



Children's Law

A Guide to Children's Care Proceedings

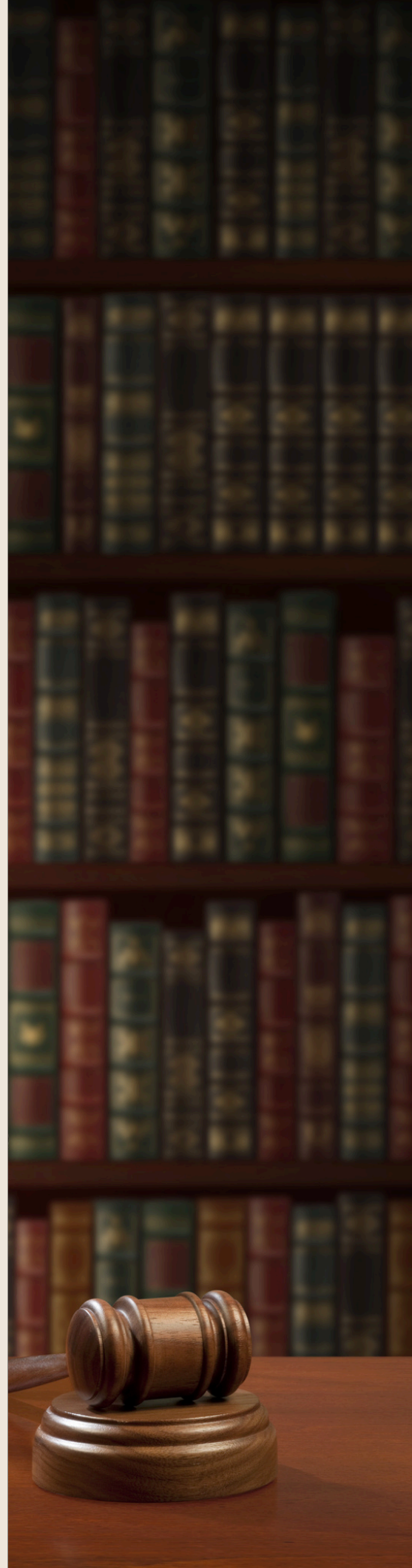
This document has been created by Hillingdon Safeguarding Partnership to provide accessible information for multiagency practitioners, parents and carers to support understanding of Children's Care Proceedings.

**Created: August 2024
Review due: August 2027**



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What are Children's Law and Care Proceedings?

Children's Law



Children's law in the UK encompasses a wide range of legal principles, statutes, and case law that govern the rights, protection, and welfare of children. It deals with matters such as parental responsibility, child protection, custody and care arrangements, adoption, and the rights of children. The law is designed to ensure that children's best interests are the primary concern in all legal proceedings and decisions affecting them.

Care Proceedings

The term children's care proceedings refers to a legal process started by a local authority when there are serious concerns about a child's welfare. The primary aim of these proceedings is to ensure the long term safety and well-being of the child.



Reasons why Care Proceedings may be initiated

A local authority may apply to the family court for permission to safeguard a child, this could seek to place a child into care or to supervise them within their family home. Here are some examples of why care proceedings are initiated:

- **Abuse or Neglect:** If there is evidence or suspicion that a child is suffering or is likely to suffer significant harm due to physical, emotional, or sexual abuse, or neglect, care proceedings may be initiated.
- **Parenting Capacity:** If parents are unable to provide adequate care due to issues such as mental health problems, substance abuse, or severe disability, the local authority may step in to ensure the child's safety and well-being.
- **Abandonment/Relinquishment/Death of parent or carer:** If a child no longer has their parents or guardians to care for them, care proceedings may be necessary to provide them with a safe and stable environment.
- **Severe Behavioural/or Contextual Issues:** In cases where a child's behaviour is beyond parental control or that a child is at risk in the community, care proceedings might be initiated to provide the necessary support and intervention. Sometimes factors external to the family home pose a serious risk or children may be a risk to themselves or others.
- **Medical Neglect:** Failure to provide necessary medical treatment or care for a child can lead to serious health issues, prompting the authorities to take action.
- **Child's Own Health and Development:** If a child's health or development is significantly impaired due to the care they are receiving, this can be grounds for initiating care proceedings.

Pre Proceedings (PLO)

The Pre-Proceedings process, commonly known as the Public Law Outline (PLO), is a legal framework used by children's services before starting care proceedings in court. The aim is to work with families to address concerns about a child's welfare and avoid the need for court action where possible.

1. Identification of Concerns

- **Referral/Assessment:** Concerns about a child's welfare are identified through referrals from various sources (e.g., schools, health professionals, or the police) or during an ongoing assessment by children's services.
- **Threshold Criteria:** Children's services must determine whether the concerns meet the threshold criteria for significant harm or the risk of significant harm as defined under the Children Act 1989.

2. Decision to Initiate PLO

- **Strategy Meeting:** A multi-agency strategy meeting is held to discuss the concerns and determine whether the threshold for significant harm may be met.
- **Legal Planning Meeting (LPM):** Children's services hold a legal planning meeting with their legal department to review the evidence and decide whether to initiate the PLO process.

3. Notification to Parents

- **Pre-Proceedings Letter (Letter Before Proceedings):** If it is decided to proceed, a letter is sent to the parents/carers. This letter outlines the concerns, explains what needs to change, and informs them that failure to make improvements may lead to care proceedings. It also invites them to a PLO meeting.
- **Legal Representation:** The letter advises parents to seek legal advice and representation. Parents are always eligible for legal aid during the PLO process.

4. Pre-Proceedings (PLO) Meeting

- **Initial PLO Meeting:** The PLO meeting is a formal meeting attended by the parents, their legal representatives, the child's social worker, and the local authority's legal representative. During this meeting:
 - The local authority explains their concerns.
 - The parents are given an opportunity to respond.
 - A plan is developed (the Pre-Proceedings Agreement) outlining the changes required to avoid court proceedings.
- **Timescales:** The meeting should set clear timescales for the parents to make the necessary changes, typically within 12 to 16 weeks.

5. Review Meetings

- **Review PLO Meetings:** The progress is reviewed in follow-up PLO meetings, typically scheduled every 4 to 6 weeks. The social worker monitors whether the parents are complying with the agreement and whether improvements are being made.
- **Multi-Agency Support:** Various services, such as parenting programs, substance misuse services, or domestic violence support, might be involved to assist the parents in making the required changes.

Pre Proceedings (PLO) Continued

6. Outcome of the Pre-Proceedings Process

- **Successful Resolution:** If the parents make sufficient progress and the risks to the child are reduced, the local authority may decide that no further action is needed, and the case is closed or stepped down to a lower level of intervention.
- **Care Proceedings:** If the parents do not make the necessary improvements, or if the situation worsens, the local authority may decide to initiate care proceedings. A decision to proceed to court would typically involve another Legal Planning Meeting to confirm that court action is necessary.

7. Issuing Care Proceedings

- **Court Application:** If the decision is made to proceed to court, the local authority will file an application for a care or supervision order with the Family Court.
- **First Hearing:** The first court hearing is when the Local Authority's application for a Interim Care Order (ICO) is considered. Case Management Hearing, usually takes place within a 18 days of the application. The court will consider whether an interim care order is necessary and will set a timetable for the proceedings.

8. Post-PLO Support

- **Continued Support:** Even if care proceedings are avoided, children's services may continue to work with the family to provide ongoing support and ensure the child's welfare is maintained.
- **Step-Down Process:** If the situation has improved significantly, the child and family can be supported through early help or universal services.



Summary of Key Points:

The PLO process aims to avoid court action by giving parents a final opportunity to address concerns.

Parents are strongly advised to seek legal advice throughout the PLO process.

The success of the PLO process depends on the parents' ability to make necessary changes within the agreed timeframe.

Parental Responsibility



What is Parental Responsibility?

Parental Responsibility (PR) means being legally recognised as having the authority to make decisions in a child's life, including those about their education, religion, and medical treatment.

Who Has Parental Responsibility?

- **Mothers:** Automatically have PR from the moment of the child's birth
- **Fathers:**
 - Married to the mother at the time of birth: Automatically have PR.
 - Jointly registering the birth of the child with the mother
 - Obtaining a PR order from a court.
- **Civil Partners:** Same-sex partners who were civil partners at the time of the child's birth will both have PR if they jointly register the birth.
- **Others:**
 - Individuals who obtain a PR order from the court.
 - Individuals who adopt the child, as the adoption gives full PR.



What Does Parental Responsibility Entail?

PR involves various responsibilities and rights, including:

- **Providing a home:** Ensuring the child has a safe and stable environment to live in.
- **Protection and maintenance:** Ensuring the child's well-being and safety, which includes physical care and emotional support.
- **Education:** Making decisions about the child's education, including the choice of school and extracurricular activities.
- **Boundary Setting:** Deciding on matters of setting appropriate boundaries.
- **Medical care:** Consenting to medical treatment and decisions regarding the child's health.

Why is Parental Responsibility Important?

PR is crucial because it legally empowers parents or guardians to make critical decisions affecting the child's life and welfare. It establishes a legal framework within which those decisions are made, ensuring that the child's needs are prioritised and that they receive proper care and support.

Parental Responsibility in Care Proceedings

The Importance of Parental Responsibility in Children's Care Proceedings

In children's care proceedings, PR plays a significant role in several ways:

- **Decision-Making Authority:** Individuals with PR are legally entitled to be involved in significant decisions about the child's care, including whether the child should be taken into care or placed under a child protection plan.
- **Legal Standing:** Having PR grants a parent or guardian the legal standing to contest decisions made by local authorities, ensuring their voice is heard in court.
- **Child's Welfare:** The child's welfare is the court's paramount concern in care proceedings. PR holders are responsible for providing evidence and arguments about what arrangements would be in the child's best interest, whether that involves staying with their parents, being placed in foster care, or being adopted.
- **Court Orders:** Courts can issue specific orders, such as a Child Arrangements Order, Supervision Order, or Care Order, depending on what they deem to be in the child's best interest. PR holders are typically involved in these proceedings.
- **Reunification Efforts:** In situations where a child is temporarily removed from the home, PR holders play a crucial role in the reunification process, demonstrating their ability to care for the child under the conditions set by the court.

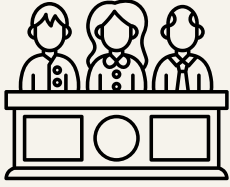
What does this mean?

The significance of PR in care proceedings is profound because it ensures that those who have the legal right to care for and make decisions for the child are actively involved in discussions and decisions about the child's future. It helps ensure that the child's welfare remains at the forefront of all proceedings and that any decisions made are in their best interest. Furthermore, PR provides a legal avenue for parents to challenge decisions they believe are not in their child's best interest, ensuring a fair and balanced approach in care proceedings.

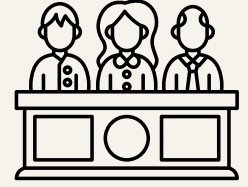
Parents without parental responsibility?

Parents that do not have Parental Responsibility can still be invited to be involved in care proceedings as a interested party and play a role. They usually have to make an application to the courts to be joined.





The Family Courts



COURT	<p>Previously there were 3 family courts: Magistrates, County and High Court. Since the 22nd April 2014 there is a single family court. The Single Family Court deals with all family proceedings, except for a limited number of matters, which will be exclusively reserved to the High Court.</p>
JUDGES	<p>Lay magistrates and all levels of judges are able to sit on the Family Court.</p> <p>A Designated Family Judge (DFJ) will lead a gatekeeping team that allocates cases to lay justices and different levels of judges on the basis of:</p> <ul style="list-style-type: none"> • the need to make the most effective and efficient use of the local judicial resources that is appropriate, given the nature and type of application; • the need to avoid delay; • the need for judicial continuity; • the location of the parties or of any child relevant to the proceedings; and • complexity.
COURT HEARINGS	<p>Directions Hearings / Case Management Hearings (CMH) / Issue's Resolutions Hearing (IRH): The court outlines the steps required to prepare for a final hearing, such as deadlines for filing evidence and scheduling future hearings. The aim is to streamline the process and focus on the key issues.</p> <p>Contested Interim Hearings: The court listens to arguments from both sides regarding temporary arrangements and makes interim orders that remain in place until the final hearing.</p> <p>Fact-Finding: The court examines evidence, hears testimonies, and makes findings on disputed facts. These findings then influence the decisions at the final hearing.</p> <p>Final Hearings: The court reviews all the evidence, listens to witness testimonies, and hears final arguments from both sides before making a conclusive decision regarding the welfare of the child or children involved.</p>
TIMESCALES	<p>Initial Application: When a local authority applies for care proceedings, they must do so promptly and the court usually schedules a first hearing within a few weeks.</p> <p>First Hearing: The first court hearing is when the local authority's application for a Order is considered. Case Management Hearing, usually takes place within a 18 days of the application.</p> <p>Fact-Finding Hearing: If required, these hearings are to determine the facts of the case.</p> <p>Final Hearing: The final hearing, where a decision about the child's future is made, should be completed within 26 weeks from the start of proceedings. This is a strict timescale set to ensure that decisions are made as swiftly as possible in the child's best interest.</p>



Family Court and Privacy



Attendance: Only those directly involved in the case, such as the parties, their legal representatives, and certain professionals (e.g., social workers, guardians, expert witnesses), are allowed to attend. Professionals may be called to give evidence in person by the courts.



Confidentiality: The details of family cases are not usually made public to protect the privacy of the individuals involved, especially children. This is to ensure that sensitive information is not exposed and to protect the welfare of the child and family members.



Reporting Restrictions: Journalists are automatically allowed to attend family court proceedings. They only attend on very rare occasions and must meet strict reporting requirements. They cannot publish any information that could identify the children or parties involved without the court's permission.



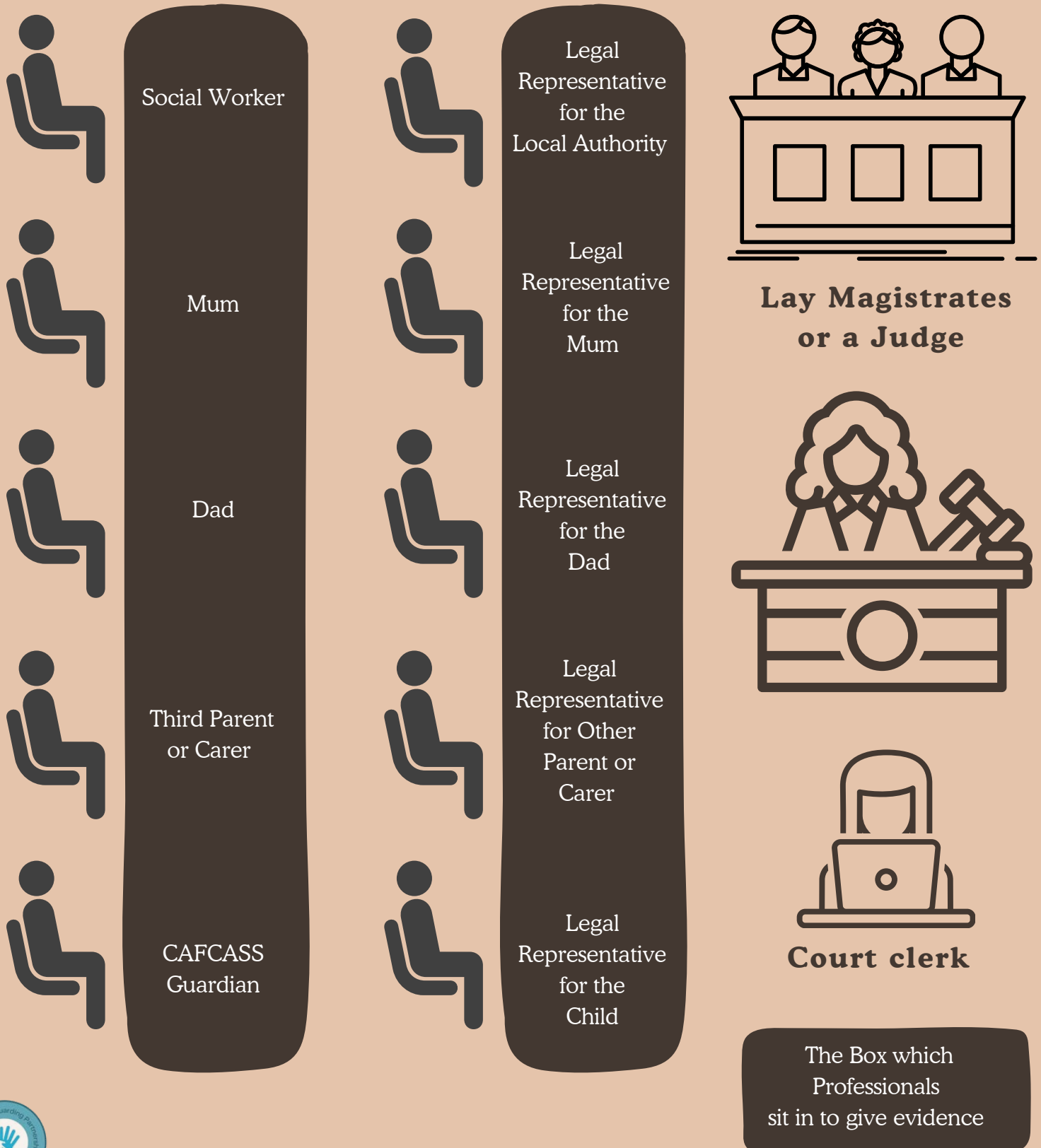
Judgements: While some judgements in family cases may be published, they are typically anonymised to protect the identities of those involved. Victims and children's names should never be published. There are however some rare exceptions.



Exceptions: In certain cases, the court may decide to hold hearings in public if it is in the interests of justice, but this is rare. Similarly, some details may be made public if there is a significant public interest or to clarify points of law.

The Family Court Room

Family court rooms are usually laid out in a particular way as shown in the diagram below. The Cases are heard either by a Judge or Magistrates and they are always assisted by a Clerk. The Solicitors or Barristers for each person sits in front of them and will sometimes turn around a speak to their client to confirm the things that are being said. Other professionals that are called to court will come in a sit in the 'box' and leave once they have finish answering questions.



Attending Family Court



Dress Appropriately: While you don't need to wear formal business attire, it's important to dress smartly and respectfully. Business casual is appropriate.

Arrive Early: Aim to arrive at least 1 hour before your scheduled hearing to go through security and find the correct courtroom.

Security: when you arrive at court allow security staff to search your bags and scan you with the metal detectors. This is normal process for everyone.

Bring Necessary Documents: Ensure you have all relevant documents and evidence, as well as any identification you might need.

Be Polite and Respectful: Show respect to the judge, court staff, and other parties at all times.

Listen Carefully: Pay attention to what is being said and follow any instructions given by the judge or court staff. if you do not understand you must say.

Speak Clearly and Calmly: When it's your turn to speak, do so clearly and remain calm, even if the proceedings become stressful.

Turn Off Your Phone: Ensure your phone is turned off or on silent mode before entering the courtroom.

Be Honest: If you are unsure, do not know something or are confused, just say so.



Do Not Be Late: if there is an issue with your travel arrangement, you must contact the courts or your solicitor to let them know.

Interrupt: Do not interrupt the judge or other parties when they are speaking.

Display Anger or Frustration: Maintain your composure, even if you disagree with what is being said. if you do this you may be asked to leave. Threats towards any persons present are taken very seriously.

Use of Legal Jargon: Avoid using legal terms unless you fully understand them. Speak plainly and clearly.

Bring Unnecessary Items: Leave large bags, food, and drinks outside the courtroom unless absolutely necessary.

Hot Drinks and Glass Bottles: these are not allowed in the court room, so do not bring them.

Multi-Agency Working in Care Proceedings

Why is Multi-Agency working so vital to Children's Care proceedings?

Multiagency working in care proceedings refers to the collaboration between various professionals and agencies (e.g., children's services, health professionals, education authorities, police, and legal professionals) involved in safeguarding and promoting the welfare of children. Information should be shared between agencies with the goal of safeguarding and promoting the child's welfare. Information about a child will help inform reasonable decision making that prioritises the welfare of the child.

What is good information sharing?

Information should be shared between agencies promptly and should be relevant, necessary, and proportionate to the goal of safeguarding and promoting the child's welfare.

Some examples;

- School attendance reports
- Health reports and updates
- Police reports
- Social Care reports and history
- Legal information

Information should be;

- Factual information
- Analysis of concerns
- Professional opinion (level of risk in your setting)
- Support available from the agency
- Limitations of agency (what resources are available)

How should information be shared?

Consent: Where possible and appropriate, agencies should seek the consent of the child's parents or guardians before sharing information. However, in cases where seeking consent would put the child at risk, information can be shared without consent if it is necessary to protect the child.

Proportionality: Only share information that is directly relevant to the case. Avoid sharing excessive or unnecessary details to maintain confidentiality and comply with data protection laws.

Clarity and Accuracy: Information shared should be clear, factual, and up-to-date. Any opinions or interpretations should be clearly distinguished from factual information.

Secure Channels: Information should be shared through secure communication channels, such as encrypted emails, secure portals, or face-to-face meetings. This prevents unauthorized access and ensures that sensitive data is protected.

Sometimes, despite there being significant concerns by professionals and information being shared; the courts may not agree that it is in the best interest of the child for them to leave the family home. Therefore, it is responsibility of professionals to ensure constant information sharing to monitor the risk of harm and to support the welfare of the child. Additionally if the courts are not satisfied with the information shared by professional they may be call to speak directly in court. Therefore is important to ensure that the allocated social worker is provided with regular updates to share with the courts.

WHO MAKES DECISIONS FOR CHILDREN WHEN IN CARE PROCEEDINGS

During care proceedings, various parties are involved in making decisions for a child, particularly when the child is at risk of immediate harm. Here's an overview of who can make decisions and in what contexts:

Local Authority (Children's Social Care):

Interim Care Orders: Once care proceedings have started and should a interim care order be granted, the local authority acquires parental responsibility. This allows them to make day-to-day decisions about the child's welfare, including where the child should live.

-Emergency Protection Orders: In situations of immediate harm, the local authority can apply for an emergency protection order (EPO), which allows them to take immediate protective action.

The Family Court Judges:

The family court has the ultimate authority during care proceedings. Judges make interim and final care orders based on the child's best interests. This includes decisions about where the child will live, who will have parental responsibility, and what type of care arrangement is appropriate. For emergency decisions, the court can make immediate decisions to protect the child, such as granting emergency protection orders or interim care orders.

Health Professionals:

If the child requires urgent medical treatment, health professionals can make immediate decisions to ensure the child's health and safety.

In non-urgent situations consent for medical treatment will typically be sought from those with parental responsibility, including the local authority if an interim care order is in place.

Foster Carers/Residential Care Staff:

When a child is placed in foster care or a residential care setting, foster carers or residential care staff can make day-to-day decisions about the child's routine, subject to the terms of the care plan approved by the local authority and court.

Parents/Guardians:

While the local authority shares parental responsibility during care proceedings if an Interim Care Order is in place, parents retain their parental rights unless the court restricts them. They can make decisions in agreement with the local authority, though the local authority's decisions typically take precedence when it comes to ensuring the child's safety. For example, if a parent makes a decision that is not in the child's best interest, the local authority can stop this to ensure the child is not exposed to further harm.

Children's Guardian:

Appointed by the court from the Children and Family Court Advisory and Support Service (Cafcass), a children's guardian represents the child's interests independently of the local authority and the parents. They provide recommendations to the court based on the child's needs and welfare.

Police:

In situations where a child is at immediate risk of harm, the police have the authority to place the child under police protection for up to 72 hours (usually within care). This gives the local authority time to apply for an emergency protection order or other necessary legal orders. The Police are the only professional that has powers to make a children immediately safe and remove children from their home without a court order.

In summary, whilst the local authority hold a significant role in making decisions for a child during care proceedings, particularly regarding immediate safety, the court oversees the process and has the final say. Parents have the opportunity to have a say in decisions being made, and other professionals, including children's guardians and health professionals, also contribute to ensuring the child's welfare.

Threshold Criteria for Care Proceedings

What is Threshold Criteria

The threshold criteria are used in child protection cases in the UK to determine whether a child's circumstances are serious enough to justify the intervention of the court. It involves proving that a child is suffering, or is likely to suffer, significant harm. This harm could be physical, emotional, or psychological, and it must be clear that the harm is due to the care provided by the parent or guardian. Essentially, the criteria set a high bar for intervention, ensuring that the court only gets involved when absolutely necessary to protect the child's welfare. Therefore, care proceedings are initiated when a local authority believes a child is suffering or is likely to suffer significant harm. Information must be gathered to prove the threshold criteria for intervention are met.

What is needed to understand if Threshold is met

- **Evidence of Harm:** They collect information showing that the child has suffered or is at risk of significant harm. This could be through medical reports, witness statements, or observations of the child's condition and behaviour.
- **Assessments:** Professionals such as social workers, psychologists, or doctors may carry out assessments to evaluate the child's physical and emotional wellbeing and the quality of the care they are receiving.
- **Family History:** They look at the family's history to understand any patterns of behaviour or past incidents that might indicate ongoing risk or neglect.
- **Professionals and Witness Testimony:** Statements from teachers, doctors, neighbours, or others who interact with the child can provide insights into the child's situation and wellbeing.
- **Case Records:** Reviewing records of previous interventions or concerns can help establish a history of issues affecting the child.
- **Direct Observations:** Social workers may observe the child's living conditions and interactions within the family to assess their safety and welfare.

Key Legislation Governing Care Proceedings

Children Act 1989

- **Section 31:** Establishes the threshold criteria for making care and supervision orders.
- **Section 38:** Governs interim care orders and supervision orders that can be made while proceedings are ongoing.
- **Section 47:** Imposes a duty on local authorities to investigate if they have reasonable cause to suspect that a child in their area is suffering, or is likely to suffer, significant harm.

Human Rights Act 1998

- Incorporates the European Convention on Human Rights (ECHR) into UK law.
- Relevant rights include the right to a fair trial (Article 6) and the right to respect for private and family life (Article 8).



What is the Welfare Checklist and the Threshold Criteria

Welfare Checklist (s1 (3) of the Children Act 1989)

When a court has to make a decision about a child's upbringing, they use a list called the "welfare checklist" to make sure they think about everything important for the child's well-being. Here's what's on the checklist:

- **The child's wishes and feelings:** The court will consider what the child wants, depending on their age and understanding. So, if you're old enough to express your thoughts, the court wants to know how you feel about the situation.
- **Physical, emotional, and educational needs:** They will look at what the child needs to be healthy, happy, and able to learn. This means making sure they have a safe place to live, enough food, and support for your school work and emotions.
- **The likely effect of any change in circumstances:** The court thinks about how changes, like moving to a new home or changing schools, might affect the child.
- **Age, sex, background, and other characteristics:** They consider the child's age, whether they are a boy or girl, their culture, religion, and anything else that makes them unique.
- **Any harm the child has suffered or is at risk of suffering:** They look at any past harm the child might have experienced and try to prevent any future harm.
- **How capable each parent or guardian is:** The court assesses how well each parent or person caring for the child can meet their needs and keep them safe.
- **The range of powers available to the court:** They think about all the different options they have to help you and the child and family.

Threshold Criteria (s31 (2) of the Children Act 1989)

Before the court can make certain decisions, like taking a child into care, they need to see if the situation meets specific rules, called the "threshold criteria." Here's what they check:

1. **Significant harm:** They look to see if a child is suffering or are likely to suffer serious harm. This could be physical harm, emotional harm, or neglect (not being properly cared for).
1. **Attributable to:** They check if this harm is because of something the child's parents or guardians did or didn't do. For example, if they didn't provide proper care or protection.

In summary, the welfare checklist is used to ensure all important factors about a child's well-being are considered in any decision-making process, while the threshold criteria are used to determine if the situation is serious enough for the court to intervene in a major way.

Family Court Orders

In care proceedings, different court orders are issued at various stages of the proceedings depending on the specific circumstances and the immediate needs of the child. Below is a list of these court orders that may be issued within care proceedings:

Emergency Protection Order (EPO)

Purpose: To provide urgent protection when a child is in immediate danger.

When granted: At the outset of concerns, often before full care proceedings begin.

Interim Supervision Order

Purpose: To provide temporary supervision of the child and to assist, befriend and advise the family.

When granted: During the initial hearings after care proceedings are initiated, if removal from home is not necessary.

Interim Care Order

Purpose: Provide temporary care arrangements for the child while the full case is being considered. Gives the local authority Parental Responsibility.

When granted: during the initial hearings after care proceedings are initiated.



Care Order

Purpose: To place the child under the local authority's care on a long-term basis if the court concludes that the child is at risk.

When granted: At the final hearing, after all evidence and assessments have been reviewed.

Supervision Order

Purpose: To allow the child to stay at home under the local authority's supervision if the court determines that with support, the child can remain safely at home.

When Granted: at the final hearing, as an alternative to a care order.



Family Court Orders Continued...

Placement Order

Purpose: To allow the local authority to place the child for adoption.

When granted: After the final care order if the court decides that adoption is in the child's best interests.

Special Guardianship Order (SGO)

Purpose: To appoint a special guardian for the child, granting them parental responsibility. For alternative carers - family members, friends etc.

When granted: After final hearings. An alternative to a care order or adoption, gives permanent arrangement while maintaining some legal connection to the birth parents.

Child Arrangements Order

Purpose: To set out the living and contact arrangements for the child.

When granted: Can be issued at the final hearing or at any point if living and contact arrangements need formalising.

Deprivation of Liberty Orders for children (DOLs)

Purpose: to ensure that children are not unlawfully deprived of their liberty and their rights are protected.

When granted: When it becomes evident that the care arrangements for a child have significant restrictions to keep them safe.

Secure Accommodation Order

Purpose: To place the child in a secure facility if they are at risk of harm to themselves or others.

When granted: At any stage if the child's behaviour or circumstances necessitate secure accommodation.



Complexities in Care Proceedings

The legal process itself is intricate, involving various statutes, regulations, and guidelines that must be adhered to. Key legislation includes the Children Act 1989, which outlines the grounds for care proceedings and the procedures to follow.

Care proceedings often involve multiple professionals, including social workers, legal representatives, psychologists, medical experts, and children's guardians. Coordinating input and evidence from these diverse sources can be challenging.

Collecting sufficient and accurate evidence to support the case is a meticulous and time-consuming process. It involves assessments, interviews, and sometimes expert testimonies, all of which must be documented and presented in court.

Care Proceedings and Court Orders requires transparency and for all information to be shared with parents and parties within proceedings. Significant decisions for a child must be shared with the Judge. Information about the family may cause upset and conflict.

The range of possible outcomes—ranging from the child being returned to their parents with support measures in place, to long-term foster care, or adoption—requires thorough consideration of the long-term implications for the child.

Sensitivity to cultural norms and ethical considerations must be maintained throughout the process. Different cultural understandings of family and child-rearing practices can complicate assessments and decisions.

Care proceedings must balance the rights and interests of the child, the parents, and the state. This includes considering the child's best interests, the parents' rights to family life, and the state's duty to protect vulnerable children. Balance requires careful and often complex judgments.

There is often urgency in making decisions to ensure the child's immediate safety and long-term well-being. This pressure to act swiftly can add to the complexity, as decisions need to be made with both speed and accuracy.

Decisions made in care proceedings are subject to appeals and reviews, adding another layer of legal and procedural complexity. Each stage requires meticulous documentation and justification of decisions.

Each case is unique, with its own specific circumstances and challenges. Factors such as the child's needs, family dynamics, cultural background, and the nature of the alleged harm add layers of complexity to each case.

Multi-agency working is vital within Care Proceedings. Social workers are often required to provide information, assessments and progress with the courts. This information may come from a variety of professionals working with the children, including but not limited to Education, Health and Carers etc. Information should be shared with the social worker promptly and clearly. Lack of information sharing can result in delay and gaps in information that could impact on future decision making for the child. The Courts can call any professional to provide or give evidence particularly if they are not satisfied with the evidence before them.



HUMAN RIGHTS

Balancing Human Rights in Family Court Public Proceedings

What are Human Rights

Human rights are fundamental rights and freedoms that belong to every person in the world, from birth until death. These rights are based on principles of dignity, equality, and mutual respect, which are shared across cultures, religions, and philosophies. They are protected by international and national laws and are designed to ensure that everyone can live a life of dignity and respect.

Principles of Human Rights Act 1998 – implementation of ECHR in UK

- Rights are enforceable in UK courts
- Where ever possible, there should be compatibility with the Convention Rights
- Convention Rights form a set of binding values for public authorities
- Public authorities must have human rights principles in mind when decisions are made about people's lives
- Human Rights must be part of all policy making

Balancing decisions in Care Proceedings

- Duty to act proportionately – least intervention appropriate
- Positive duty to promote convention rights
- **Absolute Rights** – so fundamental that are absolute (e.g. right to protection from torture, inhuman and degrading treatment, and prohibition of slavery)
- **Limited Rights** – limited under specific and finite circumstances (e.g. right to liberty)
- **Qualified Rights** – interference permissible if justified in law; done with a permissible aim set out in Convention; necessary in a democratic society (e.g. right to respect for private family life)

The European Convention on Human Rights (ECHR) and the Human Rights Act (HRA)

The ECHR and the Human Rights Act 1998 work together to protect human rights in the UK. The ECHR provides the foundational international framework of rights and freedoms, while the HRA incorporates these rights into domestic UK law, making them enforceable in UK courts. The HRA thus serves as a bridge between the international obligations under the ECHR and the practical enforcement of these rights within the UK legal system.

Key ECHR articles affecting Care Proceedings

2. The right to life
3. Not to be subjected to inhuman or degrading treatment
5. Liberty and security
6. Fair trial
8. Respect for family and private life
14. Not to be discriminated against in enjoyment of rights

Example of how Human Rights are balanced

If court is deciding whether to remove a child from their parents due to allegations of severe neglect.

Human Rights Involved:

- Child's Absolute Right: Protection from harm (Article 3, ECHR - freedom from torture and inhuman or degrading treatment)
- Parents' Qualified Right: Right to family life (Article 8, ECHR)

Balancing Example:

- Child's Absolute Right: The child's right to protection from harm is paramount and non-negotiable.
- Parents' Qualified Right: The parents' right to family life can be restricted if necessary to protect the child's absolute right.

Decision: If evidence shows the child is at severe risk, the court may decide to remove the child from the parents' care to ensure the child's absolute right to protection from harm is upheld, despite infringing on the parents' right to family life.



What is Interim Removal?



Interim removal is a temporary decision made by a court to remove a child from their home while a full court case is still being decided.

Temporary Measure: It's not a permanent decision. The court is still investigating and making a final decision about what is best for the child.



Safety First: The main reason for interim removal is to ensure the child is safe. If there's a concern that the child might be in danger or not properly cared for at home, the court can decide to move the child to a safer place temporarily.

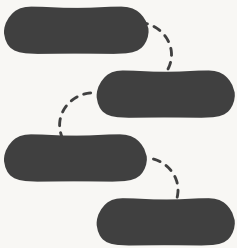
Urgency: Sometimes situations are urgent, and the court needs to act quickly to protect the child, even before all the facts are fully known.



When Might Interim Removal Happen?

Evidence of Harm: If there is evidence that the child is being harmed or is at serious risk of harm. This could be physical abuse, emotional abuse, neglect, or any situation that puts the child's well-being in danger.

Investigation Ongoing: While children's services and other professionals are still investigating the case, they might recommend interim removal to keep the child safe.



What Happens During Interim Removal?

Temporary Care: The child might be placed with another family member, a foster family, or in a children's home. The goal is to find a safe and supportive environment.

Court Reviews: The court will keep reviewing the situation regularly to make sure the child is safe and to check on the progress of the investigation.

Final Decision: Once the court has all the information it needs, it will make a final decision about the child's long-term living situation. This could mean returning the child to their parents, placing them with relatives, or other arrangements that ensure the child's safety and well-being.



Key Points to Remember

- **Protective Action:** Interim removal is about protecting the child first and foremost.
- **Temporary:** It's a short-term solution whilst the court figures out the best long-term plan.
- **Regular Reviews:** The court keeps a close eye on the situation to make sure the child remains safe during the interim period.

Police Powers to Protect



Police protection

The police in the UK have specific powers to protect children who are at risk of significant harm. These powers are governed by various laws and pieces of legislation aimed at ensuring the safety and welfare of children.

1 Relevant Legislation

1. Children Act 1989
2. Police and Criminal Evidence Act 1984 (PACE)

2 Police Protection Powers Under the Children Act 1989

Section 46 of the Children Act 1989 gives the police the authority to take immediate action to protect a child in situations where there is an imminent risk of significant harm. This is known as a "police protection". Police are the only public agency that can remove a child from their home without a court order.

3 Key Provisions of Section 46

- 1. Taking a Child into Police Protection:** A police officer who has reasonable cause to believe that a child would otherwise be likely to suffer significant harm can: Remove the child to suitable accommodation and Prevent the child's removal from a hospital or other place where they are currently being accommodated.
- 2. Duration of Police Protection:** The police can keep a child in protection for up to 72 hours. During this period, the local authority must be notified and an application to the courts for an Emergency Protection Order (EPO) may be considered.
- 3. Responsibilities and Welfare:** The child must be moved to a place of safety, such as foster care, a hospital, or any other accommodation agreed upon by the local authority. The police must inform the local authority and parents or guardians as soon as practicable. The child's welfare is paramount, and any actions taken should aim to safeguard and promote their well-being.
- 4. Release from Police Protection:** The child must be released from police protection if the criteria for their detention no longer apply. If an EPO is not obtained within the 72-hour period, the child must be returned to their parents or guardians unless there are other legal grounds to continue protection.

4 Summary

Police powers to protect children in the UK are essential for immediate intervention in situations of significant harm. Governed by Section 46 of the Children Act 1989 and supported by provisions in the Police and Criminal Evidence Act 1984, these powers enable the police to act swiftly to safeguard children. Collaboration with local authorities ensures that children receive the necessary care and protection following police intervention.

Understanding Section 20 of the Children's Act 1998

Key Points

WHAT AND WHY	<p>Section 20 of the Children's Act 1989 is a pivotal piece of legislation that outlines the duty of local authorities to provide accommodation for children in need in their area.</p> <p>A Section 20 agreement is a way for parents and social services to work together to decide that a child will live somewhere else temporarily.</p> <p>Family Issues: Sometimes, families face problems like health issues, housing problems, or other difficulties that make it hard for parents to take care of their children properly.</p> <p>Short-Term Solution: It's meant to be a short-term solution until the parents can get back on their feet and take care of their child again.</p>
HOW?	<p>Voluntary Agreement: This means that parents agree to let social services look after their child for a while. It's not a court order; it's something parents agree to.</p> <p>Temporary Care: The child might stay with relatives, in foster care, or in a children's home. The idea is to make sure the child is safe and well-cared for during this time.</p> <p>No Court Involvement: Because it's an agreement, there's no need for a court to get involved initially. It's a way to keep things more straightforward and cooperative between the parents and children's services.</p>
COMPLICATIONS	<p>Lack of Legal Representation: Parents might not always understand their rights fully and may not have a lawyer to help them. This can sometimes lead to misunderstandings or feeling pressured to agree.</p> <p>Indefinite Time: Although it's supposed to be temporary, sometimes children stay in care longer than expected, which can be confusing and upsetting for everyone involved.</p> <p>Withdrawal of Consent: Parents have the right to change their mind and ask for their child to come back home, but this can sometimes be a complicated process, especially if children's services think the child might not be safe yet.</p> <p>Misunderstandings: Sometimes, parents might not fully understand that they can say no or that they can set conditions on the agreement. This can lead to feeling like they've lost control over the situation.</p>
WHO	<p>Section 20 is an agreement between parents/carers and the local authority. It is usually completed with the child's social worker. Parents must sign and understand the Section 20 agreement for it to take effect. If there are concerns with a parents capacity to understand Section 20 agreement should not be used. Parents retain their Parental Responsibility and the local authority does not obtain any with a Section 20, therefore parents continue to make all decisions for their child/ren.</p>

Understanding Section 20 of the Children's Act 1998

for Professionals

Introduction

Section 20 of the Children's Act 1998 is a pivotal piece of legislation that outlines the duty of local authorities to provide accommodation for children in need in their area. This section is often used in practice by social workers to ensure the welfare and safety of children.

The Right to Family Life

The right to family life is a fundamental principle that underpins all aspects of social work, including the application of Section 20. The European Convention on Human Rights (Article 8) protects the right to respect private and family life, home, and correspondence. This right applies to everyone, including children and their families.

In practice, this means that social workers should always strive to keep children within their families wherever possible and appropriate. Removing a child from their family and accommodating them under Section 20 should only be considered as a last resort when all other options have been exhausted and it is in the child's best interests.

Principles of Section 20

The main principles of Section 20 are:

Voluntary Accommodation:

Section 20 is a voluntary agreement between the local authority and the parents or guardians of the child. The parents retain their parental responsibility and can remove the child from the accommodation at any time.

Child's Welfare Paramount:

The child's welfare is the paramount consideration. The local authority has a duty to safeguard and promote the welfare of the child.

Partnership with Parents:

The local authority should work in partnership with the parents or guardians, taking their views into account when making decisions about the child's accommodation.

Appropriate Accommodation:

The accommodation provided must be appropriate to the child's needs and circumstances.



Section 20 and Application in Practice

In practice, social workers should use Section 20 in the following ways:

- **Assessing the Child's Needs:** Carry out a thorough assessment of the child's needs to determine whether accommodation under Section 20 is necessary and appropriate.
- **Working with Parents:** Engage with the parents or guardians to explain the purpose and implications of Section 20. Obtain their agreement before accommodating the child.
- **Regular Reviews:** Regularly review the child's situation to ensure that the accommodation continues to meet their needs and that it remains in their best interests.
- **Planning for the Future:** Work with the child, parents, and other relevant professionals to plan for the child's future, including the possibility of returning home.

Limitations of Section 20

While Section 20 is a powerful tool, it's important to be aware of its limitations:

- **No Time Limit:** There is no statutory limit on how long a child can be in Section 20 accommodation. However, keeping children in Section 20 arrangements without initiating care proceedings could breach the law and prevent children from having a permanent place to call home.
- **Misuse and Abuse:** There have been instances of misuse and abuse of Section 20, such as using it as a long-term prelude to care proceedings. This misuse has led to criticism and potential breaches of human rights.
- **Lack of Parental Understanding:** Parents may not fully understand the implications of Section 20, leading to potential issues. Social workers must ensure parents are fully informed and their consent is obtained.
- **Inadequate Planning:** Failure to regularly review the child's situation and make necessary adjustments can lead to the child's needs not being met adequately.
- **Voluntary Nature:** Section 20 is a voluntary agreement, and a person with parental responsibility may remove the child at any time. This can potentially disrupt the child's living arrangements, stability and result in them returning to an unsafe environment.

Conclusion

Understanding and correctly applying Section 20 is essential for social workers to ensure the best outcomes for children in need. It is a powerful tool that, when used appropriately, can significantly improve a child's circumstances and future prospects. However, it should always be used with the understanding that every child has the right to family life and that the best place for a child is usually within their own family.

Please note that this is a brief summary and does not cover all aspects of Section 20. For a more comprehensive understanding, please refer to the full text of the Children's Act 1998 and relevant case law. Always seek legal advice if you are unsure about the application of Section 20 in a particular case. Remember, the welfare of the child is always paramount.



Children's Legislation

The Basics



Children are protected under many different pieces of legislation and the law is often complex and confusing to understand. To give an overview and some basic information below are many (but not limited to) different pieces of legislation and their main principles for children.

1. Children Act 1989

- **Paramountcy Principle:** The child's welfare is the court's paramount consideration in any decision.
- **No Delay:** Cases should be handled without unnecessary delay.
- **Parental Responsibility:** Defines parental rights and duties towards the child.
- **Welfare Checklist:** Courts consider a range of factors, such as the child's wishes, needs, and the effect of any change of circumstances, to determine the child's best interests.
- **Child Protection:** Establishes the legal framework for child protection in England and Wales, including care and supervision orders.

2. Children Act 2004

- **Integration of Services:** Promotes cooperation between agencies to improve child welfare.
- **Local Safeguarding Children Boards (LSCBs):** Establishes the requirement for LSCBs to ensure that agencies work together to protect children.

3. Children and Families Act 2014

- **Support for Families:** Emphasizes supporting families to provide better outcomes for children, including the reform of the adoption process and special educational needs provision.
- **Family Justice:** Introduces a 26-week time limit for completing care and supervision proceedings to reduce delays in decision-making.
- **Parental Involvement:** Promotes the involvement of both parents in a child's life after separation, where it is safe and in the child's best interests.

4. Adoption and Children Act 2002

- **Child-Centred Adoption:** The welfare of the child is the court's paramount consideration in adoption cases.
- **Adoption Process:** Provides the legal framework for adoption in England and Wales, ensuring that adoption decisions are made in the best interest of the child.
- **Contact:** Addresses post-adoption contact between the child and birth relatives.

5. Education Act 2002

- **Safeguarding in Schools:** Places a duty on schools to safeguard and promote the welfare of children.
- **Duty to Report:** Requires schools and local authorities to report cases of suspected abuse to appropriate agencies.



Children's Legislation

The Basics Continued...

6. Children and Social Work Act 2017

- Corporate Parenting Principles: Local authorities must act in the best interests of children in their care.
- Care Leavers: Enhances support for care leavers, including the provision of a personal adviser up to the age of 25.
- Child Safeguarding: Strengthens arrangements for local child safeguarding partnerships.

7. Family Law Act 1996

- Non-Molestation Orders: Provides protection from domestic violence, including orders to protect children.
- Occupation Orders: Allows the court to decide who can live in the family home, particularly where children are involved.

8. Children (Leaving Care) Act 2000

- Support for Care Leavers: Ensures that young people leaving care are provided with the necessary support, including accommodation and personal advisers, to transition to independent living.

9. The Care Act 2014

- Adult Safeguarding: While primarily focused on adult care, the Act also impacts young people transitioning from children's services to adult services, ensuring continuity of care.

10. Protection of Children Act 1999

- Safeguarding: Introduces the framework for checking individuals working with children, including the creation of a list of individuals considered unsuitable to work with children.

11. Working Together to Safeguard Children 2023 (Statutory Guidance)

- Responsibility: Safeguarding is EVERYBODY'S responsibility.
- Interagency Collaboration: Sets out the duties of local authorities, schools, and other agencies in working together to safeguard children.
- Child-Centred Approach: Emphasises placing the child's needs at the centre of safeguarding efforts.

12. The Children and Young Persons Act 2008

- Improvement of Care Standards: Enhances the care system for looked-after children, focusing on improving care standards and outcomes for children in care.

13. Human Rights Act 1998

- Human rights are fundamental rights and freedoms that belong to every person in the world, from birth until death. These rights are based on principles of dignity, equality, and mutual respect, which are shared across cultures, religions, and philosophies.

Legal Capacity & Consent for Children and Young Adults

The legal framework surrounding capacity and consent for children and young adults under 18 is governed by various pieces of legislation and principles that address their ability to make decisions, particularly in medical and social care contexts.

Key Legislation

- **Family Law Reform Act 1969**
- **Children Act 1989**
- **Mental Capacity Act 2005** (though primarily for those over 16)
- **Human Rights Act 1998**
- **Children and Families Act 2014**

Principles

- **Best Interests:** The child's welfare and best interests are the paramount consideration in all decisions made by courts or professionals.
- **Evolving Capacity:** Recognises that as children grow older, their ability to make decisions increases.
- **Child-Centered Approach:** Decisions should consider the child's views and feelings in accordance with their age and understanding.

Gillick Competency

What is Gillick Competency: Gillick competency stems from a 1985 legal case (Gillick v West Norfolk and Wisbech Area Health Authority), where the UK House of Lords determined that a child under 16 could consent to their own medical treatment without the need for parental permission or knowledge, provided they have sufficient maturity and understanding to fully comprehend the proposed treatment. This principle has since been extended beyond healthcare to other areas where capacity and consent are relevant.

Criteria for Gillick Competency

- **Maturity and Understanding:** The child must have enough intelligence, competence, and understanding to fully appreciate the implications of the treatment or decision.
- **Decision-Specific:** Competency is not an all-or-nothing status; a child might be competent to make some decisions but not others.
- **Balancing Autonomy and Protection:** The principle strikes a balance between respecting the autonomy of young people and ensuring they are protected from harm.

Refusal of Treatment

- **Under 16:** If a Gillick-competent child refuses treatment, healthcare providers may seek a court order to override the refusal if it is in the child's best interests.
- **Aged 16-17:** A young person's refusal of treatment is more complex. While they can consent to treatment, their refusal can be overridden by a parent or the court if it's in their best interests, particularly in life-threatening situations.



Legal Capacity & Consent for Children and Young Adults Cont...

Fraser Guidelines

The Fraser guidelines were developed alongside Gillick competency specifically for providing contraceptive advice to under-16s without parental consent, but the guidelines are also used in broader contexts. The key considerations are:

- The young person understands the professional's advice.
- The young person cannot be persuaded to inform their parents or allow the professional to inform them.
- The young person is likely to begin or continue having sexual intercourse with or without contraceptive treatment.
- Without contraceptive treatment, the young person's physical or mental health is likely to suffer.
- The young person's best interests require the professional to give contraceptive advice, treatment, or both without parental consent.

Mental Capacity Act 2005 (for those 16 and over)

While the Mental Capacity Act 2005 primarily applies to those aged 16 and over, it is relevant for young adults nearing this age and can intersect with Gillick competency in assessing decision-making capacity. The Act's principles include:

- **Presumption of Capacity:** Every adult (and young person over 16) is assumed to have capacity unless proven otherwise.
- **Right to Make Unwise Decisions:** Individuals have the right to make decisions that others might consider unwise.
- **Best Interests:** Any decision made on behalf of someone lacking capacity must be in their best interests.
- **Least Restrictive Option:** Any intervention should be the least restrictive of the person's rights and freedom of action.

Parental Responsibility and Consent

- **Under 16:** Generally, parents or guardians have the legal right to consent to treatment for their children. However, Gillick competency allows for exceptions where the child can consent on their own behalf.
- **Aged 16-17:** The Family Law Reform Act 1969 gives 16 and 17 year olds the legal capacity to consent to medical treatment as if they were adults. However, parents retain the ability to consent on their behalf in some situations, although this is a complex area of law.

Confidentiality

Children and young people have a right to confidentiality, even from their parents, if they are deemed competent. This principle is particularly significant in areas such as sexual health, mental health, and substance misuse services. However, confidentiality may be breached if the young person is at risk of serious harm.

Care Proceedings Fact Sheet

Legal Framework

Family care proceedings are primarily governed by the Children Act 1989, which sets out the responsibilities of local authorities and the legal framework for protecting children at risk.

Threshold Criteria

For a local authority to initiate care proceedings, it must demonstrate that the child is suffering or is likely to suffer significant harm due to inadequate parental care or the child being beyond parental control.

Interim Care Orders

During the proceedings, the court may issue an ICO, placing the child temporarily in the care of the local authority while the case is being decided.

Parental Rights

Parents retain their parental responsibility even if a care order is made, although the local authority gains the power to make decisions about the child's care and welfare.

Care Plan

The local authority must present a detailed care plan outlining how they intend to care for the child, including where the child will live and the support they will receive.

Representation and

Advocacy

Both the child and the parents are entitled to legal representation. The child is usually represented by a Children's Guardian, an independent advocate appointed to represent the child's best interests.

Appeal Process

Decisions made by the family court can be appealed. Parents, children, or the local authority can appeal if they believe there has been a significant error in the handling of the case.

Duration and Review

Care orders are usually reviewed periodically. Care Proceedings should conclude within 26 weeks, unless the Judge authorises otherwise.

Possibility of Reunification

The goal of family care proceedings is not always to remove the child permanently but to ensure the child's safety and welfare. Efforts may be made to support the parents to rectify issues and reunite the family if it is in the child's best interest.

