



## **Children's Safeguarding and Family Help**

The Children Act 1989 and the legal framework for children's services

## 1 Overview

- The Children Act 1989 provides the main legislative framework for public and private law relating to children that aims to provide a balance between children's rights and parents' responsibilities and sets out the circumstances under which the state may intervene in family life in order to safeguard and promote a child's welfare.
- The Act provides for a number of orders relating to a child's care available both in private proceedings initiated by families and public proceedings where local authorities have a duty to intervene in the child's day to day care.
- The information written here should help social workers:
  - understand Camden's legal duties and the parameters of Children's Safeguarding and Family Help involvement in children's lives
  - signpost parents and families to the various options available to them when looking at alternative care arrangements for a child and how these arrangements can be legally secured
  - be aware of how the Act, and in particular the making of any court orders and the holding and exercise of parental responsibility, may impact on how they work with children and families.

## 2 Key principles of the Act

- These principles underpin CSFH policies and should inform social work practice, being taken into account when making any decisions about the child's care.
  - Children are best looked after within their own family.
  - Parents have rights and responsibilities towards their children.
  - The welfare of the child is paramount.
  - Where the state intervenes, this must only be in the child's best interests.
  - Decisions on the child's care must be made in a timely manner in order to avoid delay which may be harmful to the child.
  - Court orders should be made where this is the only way in which to ensure the child's welfare can be promoted.

- The courts operate a “no order” rule in order to reduce conflict and encourage parties to reach agreement without the need of a court order and will only make an order if it will positively improve outcomes for the child.
- When making orders and deciding on care arrangements for a child, the court will apply *the welfare checklist* to ensure that decisions are focussed on the child’s needs, their views and their need for stability and security, and what legal advantage there is for the child in making an order.
- The welfare checklist is:
  - the ascertainable wishes and feelings of the child concerned;
  - the child’s physical, emotional and educational needs;
  - the likely effect on the child if circumstances changed as a result of the court’s decision;
  - the child’s age, sex, backgrounds and any other characteristics which will be relevant to the court’s decision;
  - any harm the child has suffered or maybe at risk of suffering.

### 3 Camden’s duties under the Act

#### **Safeguarding duty**

As a local authority, Camden has a duty under section 17 of the Act to safeguard and promote the welfare of children living in the borough. Safeguarding is defined as:

- providing help and support to meet the needs of children as soon as problems emerge
- protecting children from maltreatment, whether that is within or outside the home
- preventing impairment of children’s mental and physical health or development
- ensuring that children grow up in circumstances consistent with the provision of safe and effective care
- promoting the upbringing of children with their birth parents, or otherwise their family network through a kinship care arrangement, whenever possible and where this is in the best interests of children
- taking action to enable all children to have the best outcomes in line with the outcomes set out in the Children’s Social Care National Framework.

### **Children in need**

Section 17 also places a duty on local authorities to provide services and support to those children who are children in need. This is defined as any child whom it is thought are unlikely to meet a reasonable standard of health and development, or whose health and development would be significantly impaired, unless provided with services, or children who have a disability.

### **Child protection**

Section 47 of the Act places a duty on local authorities to investigate where there is reasonable cause to believe that a child is suffering or at risk of suffering significant harm. This is defined as ill-treatment or impairment of health and development arising from neglect or abuse, including the impact of seeing or hearing another individual's ill-treatment.

### **Looked after children**

Section 20 places a duty on local authorities to provide accommodation for children with parental consent where:

- no-one has parental responsibility for the child;
- the child is lost or abandoned;
- the parent/carer is prevented from providing suitable care and accommodation;
- the child is suffering or likely to suffer significant harm which is attributable to the care they are receiving or they are beyond parental control.

Children may be looked after by Camden without parental consent where the court grants the council a Care Order under section 31 because the court believes:

- the child is suffering or likely to suffer significant harm **and:**
- The harm is attributable to the quality of parental care which is not of a reasonable standard or the child is out of parental control.

## 4 Parental responsibility

### 4.1 Definition

Parental responsibility is defined as “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to that child and his property”. This covers the child’s care and upbringing and the right to make long-term decisions about the child’s future.

### 4.2 Acquiring parental responsibility

- A child’s **birth mother** will automatically have parental responsibility;
- **Opposite-sex couples** will both automatically have parental responsibility if they are in a marriage or civil partnership.
- **Same-sex couples** who have a child where only one parent is the natural parent will both have parental responsibility if they had entered into a civil partnership prior to starting the fertility treatment, such as donor insemination or IVF. In these cases, the mother who is carrying the child will automatically gain parental responsibility, while the partner will also have parental responsibility if they are named on the birth certificate.
- **Unmarried fathers** may also acquire parental responsibility in the following ways;
  - through a court order
  - by entering into an agreement with the mother to share parental responsibility
  - for children born after 1<sup>st</sup> December 2003, where he jointly registers the child’s birth with the mother and is named as the father on the birth certificate
  - where he is appointed as the child’s guardian following the mother’s death (see section on guardianship at 3.5).
- **Step-parents** who are married or in a civil partnership with a parent who has parental responsibility may acquire parental responsibility either by agreement with the parent, court order or non-agency adoption.
- A step parent application would also be required for a **same-sex partner** of the biological parent, if the couple are not married or in a civil partnership at the time of conception.

- Parental responsibility can also be obtained for parents who conceived by surrogacy, this would be granted via the courts after an application for a 'parental order'.
- **Special guardians** acquire parental responsibility on the making of the special guardianship order (see section 4.2)
- Anyone named in a **child arrangements order** with whom the child lives will acquire parental responsibility (see section 4.1)
- **Local authorities** acquire parental responsibility when a care order, interim care order or emergency protection order is made (see below).

### 4.3 Parents without parental responsibility

If a father/parent does not hold parental responsibility, they will still be considered the child's parent for the purposes of the Act and will be entitled to:

- be consulted on any plans for the child made by the local authority
- apply for any orders in relation to the child
- reasonable contact.

However, they will not be entitled to:

- remove a child from voluntary accommodation
- be joined automatically as a party to any care or supervision proceedings
- give consent to adoption
- appoint a guardian.

### 4.4 Transfer or delegation of parental responsibility

- Parents cannot "surrender or transfer" any part of their responsibility but can enter an agreement with someone to delegate some parts of their responsibility on a temporary basis, for example under a private fostering agreement or when agreeing to accommodation under section 20. However, they remain responsible overall for ensuring the arrangements are able to meet the child's needs and safeguard their welfare.
- Certain court orders will give a local authority parental responsibility which is shared with parents, but how responsibility for the child's care may be shared depends on the order (see later in the document for details).

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- Temporary carers have a responsibility to do “what is reasonable in all the circumstances of the case for the purpose of safeguarding and promoting the child’s welfare”. This applies to foster carers and family and friends carers looking after a child who is voluntarily accommodated under section 20 where local authorities do not have parental responsibility.

#### **4.5 Guardianship**

- A guardian is an individual who is appointed to hold parental responsibility for a child where their parents have died and can only be appointed by a parent who has parental responsibility, another guardian (or special guardian) or the court. On appointment, a guardian will hold the same parental responsibility as the birth parent.
- A private appointment of guardianship must be in writing, signed and dated by the parent who holds parental responsibility. The court will only appoint a guardian where there is no parent or anyone else who has parental responsibility for the child.
- If a child who has no parent with parental responsibility is accommodated or made subject to a care order, the local authority may consider if a member of the child’s family can be appointed guardian.
- Guardianship automatically ends once the child has reached 18 but can be ended earlier by court order on application by:
  - anyone else who has parental responsibility, including a local authority holding a care order
  - the child
  - the court’s own motion.

## **5 Private law orders**

### **5.1 Section 8 orders**

- In private family proceedings, the Act aims to reduce parental conflict around the care and upbringing of a child. There are several orders known as section 8 orders that help families to resolve disagreements such as with whom the child will live and with whom they may have contact.

- **Child arrangements orders** set out with whom a child will live with and spend time with and covers residence and contact arrangements.
  - **Prohibited steps orders** may stop a parent from taking a particular step with regard to exercising their parental responsibility without court consent, for example removing the child from the UK.
  - **Specific issue orders** give directions in order to resolve a specific question which has or may arise in connection with any aspect of parental responsibility for a child, for example consent to medical treatment.
- The orders are only granted in relation to children under the age of 16 and will normally remain in place until the child is 16 although the “live with” element of child arrangement orders runs up to 18.

## 5.2 Special guardianship order

- Special guardianship orders are designed to provide legal permanence for children for whom adoption is regarded as unsuitable. A special guardian will share parental responsibility with parents or others who have parental responsibility, but will have exclusive rights to exercise parental responsibility for the child in terms of their day to day and future care.
- A special guardianship order will automatically discharge any care order in respect of the child once it is granted and the child will cease to be looked after. The order lasts up to the child’s 18<sup>th</sup> birthday.
- For further details of CSFH involvement, please see Camden’s Special Guardianship Order policy. [Applications for Special Guardianship Orders](#)

## 5.3 Family assistance order

The court can make this order during any family proceedings in order to provide short term help to families to help them overcome any problems associated with parental separation. The order normally involves allocating a CAFCASS officer (or local authority officer) to work closely with the family for up to 12 months.



## 6 Inherent jurisdiction

- The High Court still has the power to make orders in order to protect children that are not taken from any statutory law and is known as inherent jurisdiction. However, use of this is now restricted by the Children Act. Normally, any issues relating to a child's care should be dealt with under the Act; for example, if a local authority wished to take over the care of a child, a care order would be sought.
- As inherent jurisdiction cannot normally be used where a statutory power is in place, it is only likely to be used where there are gaps in statutory provision for the protection of children. This may be the case where thresholds for intervention under the Children Act cannot be reached but there is a major issue relating to the child, for example abduction, refusal of medical treatment, deprivation of liberty or protection from publicity.
- Court powers under inherent jurisdiction are wider than parental responsibility and can override the child's wishes where this is thought to be in their best interests.

## 7 Child protection orders

The Act contains provision for making the following orders so that a local authority can take specific actions to protect a child. These are:

- **Child assessment orders (CAOs)** that allow a local authority to assess the child's situation and their health and development where there are concerns that they may be suffering significant harm but parents are not co-operating with social workers and access to the child is difficult.
- **Emergency protection orders (EPOs)** that allow a local authority to remove a child from their parent's care or lets them remain somewhere safe for a short duration in order to secure their immediate safety while investigations are being carried out.
- **Police Protection** describes police powers to act immediately to remove a child to a place of safety or prevent them from being removed in order to safeguard their welfare. The basis for this is where there is a reasonable cause to believe that they would otherwise suffer significant harm but there is not enough time to obtain a court order.

- **Recovery orders** that are issued when a child is removed from the care of the responsible person contrary to a care order or emergency protection order or is in police protection in order to help the recovery of that child.

Further details on these orders and associated practice guidance can be found in the child protection orders policy.

[CP orders | Children's Policy & Practice Hub \(camden.gov.uk\)](#)

## 8 Care orders

- Section 31 of the Act allows local authorities to apply to the court for a care order that allows the local authority to take over the care of a child because it is considered that their safety and welfare cannot be promoted if they remain at home.
- The threshold for granting a care order is that the child is suffering or likely to suffer significant harm and this is attributable to the care they are receiving or the child is beyond parental control.
- When the child is subject to a care order:
  - the child must be provided with accommodation
  - the local authority must safeguard and promote their welfare
  - the local authority shares parental responsibility with parents but can decide on the child's day to day care, delegating responsibility to foster carers
  - all section 8 orders, education supervision orders and school attendance orders in respect of the child will be automatically discharged.
- A young person aged 17 or above cannot be made the subject of a care order and all care orders will cease once the child reaches 18. Care orders are automatically discharged once a special guardianship order is made and is suspended once a placement order is made, coming back into force if the placement order is revoked.
- Further details on procedures to be followed for pre-proceedings and care proceedings can be found in the Care and supervision proceedings policy.  
[Care and Supervision Proceedings and the Public Law Outline](#)

## 9 Supervision orders

- Section 31 also allows the local authority to apply to the court for a supervision order in respect of the child so that the child is placed under the supervision of the local authority in order to advise, assist and befriend the child.
- The order allows the local authority to set specific actions and directions that the child must comply with, including:
  - living at a specific address
  - taking part in specified activities
  - reporting to a particular place at a specific time.
- The order will be in force for one year initially but can be extended to up to 3 years. The threshold for granting a supervision order is the same for a care order. For more details see the Supervision order procedures. [supervision-order-policy.pdf](#)

## 10 Interim orders

- During proceedings, a court can make an interim care or supervision order if there are grounds for believing that the threshold for making an order has been met. An interim order has the same effect as a final care or supervision order and will be in force for as long as the court believes is necessary prior to a resolution of the hearing.
- When making an interim order, the court may also consider making an exclusion order to direct a named individual to leave the child's home or stop them from entering the home or the neighbourhood, as well as other directions, for example in relation to assessments.

## 11 Placement orders

- Placement orders granted under section 21 of the Adoption and Children Act 2002 allow a local authority to place a child for adoption and may only be applied for where the CSFH Director, as agency decision maker, has decided that adoption is the best permanence option for the child.

- Under a placement order, the local authority shares parental responsibility with birth parents and adoptive parents (where the child is placed) but can decide on how each will exercise this.
- A placement order may only be made in respect of a child who is subject to a care order or where the case meets the threshold for a care order to be granted (or the child has no parents).
- When deciding the issue, the court must be satisfied that either parents have consented to adoption or their consent may be dispensed with and that adoption is the best permanence option for the child.
- Once made:
  - any previous child arrangement order or supervision order ceases to have effect
  - a care order is suspended until the placement order is revoked
  - there are restrictions on what other orders can be applied for by various parties
  - it continues in force until revoked or an adoption order is granted in respect of the child.
- Where adoption is considered the best permanence option, social workers are advised to apply for a combined care and placement order so that decisions about the child's future care can be taken without any delay, especially if there are concerns that a parent may withdraw consent to adoption.

**Please note that an application to the court to revoke a placement order must be made whenever it is decided that adoption will not be the child's permanence plan.**

## 12 Adoption orders

- When an adoption order is made, all rights and responsibilities regarding a child are removed from the birth parent (and the local authority where a care or placement order is in force) and transferred to the adopted parents who become the child's parents in law and exclusively hold parental responsibility for that child.

- Adoption completely ends the child’s legal relationship with their birth family and the adopted family will take over their care and will remain their parents for their lifetime.
- Further details on procedures for adoption are available in the division’s “Adoption processes for children’s social workers”.

[adoption-processes-for-childrens-social-workers.pdf \(camden.gov.uk\)](#)

### 13 Secure accommodation orders

- Secure accommodation is a provision designed to meet the needs of young people whose complex needs can only be met in a particularly specialised placement that involves restricting their liberty.
- Young people can only be placed in secure accommodation if they are looked after by a local authority and are subject to a secure order under section 25 of the Act (the welfare order). However, some young people may be remanded into secure accommodation by the criminal courts.

For further details, please see the *Placement in secure accommodation* policy.

[Placements in Secure Accommodation on Welfare Grounds](#)

### 14 Other relevant orders

Social workers should be aware of other orders relating to forced marriage and violence against women.

#### **Domestic abuse protection notice (Domestic Abuse Act...)**

- The police can give a **domestic abuse protection** notice to a person aged 18 or over to prohibit them from being abusive towards a connected person if:
  - there is a reasonable believe that the person has been abuse towards the victim and
  - it is necessary to give the notice in order to protect that person.
  - The notice can stipulate that the person does not contact the victim or go within a specified distance from their home.
- Where the person lived with the victim, the notice can:

- evict or exclude them from the premises;
  - stop them from entering the premises;
  - require them to leave the premises.
- When considering whether to serve a protection notice, the police officer must, along with other considerations, take into account the welfare of any children who may be affected by the domestic abuse.

### **Domestic abuse protection order**

- This order prevents a person from being abusive towards a connected person; both the police and the victim can apply for an order as can anyone else with leave of the court. Where a person is served with a domestic abuse protection notice, an application for an order will normally be heard within 48 hours. An application may also be made as part of family, criminal or civil proceedings.
- An order will be made where the court is satisfied on a balance of probabilities that the person has been abusive towards the victim and it is necessary and proportionate to make an order to protect the victim. Again, when considering making an order the court will, amongst other considerations, take into account the welfare of any child affected.
- An order may contain similar provisions as the protection notice (see above) and will last for a period set by the court and it is an offence not to comply with the terms of the order.

### **Female Genital Mutilation (FGM) protection orders**

FGM protection orders contain conditions to protect a victim or potential victim from FGM, for example, requiring the person's passport to be surrendered to prevent them from being taken abroad for FGM or requirements that no one arranges for FGM to be performed on the person being protected.

A local authority can apply to the court for a FGM protection order and details can be found in the government factsheet.

[FGMPO - Fact Sheet - 1-12-2016 FINAL.pdf \(publishing.service.gov.uk\)](#)

### Forced marriage protection order

- The legal age for marriage in England and Wales is 18 under the Marriage and Civil Partnership (Minimum Age) Act 2022. It is a criminal offence to force someone to marry, including:
  - taking someone overseas to force them to marry (whether or not the forced marriage takes place)
  - marrying someone who lacks the mental capacity to consent to the marriage (whether they are pressured to or not)
- A forced marriage protection order can provide protection to potential victims and may contain specific conditions such as surrendering passports. It can be applied for by the victim or a third party acting on their behalf, including a local authority. For more information see the government factsheet.

[Forced marriage protection orders - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/factsheets/forced-marriage-protection-orders)

## 15 Youth justice orders

Social workers may work with young people who have entered the criminal justice system and who are receiving a service from the Youth Justice Service. Social workers should refer to the CSFH/YOS joint protocol and should be aware of the following orders: Criminal Justice Act 98?

- **Detention and training orders (DTO)** are given for **custodial sentences** which are served in Youth Offending Institutions or Secure Training Centres.
- **Community orders** are given where the young person will serve their sentence in the community:
  - **Referral orders** are for those who plead guilty to a first offence or lesser offence and involve a programme of work designed to address offending behaviour.
  - **Youth rehabilitation orders** are for more serious offences, those who do not plead guilty or persistent offenders and last for up to 3 years. The young person will be ordered to carry out certain activities and may be excluded from certain areas or activities. The young person may also be subject to intensive supervision and surveillance such as curfew or electronic tagging.