

CHILDREN AND THE LAW

when social services are involved

The prospect of local authority involvement with children can be terrifying for many parents, but children are very rarely removed from their families. It is important that non-abusive parents of children who have been sexually abused have a full understanding of social services involvement and get clear information on their rights.

If the social services department of your local authority consider that your child is at risk of harm or is in need of help, they have a duty to investigate what actions they should take to help you and your family and to protect your child or promote your child's welfare. If you report to the police or social services that your child has experienced sexual abuse then social services should investigate the situation. The local authority should work with you and support you and your child.

This is a very complex area of law and if the local authority are involved with you and your child it is important that you seek legal advice from a solicitor who is a member of the Law Society Children Panel as soon as possible. You may be eligible for free legal advice regardless of your means (see **Useful Contacts**).

This legal guide provides an overview of the law and procedure in relation to local authority children proceedings from the point of view of the biological parent. As such, not every section will be relevant to you.

THE LAW

The law relating to child care proceedings and local authority support for children is set out in the **Children Act 1989** (CA 1989).

PARENTAL RESPONSIBILITY (PR)

Those who have parental responsibility (PR) can make or be involved in the important decisions necessary in your child's life including education, health, medical treatment, and the day to day care that is provided to your child. If you are the biological mother you will have PR automatically, for more information on who has PR see **Children and the Law: Contact, Residence and Parental Responsibility** and Rights of Women's **Guide to Parental Responsibility**. A local authority social services department can also get PR for a child if the court makes a care order in respect of that child. The local authority will then share that PR with anyone else who has PR for the child but the local authority can overrule any decisions that they do not consider are in the child's best interests.

LOCAL AUTHORITY

Protecting children and supporting families

The primary responsibility for caring for children lies with their parents. Every local authority must take reasonable steps through the provision of services to prevent children in its area suffering harm or neglect.

The local authority are required to work in partnership with parents, ensuring parents will be helped and encouraged to play as full a part as possible in decisions about their child. If a child has been sexually abused, the social services department of the local authority should investigate the situation and take steps to make sure that the child is protected and safe.

If allegations of sexual abuse are made by your child you should inform the police and social services immediately. If the local authority (LA) consider your child is at risk of harm or in need of help, they have a duty to investigate what actions they should take to safeguard your child and promote your child's welfare. An investigation does not mean that the local authority will remove your child from you. If the local authority investigate an allegation of sexual abuse you **may** have to show what steps you have taken to protect your child and what steps you could take. For example, the local authority may want to see that you have ended your relationship with the person the child is alleging sexually abused them.

Local authority's role in supporting children and families

Every local authority must take reasonable steps through the provision of services to prevent children in its area suffering ill-treatment or neglect. This includes a related duty to take steps to support families and reduce the need to remove children from their parents.

Children in need (Part III CA 1989)

The local authority has a duty to protect 'children in need' in its area. The definition of children in need is very broad and can include children who suffer from mental or physical disabilities, as well as children who have experienced sexual or physical abuse.

If the local authority is made aware that your child has alleged sexual abuse then it has a duty to assess whether there are any services it can provide to assist you and your child. If your child has experienced abuse, social services may provide support and counselling to your child and you or the local authority may provide safe accommodation for you and your child, to protect you from the perpetrator of abuse.

Social services duty to investigate (Section 47 CA 1989)

Where the local authority believes a child is suffering or likely to suffer harm **it has a duty to investigate** the child's circumstances. A social worker will be allocated to the case to investigate.

The investigation should involve detailed investigation of the child and her family and may lead to provision of services, for example, accommodation for the child and her non-abusing parent.

As part of this investigation the local authority will request to see your child and you should agree for the local authority to meet with your child.

The purpose of the investigation is to ensure that the child is safe from harm. If social services believe your child has suffered harm or is at risk of suffering significant harm they may start court proceedings. They may apply to the court for a care or supervision order, but this action will only be taken as a last resort and does not mean that your child will be removed from your care provided you are able to keep the child safe.

Why is the person who sexually abused my child not being investigated by the local authority?

The first steps to be taken by the local authority will be to ensure that the child is safe. The role of the local authority is not to hold persons suspected of abusing a child accountable for their actions or to punish them for their behaviour. If the abusive parent is no longer living with the child or in contact with that child then the local authority may not need to assess that person. It is the police's job to investigate any criminal offences committed and the crown prosecution service who makes the decision to charge and the crown court will decide

whether the person who it is alleged has sexually assaulted your child is guilty. For more information see **Children and the Law: The Criminal Justice System and Child Sex Offences**.

If the child continues to live with you then the local authority has a duty to investigate whether the child is safe and this is why you may feel like you are being investigated.

CHILD PROTECTION CASE CONFERENCE

If the local authority investigations indicate that your child has suffered, or is at risk of suffering harm, they may arrange a child protection case conference to consider and decide whether your child should be made the subject of a local authority child protection plan. **The child protection case conference cannot decide to remove your child from your care, only the court can make this decision.** Removal of your child by the LA is something that many parents worry about when a child protection case conference is called. The child protection conference is completely separate to court proceedings and the only decision which the conference can make is whether a child protection plan is necessary and what protection plan is needed to keep your child safe and well. Only a court can order that a child is removed from their parents and this only happens in very serious situations; most children who are the subject of a child protection plan stay at home with their parents / carers. You should however consult a solicitor on the Children Panel and you may be entitled to legal aid.

The child protection conference is a confidential meeting to discuss the welfare of your child. This meeting is usually attended by you and any other persons with parental responsibility, social services, police, support workers, health visitors and nurses. This means the person who is accused of sexually abusing your child may be invited to the conference if they are the child's parent and they have parental responsibility. They are not always invited, particularly, if it would place the other parent at risk or if it is likely they will disrupt the conference. You can ask that you are not in the conference at the same time as the other parent and that you can leave safely.

The social workers will provide a report and confirm the information gathered and their proposed plan of action/support. Other professionals will be asked what they know about your situation and your family. You will be asked to comment on the information gathered and you will be able to give your views on your child's situation. It is important, as the non-abusive parent, that you show how you can protect your child and that your child can be safe in your care. If you are the non-abusive parent of a child who has experienced sexual abuse and you can show that your child will be safe in your care without support and guidance, it is very unlikely that the local authority will make your child subject to a child protection plan. You could show your child is safe by applying for protective injunctions, including, non-molestation orders and occupations orders (for more information see Rights of Women's **A Guide to Domestic Violence Injunctions**.)

You should attend the child protection conference to put forward your views about your children and discuss the concerns and proposed plans. It is very important that you cooperate with the local authority. If you are unable to attend you should ask for the conference to be arranged on a day when you can attend. If the local authority does not agree to this you should ask to submit a letter setting out your views, but you should make your best efforts to attend the conference. You can bring a friend, relative, support worker or a solicitor to the conference. Although you are not allowed to have a solicitor or other person to speak on your behalf at the conference, they can attend and provide you with support you and advise you as to what is going on.

It will only be if the professionals attending the child protection case conference believe that your child is in need of protection they may decide to make your child subject to a child protection plan. The child protection plan will be outlined at the conference and will set out what needs to happen to address the concerns the local authority have, outline steps that you need to take with regard to your child and support that will be provided by the local authority. It may also state whether social services intend to apply to the court for any order and, if so, which order (e.g. care or supervision

order) and their reasons for doing so. The child protection case conference will meet every 3-6 months until the child protection team decide your child is no longer at risk of harm.

What if I am unhappy with the outcome of the child protection case conference?

You may be able to appeal the decision made to make your child subject to a plan and this must be done in writing to the conference coordinator within 5 days. If you are unhappy with the outcome of the case conference you should seek legal advice from a solicitor (see **Useful Contacts**). All agencies involved in the conference are required by the CA 1989 to have their own complaints process. Complaints or representations can be made regarding unwelcome or disputed decisions, concern about the quality and appropriateness of services, or about the delivery or non-delivery of the services.

CHILD PROTECTION PLAN

If a child protection plan is necessary, a core group meeting of the key professionals will be arranged approximately 10 days after the case conference and should then meet regularly to review the situation. The purpose of the core group meeting is to ensure that what was discussed at the child protection conference is put into action and to keep the child protection plan under review. You should attend and participate in the core group meeting to discuss the progress of the plan for your child and how you see the situation, as well as what help you think you or your child need.

A child protection plan does not mean that your child will be removed from your care. Where there is evidence that a child has been sexually abused, the local authority will often have to put a child protection plan in place to monitor your child and to assist you in taking care of the child so that she is safe, and ensure that you engage with any services which are put in place.

Voluntary agreements

Despite being the non-abusive parent of a child who has been abused, the local authority will want to be sure that you will protect your child

from further harm. You may be asked to enter a voluntary agreement that your child will not come into contact with the abusive person and that you will live in a certain place.

CARE PROCEEDINGS

If the social services department of your local authority believe your child has suffered harm or is at risk of suffering harm because of the care provided to the child or a lack of care, they can apply for a court order to either supervise the child in your care or to remove your child from your care and allow the local authority to make decisions about your child. The legal process is often referred to as care proceedings. **Care proceedings** can be initiated by the local authority or by the NSPCC. Initiating care proceedings does not mean that your child will be removed from your care. A decision to remove children from their parents is only made after very serious investigation and assessment and consideration of all the relevant circumstances by the court as it affects the lives of all those involved. The court's first consideration is the welfare of your child. The court will only make an order to remove your child from your care if it decides that your child is likely to suffer significant harm and that it is necessary to protect your child's best interests. As the non-abusive parent of a child who has been sexually abused you will need to show that you are able to protect your child from harm and that you have and will continue to take all the necessary steps to protect your child. If your child has made an allegation of sexual abuse, you should inform the police as soon as possible.

Care proceedings are extremely complicated and legal advice from a Children Panel solicitor should be sought if social services become involved with your family. As a parent with PR, you are automatically entitled to free legal aid for care proceedings.

EMERGENCY SITUATIONS

Police protection orders

If social services think your child needs immediate protection from some kind of harm they can ask the police to place your child under police protection, which allows the police to take your child and place

them in temporary foster care for up to 72 hours. For example, the police might immediately remove your child from school or from her home for a short period of time. The decision about whether to place the child under police protection is made by the police.

Emergency protection order (EPO)

If there is an emergency situation and the local authority have a reasonable belief that your child requires immediate protection the local authority or any other person can apply to court for an **emergency protection order** (EPO). If there are exceptional circumstances and the court believes your child will be in danger of harm if they are not removed from the place they are living and provided with accommodation by the local authority or a relative, it can make an EPO. In addition, to the court's powers to order the removal of a child, they can also make an **exclusion order**. An exclusion order can require that the person who is alleged to have caused the abuse must leave the family home for the duration of the order. This is useful in situations where the significant harm or threat of significant harm would cease if a person was removed from the family home. For example, if the perpetrator of abuse is residing in the family home and there is a non-abusive parent also living there, the court can make an exclusion order to restrict the abuser's ability to occupy the family home. An EPO usually lasts for 8 days but it can be extended.

An EPO can also be made if there is concern that you will move the child from a place where she is currently safe and that an order is required to ensure the protection of the child.

If an EPO is made your child may be removed from you and placed in foster care or with a relative **temporarily**. This does not end your PR for your child but it means you will share PR with social services for the duration of the EPO. The local authority can limit the extent that you can exercise your parental responsibility, but they must act in your child's best interests.

If you show that you can ensure your child's safety, your child should be returned to you within 8 days. You might be encouraged to apply for a

residence order and offered assistance by the local authority (see **Children and the Law: Contact, Residence and Parental Responsibility**). If the Local Authority consider that they need to share parental responsibility with you for longer and/or retain the child in foster care they must commence care proceedings.

WHEN CAN THE COURT DECIDE WHETHER TO MAKE A CARE OR SUPERVISION ORDER?

Step 1: Threshold criteria

The court will only consider making a care or a supervision order (for details of these orders see below) if the **threshold criteria** are satisfied. These are the minimum conditions which the court must be satisfied of before it can even consider whether to make a child subject to a care or supervision order, which could result in the child being removed from your care. The threshold criteria are that the court must decide that your child is suffering or is likely to suffer significant harm; and the harm is caused by the fact that the standard of care that is being given to the child by her parents is not satisfactory; or your child is beyond parental control.

Significant harm is defined as ill-treatment or the impairment of (injury to) health or development. Examples of significant harm include direct physical or sexual abuse; as well as serious neglect, as a result of drug or alcohol abuse; or emotional or psychological impairment (harm) caused to your child by seeing or hearing domestic violence; or failure to protect a child from sexual abuse. Parents have a duty to protect their children from harm and danger. In some situations the court may view that a non-abusive parent has failed to take appropriate steps to protect their child from harm, including sexual abuse, and may decide that the threshold criteria has been met.

Step 2: Welfare principle

Only when the threshold criteria have been met can the court go on to consider whether it is **necessary** to make a care or supervision order to protect your child's best interests.

When the court is making the decision about whether to make an order and what type of order to make, the law says that the child's welfare must be the court's "paramount consideration." This means the court must consider the child's welfare above everything when making the decision; and in particular the court must address the **welfare checklist**:

- your child's wishes and feelings, depending on her or his age and understanding (generally the older the child is, the more attention the court will pay to those wishes and feelings although this will depend on their level of understanding)
- your child's particular needs – physical, emotional and educational needs (this includes practical needs such as accommodation and food, as well as love and affection)
- the likely effect on your child of a change of circumstances and the effect of being removed from his or her family
- your child's age, sex, background and any of the other characteristics which are considered relevant (this includes your child's religious and cultural needs as well as your child's age)
- any harm, abuse, or neglect your child has suffered or is at risk of suffering (this includes any risk of sexual, physical or emotional abuse and any domestic violence your child has seen or heard)
- how capable you and anyone else with parental responsibility (or anyone the court considers relevant, such as relatives or friends who your child might live with) are of meeting your child's needs
- the court must consider the range of different orders it can make and decide whether an order is required and if so, which is most appropriate order. The court may decide it is not necessary to make a supervision or care order, as a residence order in your favour might be the appropriate solution even if the threshold criteria are met.

CARE ORDERS

If the local authority believes that your child has suffered harm or is at risk of suffering significant harm and there is a real possibility that they will suffer harm in the future they can apply to the court for a care order. If a care order is made your

child may continue to live with you, but this is very unlikely and it is most likely your child will be moved to live with another relative or placed with foster parents. You will continue to have PR for your child but you will **share** PR with the local authority and any other person who has PR. If there is an interim care order the local authority will decide the extent to which you can exercise your PR and can overrule decisions that you make with regard to issues, such as your child's education, if that is in the child's best interests. If the local authority is going to apply for a care order they must produce a **care plan**. The care plan will detail your child's needs and how the local authority propose to meet with these and what orders, including care and supervision orders, they intend to apply to court for and their reasons for doing so.

As the non-abusive parent you will have to show that you have taken appropriate steps to protect your child and that your child can be protected from harm in your care, in order to avoid the need for a care order. For example by ending your relationship with the abuser, cooperating with the police investigations and seeking protective injunctions at the family court (see Rights of Women's **Guide to Domestic Violence Injunctions**.)

Interim care order (ICO)

Once an application for a care order has been made by the local authority the court can make an interim (temporary) care or supervision order.

If an **interim care order** (ICO) is made your child may live with you, although this is very unlikely. It is more likely that the local authority will place your child with foster carers or a relative from the date the ICO is made until the court makes a final decision on whether to make a more long term order, (such as a final care order or supervision order) or return the child to your care. This means the local authority will obtain PR for your child and will be involved in the important decisions with regard to your child and can overrule your decisions.

An **exclusion requirement** can be made as part of an interim care order, in situations where the removal of a person from the family home would

also remove the significant harm or threat of significant harm. For example, if the perpetrator of abuse is residing in the family home and there is a non-abusive parent also living there, the court can make an exclusion order to restrict the alleged perpetrator's ability to occupy the family home.

An ICO does not end your PR but it means you will **share** PR jointly with the local authority and any other person who has parental responsibility, for the duration of the ICO.

An ICO is made by the court to ensure that your child is protected while the court fully investigates your child's circumstances and decides whether a care order or supervision order should be made.

Final care order

If a final care order is made it is unlikely that your child will be able to live with you. In limited circumstances your child may be able to continue to live with you, but most children subject to a final care order are placed in foster care or with a relative. The local authority can apply for a care order, and recommend that your child lives with you.

If the Local Authority is applying for an order the court will consider the evidence and views of all parties and will decide whether any order is necessary and if so what type of order. The court can make any order it considers to be appropriate even if the local authority have not recommended a particular order, for example when the local authority have applied for a care order, the court could decide to make a residence order (see **Children and the Law: Contact, Residence and Parental Responsibility**) in your favour coupled with a supervision order (see **Supervision orders**). Your child may be placed to live with foster carers or family members. The local authority should do its best to place your child with a family member, but this is not always possible. Foster carers act as substitute parents and will provide day to day care for your child. In most circumstances you will be able to have contact with your child (see **Contact**). If a final care order is made you will remain your child's legal parent. The order will usually last until your child is 18, she marries or it is changed or ended by the court. Sometimes the court will make a care order that allows your

child to continue to live with you, although this is unlikely.

As a parent with PR you must be kept informed at every stage of the court proceedings. You will automatically be entitled to free legal advice and you can attend with legal representation and oppose the making of a care order. If your child has alleged abuse against her father, he can also attend the care proceedings with representation. The court has a duty to consider your views before making a decision with regard to making a care order.

Care proceedings are very complicated and you are entitled to free legal advice and representation from a solicitor (see **Useful Contacts**).

As the non-abusive parent of a child who has been abused you may be encouraged by the local authority to apply for a residence order or injunction orders, as an alternative to the local authority bringing care proceedings.

Changing or ending a care order

A care order usually lasts until your child is 18, he or she marries or it is changed or ended by the court.

If you are not happy with the court order you should ask your solicitor for advice on whether there are grounds of appeal (see **Appeals**).

Alternatively, you can apply to have a care order discharged (ended) but can only do so once 6 months has passed from the making of a care order.

In addition, your child or your child's solicitors or the local authority can apply to end the care order in the same way.

If an application to discharge the care order is unsuccessful you must wait 6 months or seek the court's permission to apply again to have the care order brought to an end. If the care order is discharged by the court, care of your child will be returned to you and anyone else with PR.

Contact

The local authority has a duty to promote contact between children and their parents, unless it is not practical or would interfere with your child's welfare. Any contact order already in place is

discharged (ended) when a care order is made. If your child is accommodated in foster care the local authority can decide on what type of contact each parent has with the child, including whether there should be **direct contact**, which is where you will see your child face to face.

If care proceedings have commenced, the court can make an interim contact order to set out the arrangements for contact. Contact may be supervised at a contact centre if there are concerns which mean unsupervised contact is not in the child's best interests. Alternatively, the local authority will often allow **indirect contact** with children. This is where your child will not visit a parent but may be able to speak on the telephone and exchange letters.

Contact with the abusive parent

If the abusive parent is not allowed to have contact with your child or he is unhappy with the level of contact that he has been given with your child, during the care proceedings he can ask the court to consider interim contact arrangements. He can also make an application for contact to be heard when the court decides whether to make a care order. If a care order is made and an application for contact by the father of the child is refused by the court, he cannot make another application for contact for 6 months unless he receives the permission of the court. If the abusive parent is in prison, the court and the local authority are likely to view that regular contact is not possible or in the child's best interests.

A contact order may be varied or discharged by an application made to court by anyone with PR, the local authority or your child.

SUPERVISION ORDERS

Rather than making a care order the court can make a **supervision order**. A supervision order usually means that your child can live at home but you will be supervised by the local authority or a probation officer who will visit you and monitor your child. As the non-abusive parent of a child the court might make a Residence order in your favour coupled with a supervision order. This means your child will live with you but be subject to supervision by the local authority.

The effect of a supervision order is less severe than a care order. You will retain full PR for your child but the local authority will advise and assist you in caring for your child. A supervision order can be made for up to one year and can be extended by the court for 2 more years. The supervision order will often have requirements attached to it designed to help your child. You might be required to ensure your child does not come in contact with their abuser; or you may be required to undergo some kind of treatment, for example, drug/alcohol abuse treatment or parenting classes.

SPECIAL GUARDIANSHIP ORDERS

The Adoption and Children Act 2002 created a new type of order called a special guardianship order (SGO) as an alternative to adoption.

A **special guardianship order** (SGO) is often made in favour of relatives, where a child cannot live with their parents, but there is a family member or person close to the family who is able to care for the child. It is appropriate where a child would benefit from a permanent relationship with their day to day carer(s) and also some continued contact and links with his or her birth parents (although sometimes only limited contact is possible). If the court is considering making a SGO the possible special guardian will have to be assessed by the local authority. A SGO cannot be made in favour of biological parents.

The special guardian of your child will have PR and will be responsible for all the day to day decisions involved in caring for your child and for making decisions about his or her upbringing, for example your child's education. In law you will remain your child's parent and you will continue to have PR but the extent to which you can exercise PR will be very limited. A SGO will end a previous care order.

This order is intended to be a permanent order but you can apply to end a SGO. You will need to have the permission of the court to do this. In order to secure the court's permission you will have to show the court that there has been a significant change in circumstances since the special guardianship order was made. If you would like to apply to end a SGO please seek legal advice from a solicitor (see **Useful Contacts**).

ADOPTION

Even if you do not want your child to be adopted the court can decide that your child should be adopted without your consent. The local authority can apply to the court for a Placement Order to give them authority to place your child for adoption without your consent. This application will only be made if the local authority has applied for a care order in respect of your child and the care plan is for the child to be placed in an adoptive placement. The court must be satisfied that the threshold criteria (see below) have been met before considering whether your child should be placed for adoption and be satisfied that a Placement Order is in the best interests of your child.

When a placement order is made, any existing care order is suspended and any contact or residence orders that are in place will no longer have effect, but the court must consider whether to make an order for contact when making the placement order (see **Contact**).

A placement order has a long term effect on both the birth parents and the child. The court will not make a placement order lightly and can only make the order if it is satisfied that it is better for the child to make the order than not to do so.

Adoption is a last resort and is usually only suitable for younger children where there is little or no possibility that their parents will be able to care for them.

Revoking (formally cancelling) a placement order

Usually a placement order lasts until an adoption order is made or your child reaches 18 years old or marries or enters a civil partnership. If a placement order has been made and your child has not been placed to live with possible adoptive parents you can apply to the court for permission to make an application to have the placement order revoked (or brought to an end).

The court will only allow you to make an application to revoke the placement order if you can prove that your circumstances have changed. The court will only decide to revoke the order if it is in the best interests of your child.

Once your child has been placed with possible adoptive parents for 10 weeks, the adoptive parents can apply for a final adoption order. An adoption order will end your PR for your child. If an adoption order is made your child will live permanently with the adoptive parents and you will not have the right to be involved in decisions with regard to your child's life or day to day care. The order will create a new parent / child relationship between the child and his or her adoptive parents. Only the adoptive parents will have PR and it will be as if they are your child's birth parents.

APPEALS

In certain circumstances you may be able to appeal the decision of the family court. You can only appeal where there decision made by the court was wrong in law, there is new evidence or there have been procedural errors; you cannot appeal simply because you are unhappy with the court's decision. There are strict time limits which depend on the level of court which made the decision, if you think you may have a case for appeal, you should seek legal advice as soon as the court has made a final order about the time limits in your particular case. You will need to take advice from your legal team and have their support to show that there are grounds for appeal, in order to apply for legal aid to appeal a decision.

CHALLENGING THE LOCAL AUTHORITY

Making a complaint

The social services department of all local authorities are required by law (CA 1989) to have their own complaints process. Complaints or representations can be made regarding unwelcome or disputed decisions, for example the decision to make a child subject to a child protection plan, concerns about the quality and appropriateness of services provided by the local authority, or about the delivery or non-delivery of the services by the local authority.

If you make a complaint or your solicitor makes a complaint on your behalf and you are unsatisfied with the local authority's response, the matter can

be referred to a review panel which must then make a recommendation of what should happen.

Judicial review

In exceptional circumstances you may be able to have a decision made by the local authority judicially reviewed. You can only use judicial review if all other possible options for reviewing the local authority's decision have been tried. This is a complex area of law and you should seek legal advice from a solicitor as to whether this can be pursued.

Financial compensation for local authority failings

The local authority owes a duty of care to a child in relation to investigating abuse and commencing child care proceedings. For more information seek legal advice from a solicitor.

COURT PROCESS

Children's guardian

A child under 18 years old cannot represent themselves in care proceedings and the court will appoint a **Children's Guardian**. The role of the Children's Guardian is to provide an independent assessment of what outcome would be in your child's best interests. The Guardian will meet you and your family and any professionals who are involved such as social workers and will read social services' file. Your child will also be represented by a solicitor who will treat your child as his or her own client. The solicitor will be instructed by the Guardian, unless the child is older and is considered to be competent to provide instructions direct to the solicitor and has a different view about the orders than the Guardian. Both your child's solicitor and the Guardian should consider the evidence necessary for the court to make an informed decision about the child, often instructing experts to assess his or her needs. The Guardian's report to the court should address the points in the welfare checklist (see below.)

Evidence in care proceedings

Where an allegation of sexual abuse is made this will be central to court proceedings and this means that the court will have to listen to evidence and

decide whether acts of sexual abuse occurred and who was the perpetrator. The purpose of the family court in child abuse cases is different to the criminal court. The family court is not concerned with the detection of crime. The focus in the proceedings is the child and protection of the child

Evidence that may not have been allowed in the criminal trial against your child's father, for example, information given by a support worker or a GP that your child had behaved strangely or that your child had disclosed sexual abuse would be allowed to be used in the family court. In fact ALL relevant information must be brought to the attention of the court and then the judge will decide whether this information can be used in the hearing and how much weight it should be given.

Generally where a child is 12 or under the view is that it is usually in the child's best interests not to give oral evidence. Evidence other than oral evidence from your child can be considered by the court, for example – a letter, a picture or a note from the guardian of what the child has said. The court will also usually be provided with the police and social worker interviews of your child as evidence.

The abusive parent will be a party to proceedings along with you, the child through her Children's Guardian and the local authority. Sometimes other relatives may be parties if they have a particular interest in the case, for example, they would like the child to live with them.

This means that the abusive parent will be invited to all hearings and have the opportunity to put forward their version of events and produce evidence.

Burden of proof in care proceedings

If the alleged perpetrator of sexual abuse has been investigated by the police and this investigation did not result in criminal charges, or the perpetrator was acquitted at the criminal trial, this does not mean that you or your child has not been believed. This is because the jury in a criminal case have to decide whether the defendant is guilty and they can only decide this if they are sure as to their guilt (see **Children and the Law: The Criminal Justice System and Child Sex Offences**). In the family

courts the judge will look at all the evidence and decide whether the alleged abuse has happened based on the balance of probabilities. If the judge is satisfied that the evidence indicates that it is more likely than not that the abuse occurred then this will be sufficient to make a finding that sexual abuse has happened.

Where the family court decides that it is more likely than not that sexual abuse has occurred the making of a care or supervision order is not automatic. The court must consider the threshold criteria and also consider whether making an order would be better for the child than not making an order at all.

Evidence from police and social workers will be admissible in children's courts, where the content is relevant. It is for the judge alone to decide what weight and credibility is given to each. Where possible children should not be required to give live evidence at court. If children are to give evidence in court regarding the abuse they have alleged they should be able to give evidence indirectly by video.

Expert witnesses

Expert evidence is required in care proceedings on a variety of different issues. There may be factual disputes about what has happened to a child, or argument about the capacity of a mother or a father to provide adequate parenting. It may be necessary to obtain evidence from a variety of medical, psychiatric or other expert witnesses.

The expert's role in the court process is to conduct an assessment and express an opinion within their particular area of expertise. Experts are instructed to provide an independent and objective assessment.

The court can make directions for expert evidence. Any party to the proceedings wishing to seek the opinion of an expert must receive permission of the court. A child should not be examined by an expert for the purpose of preparing expert evidence without permission of the court.

The role of the expert is to give an informed opinion to the court in an area that they are an expert in (for example child psychology) and / or they may also give evidence on facts that are in dispute

which they have witnessed (for example, if a child has disclosed sexual abuse to them).

The judge will decide how much weight will be given to the expert's evidence. Although it does not often happen, the judge is entitled to reject the opinion of experts but he/she should give clear reasons for doing this and it could be a point of appeal if this is not appropriate.

The court should attempt to limit the number of times a child has to see an expert.

How to choose an expert?

It is important that any expert chosen is an expert in the area in which their opinion is sought. For example, a psychiatrist is a mental health specialist but may not be an expert in the mental health of children who have experienced sexual abuse. The court may hear evidence of a psychiatrist or a psychologist with expertise in children who have experienced sexual abuse and perhaps a doctor to confirm any injuries or sexual assault that has taken place. When instructing a medical professional, it is usual to instruct someone who is a consultant. There is a fundamental duty on the expert to be independent.

It is important to check the expertise of any experts that are proposed by any other party to proceedings. If it does not seem that the proposed expert is suitable you should ask your solicitor to raise this at court and suggest alternative experts who you believe are suitable.

If, on receipt, of an expert report, you are unhappy with the findings, you can request that further instructions are considered by the expert, your solicitor can cross-examine the expert at the final hearing.

LEGAL AID

Care proceedings are extremely complicated and legal advice from a specialist solicitor should be sought if social services become involved with your family. As a parent you will be eligible for free legal help if the local authority indicate that they may initiate care or supervision proceedings, this will include legal advice for your solicitor to negotiate on your behalf with the local authority prior to any

legal action being taken. In limited circumstances, legal aid will cover your solicitor coming to a child protection conference with you if the local authority issue care proceedings with respect to your child, you are entitled to full legal representation by a specialist family law solicitor. There is no means test and, therefore, you will be entitled to legal aid regardless of your income, savings or capital.

CONFIDENTIALITY

Any information between you and your solicitor is 'privileged' this means that the court is not allowed to have information regarding conversations you have had with your legal representative. There are however a few exceptions to this rule which your solicitor should advise you about including where the solicitor believes that the mental or physical safety of a child is at risk.

Disclosure of social services information

The welfare of children requires that there should be full disclosure. **Full disclosure** means that all relevant documents should be shared between professionals, including police, social services, school and medical professionals, as well as the court and you and the father of your child.

Where there are family court proceedings regarding a child, the social services department of your local authority have a duty to disclose any information relevant to the child's welfare to the court and there should be full disclosure of all information, as a parent of your child, you will be a party to proceedings and will be able to see such information. Social services will only be allowed to restrict information being disclosed to you where it would be detrimental to the child's welfare for the information to be provided. In care proceedings, the local authority has a duty to disclose all relevant information which may assist parents in rebutting allegations made against them.

WHAT TO EXPECT FROM YOUR SOLICITOR

If you have a solicitor and you are not happy with how they have treated you, you can complain.

Solicitors must abide by certain principals and are bound to follow the Solicitors Regulation Authority's Code of Conduct. One of the cornerstones of this code is that solicitors must act in their client's **best interests** at all times, regardless of whether you are publicly funded or paying privately.

It is not the solicitor's role to make decisions for you, the solicitor must advise you on the range of options available and the pros and cons of each option and it is for you, the client, to decide what course of action will be taken by the solicitor. You can choose whether or not you wish to proceed on the basis of their advice. If you are publicly funded then your solicitor has a duty to the legal aid fund. **If you require your solicitor to conduct your case unreasonably then your solicitor can decline to continue to act for you and your legal aid may end.**

If you are having problems with your solicitor, you should explain the problems you are having to your solicitor and consult the solicitor's firm's complaints process as set out in the client care letter, which you will have received when you first meet with your solicitor. If you feel that your complaint has not been dealt with appropriately. You may ask to change legal aid solicitors. The Legal Aid Agency will require you to follow your solicitor's firm's complaints procedure before considering a transfer of your legal aid

The issues relating to social services involvement with children can be complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would strongly advise that you seek legal advice from our advice line or a solicitor.

Please note that the law as set out in this legal guide is the law as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this legal guide. This legal guide is designed to give general information only.

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For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children: **women living and working in London call 020 7608 1137 on Mondays 11am-1pm, Tuesdays and Wednesdays 2-4pm. All women call 020 7251 6577 on Tuesdays to Thursdays 7-9pm and Fridays 12-2pm.**

For free, confidential, legal advice on criminal law issues including domestic and sexual violence: **women living and working in London call 020 7608 1137 on Thursdays 2-4pm All women call 020 7251 8887 on Tuesdays 11am-1pm.**

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on **020 7490 7689 on Mondays 2-4pm and Wednesdays 11am-1pm.**

All our lines can be reached by textphone on **020 7490 2562.**



MOSAC is a charity that provides a range of support and information to non-abusing parents and carers of sexually abused children. These services include Advocacy, Child-centred Play Therapy, Counselling, National Helpline, Parent Workshops, Specialist Advice & Information and Support Groups.

Our free helpline can be reached on 0800 980 1958 (also 020 8293 9990) weekdays except bank holidays.

Mosac is at 20 Egerton Drive, London SE10 8JS

info@mosac.org.uk

020 8293 8582

www.facebook.com/mosac.uk

Supporting non-abusive parents and carers of children who have been sexually abused

www.mosac.org.uk

USEFUL CONTACTS

Other useful telephone numbers

- **Community Legal Advice** (for finding a family solicitor) 0845 345 4345,
<http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>
- **CAFCASS**
www.cafcass.gov.uk
- **National Domestic Violence Helpline** 0808 2000 247
<http://www.womensaid.org.uk> / www.nationaldomesticviolencehelpline.org.uk
- **Child Maintenance Options** 08457 133 133
www.csa.gov.uk
- **Childline** 0800 11 11
www.childline.org.uk
- **NSPCC** 0800 800 500
www.nspcc.org.uk
- **Child Abuse Lawyers**
www.childabuselawyers.com
- **Barnardos**
www.barnardos.org.uk
- **Gingerbread** 0800 802 0925
<http://www.gingerbread.org.uk>
- **Resolution** (for finding a family solicitor) 01689 820272
www.resolution.org.uk
- **Samaritans** Telephone: 08457 909090
www.samaritans.org.uk
- **NAPAC Helpline** 0800 085 3330 / 0808 801 0331
<http://www.napac.org.uk/>
- **One in Four UK**
www.oneinfour.org.uk
- **Respond**
www.respond.org.uk
- **In to the light** sexual abuse – support, info and resources
www.intothelight.org.uk
- **Family Matters UK Helpline** 01474 537 392
www.familymattersuk.org/

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office: 020 7251 6575

Textphone: 020 7490 2562

Fax: 020 7490 5377

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk

Charity number: 1147913



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National helpline:

0800 980 1958 (or 020 8293 9990)

www.facebook.com/mosac.uk

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