

A BRIEF GUIDE TO THE LAW

Foster carers will quickly become familiar with the following terms: - Section 20 accommodated, in care, looked after.

- An **Accommodated Child** is looked after under **Section 20** of the Children Act. This is a voluntary arrangement between the local authority and the parents (or the young person if they are aged over 16). The parents retain full parental responsibility
- A **Care Order** gives the local authority parental responsibility, this is shared with the parent but the local authority decides to what extent the parents are able to exercise that responsibility. Children can live at home when they are subject to a care order but they must be placed under the **Placement with Parents** regulations.
- **Looked After** refers to all the children and young people who are looked after by the local authority, on care orders and in section 20 care, in foster homes and residential homes.

Although children are placed with foster carers for many reasons they are placed with you as a result of the power and responsibilities given to the Local Authority by one of the Acts of Parliament relating to childcare. The main piece of legislation is The Children Act 1989. This covers a number of issues relating to looked after children by Local Authorities. The most important principle of the Children Act 1989 is that the welfare of the child is of paramount importance.

Before a court makes any order or reaches any decision regarding a child's future, it must first consider:

- a) The wishes and feelings of the child, in as far as the court can do so, bearing in mind the age and understanding of the child concerned.
- b) The physical, emotional and educational needs of the child.
- c) The likely effect on him of any change in his circumstances.
- d) The child age, sex, background and any other characteristics of him that the court considers relevant.
- e) Any harm which he has suffered or is at risk of suffering.
- f) How capable are each of his parents, and any other person, of meeting the child's needs.

- g) The Children Act also charges Local Authorities that in making any arrangement either for the provision of day care under Section 18 or accommodation of children under Section 20 that the Authority shall have regard to the race, culture, religion, linguistic and dietary needs of children.

1. SECTION 20 ACCOMMODATION

A child must be provided with accommodation if

- (a) There is no person with parental responsibility for him; or
- (b) If he is lost or abandoned; or
- (c) The person who has been caring for him is prevented (whether or not permanently, and for whatever reason) from providing suitable accommodation or care.

If a child is accommodated the parents retain full parental responsibility. Nothing can be done with the child without the consent of their parents. If a parent asks for the child to be returned to them this request should be complied with.

2. CARE ORDER

The Court can only make a Care or Supervision Order if it is satisfied that:-

- (a) The child concerned has suffered significant harm or is likely to suffer such harm; and
- (b) The harm or likelihood of harm is attributable to:
 - (i) The care given to the child or likely to be given to her/him if an order were not made, not being what it would be reasonable to expect a parent to give her/him; or
 - (ii) The child being beyond parental control.

Even if the criteria to meet the above are established, before the Court makes an Order it must satisfy itself that it **should not make an Order unless it considers that doing so would be better for the child than making no order at all**. Before making an Order the Court will expect local authorities to state what long term plans there are to meet the child/young person's needs. A Guardian will be appointed during care proceedings whose role is to protect the interests of the child. The guardian may appoint a solicitor to act for the child. Another solicitor will act for the local authority. The parents will also be represented. It is up to the local authority to prove that a case has been made to justify the making of a care order. The local authority, the parents and the child's solicitor may all call witnesses to argue the case from their point of view. **Foster carers may be called to give evidence**. They are usually called by the Local Authority to give evidence on behalf of the Local Authority. Evidence from foster carers is usually powerful and persuasive because of the carer's first hand experience of looking after the child. It will feel very daunting but you will be given help and support.

3. INTERIM ORDERS

Where an application has been made for a care or supervision order there will be a period of time before a full hearing takes place. This can be for anything up to eighteen months. The court can make an Interim Care or Supervision Order providing the court has reasonable grounds for believing that the criteria [as mentioned in (2)] exist.

An Interim Care or Supervision Order can be made for up to eight weeks initially this is renewed every four-weeks until the final hearing. If a child has to be removed from home in an urgent situation, the local authority can obtain an **Emergency Protection Order**. Just one magistrate agrees these orders. They last for up to 8 days, at the end of this time the order lapses or the department has to apply for an interim care order.

4. SECTION 8 ORDERS

Under Part II of the Children Act 1989 the Court can make what are known as Section 8 orders. These cover Residence, Contact, Specific Issues and Prohibited Steps Orders.

5. RESIDENCE ORDER

This Order settles the arrangements that are to be made as to which person the child shall live with. Foster carers can apply for a residence order. A order gives the carers, rather than the local authority, parental responsibility for the child. The legislation encourages the Children and Young People's Services to positively encourage residence orders when a child is settled into a foster home. There are a number of financial and long-term implications to the obtaining of a residence order. Foster carers should seek advice when considering this step.

6. SECTION 46 (I)

This section of the Children Act gives powers to the police to take a child into police protection for up to 72-hours when a police constable believes that if they didn't obtain this order that the child would otherwise be likely to suffer significant harm. This order can be used, for example, to prevent a child's removal from hospital, as well as removing a child from home.

7. WARDSHIP

The Children Act restricts the use of Wardship by Local Authorities. Very few children are now made Wards of Court

8. ADOPTION

(See Foster Care and Adoption)

9. DIRECT REQUESTS FROM PARENTS TO FOSTER CARER FOR A CHILD TO BE DISCHARGED

(Please note: parent also includes any person who has parental responsibility for the child)

As explained above, unless the child placed with you is the subject of a Care Order or an Emergency Protection Order, then the child will be accommodated by the Local Authority on a voluntary basis. Where a child is accommodated, a parent may remove the child from your care without notice. This type of situation is a very rare occurrence because if the child is the subject of a voluntary agreement between their parents and

the Local Authority, it is likely that the parents will be working with the social worker and foster carer in partnership.

If a particular child's personal situation is of such concern that the Local Authority would not want the child discharged on demand by the parent/s. You will be given advice to contact the social worker, police or the Emergency Duty Team.

Should a situation like this arise, often the parent(s) can be calmed down and will wait long enough for you to telephone the office or the Emergency Duty Team where a social worker can at least speak to them. You are not obliged to hand over the child if the parent is drunk, affected by drugs or seems likely to harm the child.

It is worth noting that the Department has rarely been involved in situations of this nature, and we would not want foster carers to be unduly alarmed by this advice. Generally a sympathetic approach, reasoning and reassurance will help the parent accept the need for proper planning for discharge which will be less stressful and more beneficial to the child.

A young person over the age of 16-years may request the Local Authority to provide them with accommodation. Parental consent is not required and as such a parent cannot demand their discharge.

Any child who is placed in foster care who is subject to a Care Order or an Emergency order cannot be discharged on demand to a parent. Should a parent, in these circumstances, approach you for the return of their child, they need to be advised to contact the child's social worker.

IT IS THEREFORE IMPORTANT THAT YOU KNOW WHETHER THE CHILD PLACED WITH YOU IS BEING ACCOMMODATED ON A VOLUNTARY BASIS OR IS THE SUBJECT OF A CARE ORDER. WHETHER THEY ARE ON AN INTERIM CARE ORDER OR ARE SUBJECT TO AN EMERGENCY PROTECTION ORDER

If in doubt ask your fostering worker to clarify the situation for you. If a child is the subject of a court order you should be given a copy of the order at the time they are placed with you.