the removal of a child while applications are made for an Emergency Protection Order.

## PLACEMENT

- 11.9.12 The Social Worker receiving information a child is in Police protection must consult with her/his supervisor or duty manager and determine, in conjunction with Police, an appropriate placement (This will require consideration of child's network).
- 11.9.13 If the Initial Assessment indicates there are suitable carers within the child's own family or that s/he should return home, this must be discussed with the Police designated officer who retains legal responsibility whilst the Police protection remains in force.
- 11.9.14 Where there is agreement, the child may be placed and the Police protection powers ended if the child is no longer at risk. Disagreements will require liaison between the duty manager and the designated officer (who will be of Inspector or more senior rank).
- 11.9.15 Where the child cannot be placed in her/his own family network an alternative placement must be sought.
- 11.9.16 If a child is accommodated in response to Police protection this is covered by s21 of the Children Act 1989 and not s20. Consequently parents cannot remove the child from accommodation without the consent of the Police for as long as its powers of protection are being exercised.

## PLANNING

- 11.9.17 As soon as is reasonably practicable given the short duration of Police protection the Social Worker must:
- Undertake enquiries under s47 which assess the child's needs, the parent's ability to meet them, risks the child is or is likely to be exposed to, and the resources / supports necessary to reduce this risk (this assessment should inform the Care Plan and be the basis for the future planning)

- Arrange a placement agreement meeting (the child is now looked after and subject to all relevant care planning procedures)
- Encourage parents / carers to attend (unless this would place the child at risk)
- Collate basic background information
- Initiate an assessment of the child's circumstances on which to base future planning
- Arrange contact which is considered reasonable and in the child's best interests
- Consult with Legal Services re: further statutory action
- Consult with relevant managers about the need for an initial Child Protection Conference

## **11.10 RECOVERY ORDER (S50 CHILDREN ACT 1989)**

11.10.1 Recovery Orders are governed by s50 Children Act 1989.

11.10.2 A Recovery Order can be applied for and will only be granted by a Court when a child in care, under Police protection, or the subject of an Emergency Protection Order:

- Has been unlawfully taken away or kept away from the responsible person; or
- Has run away or is staying away from the responsible person; or
- Is missing

11.10.3 A responsible person means the person who has the care by means of a Care Order, Emergency Protection Order or Police powers of protection.

11.10.4 An application may be made to the Court without prior notice from the respondents if this is appropriate and in the best interests of the child.

11.10.5 A Recovery Order automatically authorises a Police officer to enter any premises specified in order to search for the child.

11.10.6 A person is guilty of an offence if they intentionally obstruct an authorised person exercising their power to remove a child.

### **APPLICATIONS FOR A RECOVERY ORDER**

11.10.7 The decision to pursue an application for a Recovery Order must be agreed by the relevant Team and Service manager.

- 11.10.8 Legal Services must be involved and will advise on whether the criteria for an Order are met.
- 11.10.9 If time permits, a Statement of Oral Evidence, a chronology and an Interim Care Plan must be prepared. In emergency situations it is possible to proceed on oral evidence provided to the Court.
- 11.10.10 At the initial hearing and subsequently the Team Manager must ensure that the Social Worker has support and advice available to her/him. If possible the Team Manager must arrange for a more experienced worker to accompany her/him to Court.

## **EXECUTION**

- 11.10.11 The Social Worker must accompany the Police to the premises specified and produce proper identification as required.

## **11.11 REMOVAL OF AN ALLEGED ABUSER**

- 11.11.1 The local authority must explore the possibility of providing services to and/or accommodation for an alleged abuser as an alternative to removing the child, under voluntary arrangements.
- 11.11.2 References in law are: Schedule 2 paragraph 5 Children Act 1989 and Part IV of the Family Law Act 1996.
- 11.11.3 A Court may issue an injunction under part IV of the Family Law Act 1996 or an exclusion requirement under an Emergency Protection Order or Interim Care Order in order to protect a child or an adult from domestic violence or molestation.
- 11.11.4 Part IV of the Family Law Act 1996 and the associated regulations deal with the protection of children and adults from domestic violence and molestation. The relevant Orders are:
- Occupation Order (ss33-41) which decides who is allowed to occupy a home and can direct another party to leave that home
  - Non-Molestation Order (s42) which prevents the respondent from molesting a named individual who is associated with her/him; from molesting a relevant child or can prohibit actions and behaviours or molestation in general
  - Exclusion Requirement (s52 & Sch.6) which can be attached to an Emergency Protection Order or Interim Care Order and require the alleged abuser to leave the home
  - Undertakings which are promises made to a Court to do or not do certain things. In relation to an Exclusion Requirement, if the

Court accepts an Undertaking it shall be enforceable as if it were an Order of the Court and shall cease to have effect if whilst it is still in force, the local authority have removed the child from the dwelling house from which the relevant person is excluded, for a period of more than 24 hours

- Transfer of Tenancy Order

11.11.5 In any Family Law proceedings under Part IV, the Court can make any of the following Children Act 1989 Orders: s8, s37 or s.6 (Family Assistance Order).

11.11.6 Legal Services' advice must be sought about any situation where the above measures seem relevant.

## **11.12 CHILD ASSESSMENT ORDER (S43 CHILDREN ACT 1989)**

11.12.1 This is not an emergency procedure.

11.12.2 Before applying for a Child Assessment Order every effort must be made to carry out the assessment without a Court order, and when the decision is made to apply for a Child Assessment Order, the parties to the case must be given 7 clear working days notice.

11.12.3 Before making a Child Assessment Order the Court must be satisfied that there is reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm, and an assessment of the child's health or development, or the way that s/he has been treated is required in order to determine whether or not the child is suffering, or is likely to suffer, significant harm, and it is unlikely that the assessment will be made, or will be satisfactory, unless the Court makes an Order and making the Order would be better for the child than not doing so (Children Act 1989 s43 (1), 1(5)).

11.12.4 The Welfare Checklist does not apply.

11.12.5 The Court has the power to make an Emergency Protection Order instead of a Child Assessment Order if, after hearing the evidence, it considers that the circumstances warrant this (Children Act 1989 s43 (4)).

11.12.6 The effect of a Child Assessment Order is to instruct any person able to do so to produce the child to a named person and to comply with any specific directions in the Order.

11.12.7 It authorises any person carrying out the assessment to do so, following the instructions contained in the Order. It may authorise the

keeping of the child away from home for a specified period or periods and contain directions about contact with other persons during such periods.

- 11.12.8 A child who is of sufficient understanding to make an informed decision may refuse to submit to the assessment or any part of it (Children Act 1989 s43 (8)).
- 11.12.9 The maximum length of a Child Assessment Order is 7 days, beginning on a date specified in the order i.e. it does not automatically come into force on the day the order is made (Children Act 1989 s43 (5)).
- 11.12.10 Any worker applying for a Child Assessment Order must provide clear evidence that the above conditions are met, including evidence as to why the assessment cannot satisfactorily be completed without an Order.
- 11.12.11 This will normally be demonstrated by showing that a written agreement with the parents or others holding parental responsibility has not been successful, and by providing a clear plan for carrying out the assessment, including dates.
- 11.12.12 It is crucial that the worker obtains the consent of all specialists to be involved in the assessment to the plan and dates.
- 11.12.13 If it is likely to be necessary to keep the child away from home for any part of the assessment period, the reasons for this must be clearly stated to the Court, together with the arrangements made for the child's accommodation, and the contact arrangements.
- 11.12.14 The relevant Service Manager must authorise the application for all Child Assessment Orders.

### **11.13 FAMILY ASSISTANCE ORDERS (S16 CHILDREN ACT 1989)**

- 11.13.1 Family Assistance Orders are governed by s16 of the Children Act 1989.
- 11.13.2 A Family Assistance Order is a short-term order of six months duration made with the agreement of parties under which an officer of the local authority is directed to advise, assist and befriend any named person within the Order.
- 11.13.3 The aim of the Order is to provide assistance to a family for a short period.

11.13.4 Under the Order the local authority can be required to supervise contact.

11.13.5 The grounds for making an Order are:

- That the child's welfare is paramount
- It is better for the child than making no Order
- The circumstances of the case are exceptional; and
- The consent of every named person, other than the child, named in the Order has been obtained

## **11.14 COURT DIRECTED INVESTIGATIVE DUTIES**

### **INVESTIGATIONS DIRECTED UNDER S7 CHILDREN ACT 1989**

11.14.1 S7 welfare reports are requested by Courts seeking guidance on particular issues rather than when there is a risk that a child/young person may be likely to suffer significant harm.

11.14.2 The local authority is not a party in s7 cases and staff will not have legal representation.

11.14.3 Unless otherwise directed, staff must at least fourteen days before the scheduled hearing, file their report with the Court and attend the Court hearing to provide evidence if required.

### **INVESTIGATIONS DIRECTED UNDER S37 CHILDREN ACT 1989**

11.14.4 S37 (1) states that in any family proceedings in which a question arises with respect to the welfare of any child/young person, where it appears to the Court that it may be appropriate for a Care or Supervision Order to be made with respect to her/him, the Court may direct the appropriate local authority to undertake an investigation of the child/young person's circumstances.

11.14.5 The Social Worker undertaking such an investigation must consider whether it is necessary to:

- Apply for a Care or Supervision Order in respect of the child/young person
- Provide services or assistance for the child/young person or her/his family or
- Take any other action with respect to the child/young person

- 11.14.6 Where it is decided by the Social Worker in conjunction with her/his supervisor that it is not necessary to apply for a Care or Supervision Order it will be necessary to inform the Court of the following:
- Reasons for the decision
  - Any service or assistance which has been provided, or it is intended to provide, for the child/young person and her/his family and
  - Any other action which has been taken, or it is proposed should be taken, with respect to the child/young person
- 11.14.7 It is also necessary to determine whether a review of the case should be held and, if so, on what date.
- 11.14.8 The information is required by the Court within 8 weeks unless otherwise directed by the Court.
- 11.14.9 If any difficulty is anticipated in complying with this time-scale, Legal Services must be notified without delay and briefed as to a date by which the required work can be completed.
- 11.14.10 Unless or until a decision is made to initiate care/supervision proceedings, the local authority is not a party and Social Workers would not ordinarily be legally represented in Court.

## **11.15 INVESTIGATIONS AS A RESULT OF EMERGENCY PROTECTION OF CHILDREN/YOUNG PERSONS (S47 CHILDREN ACT 1989)**

- 11.15.1 The duty officer must make such enquiries as s/he, in consultation with the duty senior, consider necessary to enable them to decide whether they should take any action to safeguard and promote the child/young person's welfare when the office receives a referral relating to a child/young person who:
- Is subject of an Emergency Protection Order or
  - Is in Police Protection or
  - Staff have reasonable cause to suspect is suffering, or is likely to suffer significant harm
- 11.15.2 The detail of procedures to be observed is contained in the Safeguarding Our Children Procedures (Hampshire, IOW, Portsmouth and Southampton Child Protection Committees) available in each workplace.

## **11.16 CARE & SUPERVISION PROCEEDINGS (S31 CHILDREN ACT 1989)**

- 11.16.1 An application for a Care or Supervision Order is made under s31 of the Children Act 1989.
- 11.16.2 A Care or Supervision Order will be made only when there appears to be no better way of safeguarding and promoting the welfare of the child suffering or likely to suffer significant harm.
- 11.16.3 Interim orders may be for specified periods while proceedings are underway. The legal references are: s31 to 35 and 37 of the Children Act 1989 and s11 of the Crime and Disorder Act 1998.

### **GROUNDINGS FOR A CARE OR SUPERVISION ORDER**

- 11.16.4 The Court must be satisfied that:
- The threshold criteria are met
  - The welfare checklist is applied and
  - Making an Order will be better for a child than making no Order at all
- 11.16.5 The Court has the power to make an Interim Order in two circumstances:
- On application for a Care Order by the local authority
  - Under s37 the Court can make an Interim Order whilst the local authority undertakes an assessment
- 11.16.6 The Court has the power to make a Care Order in two circumstances:
- On application for a Care Order by the local authority
  - Where a Child Safety Order is in force under s11 of the Crime and Disorder Act 1998 and it is proved, on application by the responsible officer that the child has failed to comply with the requirements of the Order. In these circumstances the Court may discharge the Order and make an Order under s31(1)(a) of the Children Act 1989
- 11.16.7 A Care Order cannot be made unless the following conditions are satisfied:
- That the child concerned is suffering, 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 her/him if the Order were not made, not being what it would be reasonable to expect a parent to give her/him or;
- The child being beyond parental control (Children Act 1989, s31(2))

11.16.8 "Harm" in s31 (2) includes both ill treatment (which includes sexual abuse and non-physical ill treatment such as emotional abuse) and the impairment of health and development (health means physical or mental health and development means physical, intellectual, emotional, social or behavioural development).

11.16.9 To satisfy the first condition, the harm must be shown to be "significant" and when assessing this, the Court must compare the health or development of the child in question with that which could be expected of a similar child. That is a child with similar attributes and needs.

11.16.10 The second condition is that the harm suffered, or the likelihood of harm to be suffered, is attributable to the absence of a reasonable standard of parental care. The standard of parenting which a child is expected to receive is an objective one, the child's parents are judged by what a reasonable parent would do for the child in question.

11.16.11 Once the Court is satisfied of the above conditions it must apply the Welfare Checklist and principles, which govern its decision making, before an Order is made.

11.16.12 An application may only be made by a local authority or, as an authorised person, an officer of the NSPCC, although an authorised person cannot apply if the child is already subject to a Care Order, Supervision Order, or there are already pending proceedings for Care or Supervision Orders.

11.16.13 A Care Order may not be made when the young person has reached 17(or 16 if married).

#### **EFFECT OF A CARE ORDER**

11.16.14 A Care Order or interim Care Order places the child in the care of the local authority and grants the local authority parental responsibility.

11.16.15 The local authority has the power to decide the extent to which parents exercise their parental responsibility, except in some specified instances where to do so would restrict that persons statutory rights

such as consenting to marriage, or in doing what is reasonable to promote the child's welfare when having care of her/him.

- 11.16.16 The Care Order lasts until the child is aged 18, or earlier through discharge by the Court.
- 11.16.17 The local authority must allow reasonable contact between the child and parents and certain others (s34 (1)). Contact can include direct and indirect contact.
- 11.16.18 The level of reasonable contact is generally left to the discretion of the local authority. However, the Court may direct contact arrangements if these cannot be agreed.
- 11.16.19 If the local authority is suspending contact for more than seven days an Order of the Court is required giving permission to do so (s34(4))
- 11.16.20 If a child is placed in the care of the parent(s) whilst under a Care Order or Interim Care Order the Placement with Parents (Etc) Regulations 1991 must be satisfied (See 6.17).
- 11.16.21 The making of a Care Order or Interim Care Order discharges any existing Residence Orders
- 11.16.22 If a child is not ordinarily resident in the area, the local authority in whose area the child ordinarily resides must be contacted at the earliest opportunity. In this situation legal advice should be sought.
- 11.16.23 The local authority cannot:
- Consent or withhold consent to adoption
  - Appoint a guardian
  - Cause the child to be brought up in a religious persuasion other than the one in which s/he would have been brought up in if the Care Order had not been made
- 11.16.24 No person may take steps to cause the child to be known by a new surname, or, generally, remove him/her from the UK (See 6.32).

### **EFFECT OF A SUPERVISION ORDER**

- 11.16.25 A Supervision Order places a child under the supervision of a designated officer of the local authority.
- 11.16.26 The duty of the supervising officer is to:

- Advise, assist and befriend the child who is the subject of the Order
- Take such steps as are reasonable to give effect to the Order
- Apply to the Court for variation or discharge where the Order is not fully complied with and/or is no longer necessary

11.16.27 The local authority does not acquire parental responsibility under a Supervision Order.

11.16.28 The person with parental responsibility or with whom the child is living with must act to ensure compliance with the Supervision Order.

11.16.29 There are certain conditions which can be attached to a Supervision Order:

- The supervised child must comply with the directions of the supervising officer on specific matters
- The named “responsible person” (usually the person with whom the child lives) must take certain steps to comply with the directions of the supervising officer
- The supervised child should undergo certain medical or psychiatric examinations
- The supervised child, in certain circumstances, can be required to submit for such treatment for mental ill health as may be specified. Evidence from a medical practitioner approved under s12 of the Mental Health Act 1983 is required in this instance

11.16.30 Any condition attached to a Supervision Order cannot be enforced by the Courts. However, compliance with or failure to comply, can be used as evidence in any future proceedings.

11.16.31 Interim Supervision Orders can be made on application as part of enquires under s37 of the Children Act 1989 or as part of an Interim Residence Order.

11.16.32 Supervision Orders initially last for one year but can be varied or renewed to a maximum of three years.

### **APPLICATIONS FOR A CARE OR SUPERVISION ORDER**

11.16.33 The grounds for an Order must be fully discussed with Legal Services. This may be as a result of a Core Assessment that has been undertaken under s47 of the Children Act.

11.16.34 At this stage it is important to identify, by reference to conclusions in the Core Assessment:

- The needs of the child
- The services that will be provided
- The role of other professionals and agencies
- Whether additional specialist assessments are to be undertaken
- The timetable and
- The responsibilities of those involved

11.16.35 The plan must be discussed and agreed by the relevant Service Manager.

11.16.36 A Statement of Oral evidence needs to be prepared outlining the reasons and process of decision making on the case.

11.16.37 This must include:

- The precipitating incident(s) and background circumstances relevant to the grounds and reasons for making the application including a brief description of any referral or assessment processes that have already occurred
- Any facts and matters that are within the Social Worker's personal knowledge
- Any previous Court orders and emergency steps that are relevant to the application
- Any decisions by the local authority that are relevant to the application
- Information relevant to the ethnicity, language, religion, culture, gender and vulnerability of the child and other significant persons in the form of a 'family profile' together with a narrative description and details of the social care services that are relevant to the same
- Where the local authority is applying for an Interim Care Order and / or is proposing to remove or seeking to continue the removal of a child under emergency protection: the local authority's initial proposals for the child including placement, contact with parents and other significant persons and the social care services that are proposed
- The local authority's initial proposals for the further assessment of the parties during the proceedings including twin track planning
- The social work timetable, tasks and responsibilities so far as they are known

11.16.38 A full chronology must be prepared. It is a running record of the significant dates and events in the child's life in chronological order and, therefore, it must be updated during the proceedings.

11.16.39 An interim, followed by a full Care Plan must be completed and signed by the Social Worker, the Team Manager and the Service Manager.

11.16.40 Care Plans must be written so as to comply with the Government guidance given in LAC (99) 29.

11.16.41 While interim Care Plans will necessarily be in outline and contain less comprehensive information, the Plan must include details of the following:

- The aim of the plan and a summary of the social work timetable
- A summary of the child's needs and how these are to be met including:
  - Placement
  - Contact with family and other significant persons
  - Education, healthcare and social care services
  - The role of parents and other significant persons
  - The views of others
- Implementation and management of the plan

11.16.42 These documents must be submitted to Legal Services at least one week prior to the relevant hearing.

### **DISCHARGE OF A CARE / SUPERVISION ORDER**

11.16.43 Applications to discharge or vary an Order are appropriately made when the circumstances have materially changed since the making of the original Order. In the majority of cases the Court is likely to be concerned with evidence of recent harm and appraisal of current risk.

11.16.44 The sole criterion for the discharge of the Care Order is the welfare of the child.

11.16.45 An application to discharge a Care Order may well be appropriate where the local authority changes its Care Plan having obtained a final Care Order.

11.16.46 If evidence comes to light that undermines the basis on which the Order was originally made, the appropriate course may be to apply for a discharge of the Order.

11.16.47 The burden of proving that it is in the interests of the child that the Care Order is discharged rests on the person applying for the Order to be discharged.

11.16.48 A Care Order may be discharged by the Court on the application of:

- Any person who has parental responsibility for the child
- The child
- The local authority designated by the Order

11.16.49 A Supervision Order may be varied or discharged by the Court on the application of:

- Any person who has parental responsibility for the child
- The child
- The supervisor

11.16.50 Where a Care Order is in force, the Court may substitute a supervision order for a care order.

## **APPLICATIONS FOR THE DISCHARGE OF ORDERS**

11.16.51 A Core Assessment must be completed and the outcome discussed with the relevant Team Manager.

11.16.52 If there are divergent views a planning meeting must be convened to discuss the plan.

11.16.53 At the earliest stage possible Legal Services must be involved in the planning issues.

11.16.54 If a discharge application is agreed a Statement of Oral Evidence, a chronology and a Care Plan must be prepared and lodged with Legal Services at least 1 week prior to the initial hearing.

## **11.17 SECURE ACCOMMODATION (S25 CHILDREN ACT 1989 & THE CHILDREN (SECURE ACCOMMODATION) REGULATIONS 1991)**

11.17.1 The following sections outline the basic criteria for applications to a Court for a Secure Accommodation Order.

11.17.2 For full details on the use of secure accommodation and secure accommodation reviews see 6.19.

### **APPLICATION FOR A SECURE ACCOMMODATION ORDER**

11.17.3 Secure accommodation is to be used only as a last resort and when all other options, e.g. residential care, specialist fostering, have been tested in consultation with the relevant Service Managers.

11.17.4 A file note must be made of alternative placements considered and the reasons why they were not suitable.

11.17.5 A decision to apply for secure accommodation must be made, in consultation with Legal Services, by the Director Children's Services.

11.17.6 Applications should be made via Legal Services to the Family Proceedings Court / Care Centre

### **COURT REPORT**

11.17.7 The Social Worker should prepare a written report for Court, including the:

- Family composition
- Chronology of significant and relevant events
- Department's involvement with the case to date
- Circumstances surrounding the application
- Reasons for the application for secure accommodation
- Plans for the young person

11.17.8 Legal Services will liaise with Children's Services staff to assemble the required evidence and other information for the Court hearing and will often need to call witnesses in person.

### **CHILDREN'S GUARDIAN**

11.17.9 In the case of applications made in the Family Proceedings, Care Centre or High Court, unless the Court is satisfied that it is not necessary, a Children's Guardian will be appointed via the Guardian Duty System.

## **11.18 ADOPTION (ADOPTION ACT 1976 AND ADOPTION AND CHILDREN ACT 2002)**

11.18.1 Further information about the interface of adoption practice and law is provided in Modules 6 and 10 of this manual.

### **ROLE OF PANEL**

11.18.2 The IOW's Adoption Panel is responsible for recommending to the Director of Children's Services whether:

- Adoption is in the best interests of a child
- An applicant is suitable for approval as a prospective adopter
- A specific prospective adopter is a suitable match for a particular child

### **SEEKING LEGAL ADVICE**

11.18.3 The Adoption Panel is served by a Legal Advisor based in Legal Services.

11.18.4 Discussions about potential adoptions and the role of the Panel, may be addressed to the Legal Advisor as well as or instead of Legal Services, particularly if they relate to queries about presentation at Panel or potential legal problems the Panel will need to address.

11.18.5 Decisions to make a Court application for an Adoption Order will be made at the child/young person's statutory review or other meeting involving the child/young person's Social Worker, adoption worker, prospective adopters and the child/young person, if age allows.

11.18.6 The decision to support applications for Adoption Orders will only be made where staff involved and the Adoption Panel are satisfied that all available options to support the child/young person within her/his family setting have failed.

### **NOTIFICATION OF INTENTION TO ADOPT**

11.18.7 The prospective adopters are required to write to the local authority explaining that they are applying to the Court to adopt the child/young person. The family will have to pay a fee on application to the Court and supply supporting documents.

11.18.8 The Social Worker and adoption worker should prepare the Schedule 2 Report as soon as possible or when requested by the Court. Three

copies of the Report and the Medical Report from the Medical Adviser will be submitted to the Court.

- 11.18.9 The above reports must be returned 6 weeks after receipt of notice of the hearing. Children's services will be represented by the child/young person's Social Worker or adoption worker, or both, as required by the Court.
- 11.18.10 Medical reports on the child or the applicants may need updating for the Court.

### **APPLICATION FOR ADOPTION ORDER - CONTESTED**

- 11.18.11 In a contested adoption case, the adoption worker will advise prospective adopters to instruct a private solicitor, who must be on the Children's Panel. Community Legal Services Funding applications must be considered, via the applicant's solicitor (If the application is unsuccessful, the local authority may pay reasonable fees).
- 11.18.12 Legal Services will ensure that an undertaking in standard form regarding costs and indemnities is obtained from the prospective adopters' solicitor.
- 11.18.13 A standard note regarding legal costs will be provided to the prospective adopters and/or their solicitors. This should be signed by both applicant/s, with one copy being returned to the adoption worker to place on file.
- 11.18.14 The fee rate will be agreed between Legal Services and the prospective adopters' solicitors before a commitment to pay the fees is made.
- 11.18.15 The prospective adopters' solicitors will present their bill to Legal Services to consider the reasonableness of the fees and then returned to the Adoption Team for payment.
- 11.18.16 Where birth parents are likely to attend Court, it will be important that arrangements are made to manage this appropriately.
- 11.18.17 The adoption worker should arrange, via the Clerk of the Court, for the adopters to use a separate entrance at the Court and be offered private rooms in which to wait.
- 11.18.18 The Social Worker will prepare a report containing all the necessary information for the prospective adopters. The solicitor will prepare the statement of facts.

11.18.19 When contested, a Children's Guardian will be appointed and, following receipt of a copy of the Schedule II Report, will visit birth parent/s, prospective adopters, child/young person's Social Worker and adoption worker.

11.18.20 Having also read the files, the Guardian will prepare a report for the Court and make a recommendation.

### **APPLICATION FOR ADOPTION ORDER - UNCONTESTED**

11.18.21 The allocated Social Worker will assist prospective adopters in lodging Court applications and other documents with their local County Court or Magistrates Court. It is usual practice to apply at the same Court where any previous child care proceedings have taken place.

11.18.22 The Social Worker and adoption worker should prepare three copies of the Schedule II Report as soon as possible or when requested by the Court. The adoption worker should send the report, with medical summary attached, to the Court within 6 weeks of receipt of notice of the Hearing.

11.18.23 A Children's Services representative will attend the Court as required. This may be the child/young person's Social Worker or adoption worker, or both.

11.18.24 In an uncontested case, a Reporting Officer will be appointed by the Court to confirm the birth parents' consent and that they fully understand the implications of an adoption.

11.18.25 Following the granting of an Adoption Order, the family will receive an Adoption Certificate from the Court. The Adoption Team will receive notification of the Adoption Order, which needs to be attached to the file.

11.18.26 The child's Social Worker must notify their Administrative Officer who will arrange for the child/young person to be discharged from Care.

11.18.27 The adoption worker must notify their Administrative Officer who will arrange for the client data base to be updated and adoption confidentiality maintained.

## 11.19 EDUCATION SUPERVISION ORDERS (S36 CHILDREN ACT 1989)

- 11.19.1 The Education Department only can make applications for Education Supervision Orders (ESO) and is obliged to consult with Children's Services before so doing.
- 11.19.2 When a referral is received from Education, the Social Worker must ensure that there are no issues which should be dealt with by Children's Services, e.g. child protection matters and a written response must be provided within the required time-scale.
- 11.19.3 If the ESO fails, the Education Division will inform Children's Services and the Social Worker must then investigate the child/young person's circumstances.

## 11.20 GLOSSARY OF LEGAL TERMS

<b>A</b>	
<b>Accommodation</b>	Being provided with accommodation replaces the old voluntary care concept. It refers to a service that the local authority provides to the parents of children in need, and their children. The local authority has a number of duties towards children for whom it is providing accommodation, including the duty to explore the child's wishes regarding the provision of accommodation and to give them proper consideration (s20 Children Act 1989).
<b>Authorised Person</b>	In relation to care and supervision proceedings, a person other than the local authority authorised by the Secretary of State to bring proceedings under s31 of the Children Act 1989. This covers the NSPCC and its officers.
<b>C</b>	
<b>Care Order</b>	An Order made by the Court under s31 (1)(a) of the Children Act 1989 placing the child in the care of the designated local authority. A Care Order includes an Interim Care Order except where express provision to the contrary is made (s31(11)).
<b>Child Assessment Order</b>	An Order under s43 of the Children Act 1989. The Order requires any person who can do so to produce the child for an assessment and comply with the terms of the Order
<b>Children In Need</b>	A child is "in need" if:- a) S/he is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for

	<p>her/him of services by a local authority under this Part (Part III of the Children Act 1989);</p> <p>b) Her/his health or development is likely to be significantly impaired, or further impaired, without the provision for her/him of such services; or</p> <p>c) S/he is disabled (s17(10)).</p>
<b>Children Living Away from Home</b>	Children who are not being looked after by the local authority but are nevertheless living away from home, e.g. children in independent schools. The local authority has a number of duties towards such children e.g. to take reasonably practical steps to ensure their welfare is being adequately safeguarded and promoted.
<b>Children's Guardian</b>	A person appointed by the Court to investigate a child's circumstances and to report to the Court (s41 Children Act 1989). The Children's Guardian can appoint a solicitor for the child. In some cases the Official Solicitor acts as the Children's Guardian.
<b>Complaints Procedure</b>	The procedure that the local authority must set up to hear representations regarding provision of services under Part III of the Children Act 1989 from a number of persons, including the child, the parents and "such other person as the authority considers has a sufficient interest in the child's welfare to warrant his representation being considered by them" (s26(3)). This procedure must contain an independent element.
<b>Contact Order</b>	An Order "requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other" (s8 Children Act 1989).
<b>D</b>	
<b>Day Care</b>	<p>A person provides day care if s/he looks after children under the age of 8 on non-domestic premises for more than 2 hours in any day (s71 Children Act 1989).</p> <p>In relation to the local authority provision of day care it refers to any form of supervised activity provided for children during the day (s18(4) Children Act 1989).</p>
<b>Duty to Investigate</b>	The local authority is under a duty to investigate in a number of situations. The general investigative duty arises where the local authority has "reasonable cause to suspect that the a child who lives, or is found in their area, is suffering, or is likely to suffer, significant harm", it must make such enquiries as it considers necessary to enable it to decide whether it

	should take any action to safeguard or promote the child's welfare (s47(1) Children Act 1989).
<b>E</b>	
<b>Emergency Protection Order</b>	An Order under s44 Children Act 1989 which the Court can make if it is satisfied that a child is likely to suffer significant harm, or where enquiries are being made with respect to the child and they are being frustrated by the unreasonable refusal of access to the child. The Order gives the applicant parental responsibility for the child.
<b>F</b>	
<b>Family Assistance Order</b>	An Order under s16 of the Children Act 1989 requiring either a probation officer or a Social Worker to "advise, assist and befriend" a named person for a period of 6 months or less. The named person can be the child's parents, guardian, those with whom the child lived or who had contact with the child, and the child her/himself.
<b>Family Law Act 1996</b>	Part IV deals with Occupation Orders, Non-Molestation Orders and amendments to the Children Act 1989 concerning Interim Care Orders and Emergency Protection Orders. S52 enables the Court, when making an Emergency Protection Order or an Interim Care Order, to attach an exclusion requirement so that a suspected abuser can be removed from the home or kept away from the home or even around it, rather than the child having to be removed.
<b>Family Proceedings</b>	These are defined in Section 8(3) as any proceedings under the inherent jurisdiction of the High Court in relation to children; and under Parts I, II and IV of the Children Act 1989, the Matrimonial Causes Act 1973, the Domestic Violence and Matrimonial Proceedings Act 1976, the Adoption Act 1976, the Domestic Proceedings and Magistrate's Court Act 1978, s1 and 9 of the Matrimonial Homes Act 1983, and Part III of the Matrimonial and Family Proceedings Act 1984. Note: proceedings under Part V of the Children Act 1989 i.e. Orders for the protection of children, are not family proceedings.
<b>Family Proceedings Court</b>	The new Court at the level of the Magistrate's Court to hear proceedings under the Children Act 1989. The magistrates will be selected from a new panel, known as the Family Panel, and will be specially trained.
<b>I</b>	
<b>Injunction</b>	An Order made by the Court prohibiting an act or requiring its cessation. Under the Domestic Violence and Matrimonial Proceedings Act 1976 the County Court has the power to

	make injunctions. Injunctions can be either interlocutory (i.e. temporary, pending the outcome of the full hearing) or perpetual.
<b>Interim Care Order</b>	An order made by the Court under Section 38 placing the child in the care of the designated local authority.
<b>Interim Supervision Order</b>	An order made by the Court under Section 31 placing the child under the supervision of a designated officer of the local authority.
<b>J</b>	
<b>Judicial View</b>	An Order from the Divisional Court quashing a local authority decision, a declaration in a particular case as to what the law is, or an Order directing the authority to take or not to take particular steps. The Divisional Court usually does not substitute its own decision but sends the matter back to the authority for reconsideration
<b>L</b>	
<b>Looked After</b>	A child is looked after when s/he is in local authority care or is being provided with accommodation by the local authority (s22(1) Children Act 1989).
<b>M</b>	
<b>Memorandum of Good Practice 1992</b>	Guidance for undertaking joint interviews with the Police. Has been augmented by the Youth and Criminal Evidence Act 1999 and guidance on Achieving Best Evidence in Criminal Proceedings: Guidance for vulnerable or intimidated witnesses, including children.
<b>N</b>	
<b>Non-Molestation Order</b>	S42 of the Family Law Act 1996. These Orders are defined as containing either or both of the following: <ul style="list-style-type: none"> <li>• Provisions prohibiting the respondent from molesting another person who is associated with the respondent (e.g. a spouse or former spouse or co-habitant)</li> <li>• Provisions prohibiting the respondent from molesting a relevant child.</li> </ul>
<b>O</b>	
<b>Occupational Order</b>	S33--41 of the Family Law Act 1996. These Orders determine who is allowed to occupy a home and can direct another party to leave the home.
<b>Official Solicitor</b>	An officer of the Supreme Court who acts on behalf of

	children in certain cases. When representing a child the Official Solicitor may act both as a solicitor and as a Children's Guardian.
<b>P</b>	
<b>Paramourncy Principle</b>	The principle that the welfare of the child is the paramount consideration in proceedings concerning children.
<b>Parties</b>	Parties to proceedings are entitled to attend the hearing, present their care and examine witnesses. The Children Act 1989 envisages that children will automatically be parties in care proceedings. Anyone with parental responsibility for the child will also be a party to such proceedings, as will the local authority. Others may be able to acquire party status. A person with party status will be eligible for legal aid in order to be legally represented at the hearing. If you have party status you are also able to appeal against the decision. Others who are not parties may be entitled to make representations. For further information on this, refer to the Rules of Court.
<b>Police Protection</b>	S46 Children Act 1989 allows the Police to detain a child or prevent her/his removal for up to 72 hours if they believe that the child would otherwise suffer significant harm. There are clear duties on the Police to consult the child, if this is practicable, and to notify various persons of their action, e.g. the child's parents and the local authority.
<b>Parental Responsibility</b>	<p>The Children Act 1989 uses the phrase "parental responsibility" to sum up the collection of duties, rights and authority, which parents have in respect of their children and their property. That choice of words emphasises that the duty to care for children and to raise them to moral, physical and emotional health is the fundamental task of parenthood and the only justification for the authority it confers. There is no list of factors which prescribe the content of parental responsibility, for such a list would have to change from time to time and have to vary with the age and maturity of the child and the circumstances in each case.</p> <p>The exercise of parental responsibility is left largely to the discretion of the adults involved, subject to 2 limitations:</p> <p>a) the criminal law imposes minimum standards of care and the civil law provides remedies for the protection of children's welfare</p> <p>b) parental responsibility itself diminishes as the child acquires sufficient understanding to make her/his own decisions</p> <p>Where a child's mother and father were married to each</p>

	<p>other at the time of her/his birth, they each have parental responsibility. Otherwise, the mother alone has parental responsibility unless the father acquires it by a Court order or an agreement under the Children Act 1989 or by subsequently marrying the mother.</p> <p>Unmarried fathers may obtain parental responsibility:</p> <ul style="list-style-type: none"> <li>a) he registers as the child's father according to the provisions of the Births and Deaths Registrations Act 1953</li> <li>b) by agreement with the mother using a prescribed form</li> <li>c) by application to Court for an order which gives him parental responsibility (such an order must be made if a Residence Order is made in his favour).</li> </ul> <p>Parental Responsibility is also acquired by:</p> <ul style="list-style-type: none"> <li>a) Court order, or private appointment of, a guardian with effect from the death of those with parental responsibility</li> <li>b) Residence Order</li> <li>c) Care Order</li> <li>d) Emergency Protection Order (but not Police Protection).</li> </ul> <p>The fact that one person acquires parental responsibility does not in itself remove another's parental responsibility but the type of order and any directions will determine the extent to which parental responsibility is exercised by those involved.</p> <p>Where more than one person has parental responsibility for a child at the same time, one may act independently of the other or others to meet that responsibility.</p> <p>A person with parental responsibility may arrange for another person to meet that responsibility on their behalf, for instance during a stay in hospital. It does not affect any liability of the person with parental responsibility which follows from a failure to meet their parental responsibility.</p> <p>Parental Responsibility cannot be passed on to someone else or otherwise given up but where it was acquired by Court order, agreement or private appointment, the Court may later bring it to an end.</p> <p>If a person has care of a child for whom they do not have parental responsibility the Children Act 1989 empowers them to do what is reasonable in all the circumstances to safeguard or promote the child's welfare.</p> <p>However, such a person may not act in a way which conflicts</p>
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	with the Children Act, in particular with an order under it, except in the limited circumstances in which the child requires protection from danger.
<b>Preliminary Hearing</b>	A hearing to clarify matters in dispute, to agree evidence and to give directions as to the timetable of the case and the disclosure evidence.
<b>Prohibited Steps Order</b>	An Order that "no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the Court". (s8(1) Children Act 1989).
<b>R</b>	
<b>Recovery Order</b>	An order which the Court can make when there is reason to believe that a child who is in care, the subject of an Emergency Protection Order, or in Police protection has been unlawfully taken or kept away from the responsible person, or has run away or is staying away from the responsible person, or is missing. The effect of the recovery order is to require any person who is in a position to do so to produce the child on request, to authorise the removal of the child by any unauthorised person, and to require any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a constable or officer of the Court (s50 Children Act 1989).
<b>Refuge</b>	S51 Children Act 1989 enables "safe houses" legally to provide care for children who have run away from home or local authority care. However, a Recovery Order can be obtained in relation to a child who has run away to a refuge.
<b>Regulations</b>	Regulations refer to the supplementary powers and duties issued by the Secretary of State under the authority of the Children Act 1989. These cover a wide range of issues, from secure accommodation to the procedure for considering representations (including complaints), and have the full force of law.
<b>Residence Order</b>	An order "settling the arrangements to be made as to the person with whom a child has to live" (Section 8(1) Children Act 1989).
<b>Responsible Person</b>	In relation to a supervised child, "any person who has parental responsibility for the child, any other person with whom the child is living". With their consent the responsible person can be required to comply with certain obligations. (Schedule 3, paras 1 and 3).
<b>Review</b>	Under s26 Children Act 1989 local authorities are under a duty to conduct regular reviews in order to monitor the progress of children they are looking after. When holding

	reviews local authorities must comply with their duties as given in s22. Reviews are opportunities to consider progress and any problems and changes in circumstances, and to resolve difficulties, set new goals and plan for the future. They are usually attended by all those with significant responsibilities for the child. The child and her/his parents should also attend, and be given help and support to participate in the decision making and to make sure their views and wishes are known.
<b>S</b>	
<b>Significant Harm</b>	S31(10) Children Act 1989 states: "Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child".
<b>Special Educational Needs Assessment</b>	A compilation of reports from various professionals to assist the local education authority to place the child in an educational setting compatible with his abilities. This assessment is carried out under the Education Act 1996.
<b>Specific Issue Order</b>	Means an Order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.
<b>Supervision Orders</b>	S35(1) and Schedule 3 Parts I and II Children Act 1989 sets out the duties of a supervisor together with various other provisions relating to the powers of a supervisor as follows:  While a Supervision Order is in force it shall be the duty of the supervisor:  a) to advise, assist and befriend the supervised child  b) to take such steps as are reasonably necessary to give effect to the order; and  c) where -  i) the order is not wholly complied with; or  ii) 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.
<b>T</b>	
<b>Timetables</b>	Under the Children Act 1989 the Court, pursuant to the principle of avoiding delay because it is harmful for the child,

	has the power to draw up a timetable and give directions for the conduct of the case in any proceedings in which the making of a s8 Order arises, and in application for Care and Supervision Orders (s11 and s32 Children Act 1989).
<b>W</b>	
<b>Ward of Court</b>	A child who, as the subject of wardship proceedings, is under the protection of the High Court. No important decision can be taken regarding the child while s/he is a ward of court without the consent of the Wardship Court.
<b>Welfare Report</b>	S7 of the Children Act 1989 gives the Court the power to request a report on any question in respect of a child under the Act. The report can be presented by either a probation officer or an officer of the local authority. S7(4) provides that regardless of any rule of law to the contrary, the Court may take account of any statement contained in the report and any evidence given in respect of matters referred to in the report as long as the Court considers them relevant.