**West Sussex – Practice Guidance**

**Types of Court Orders Available**

IROs are qualified social workers with at least five years’ experience, and who have acquired the right skills to carry out this role.

1. Emergency Protection Orders

Under section 44 of the Children Act 1989, the local authority can apply for an Emergency Protection Order (EPO) where there are reasonable grounds for believing there is an immediate risk of Significant Harm to a child. The local authority must be able to evidence that an EPO is proportionate and necessary in order to safeguard the child and that no other form of order is available that would promote the welfare of the child.

In accordance with case law, separation is only contemplated if immediate separation is essential to secure the child’s safety: imminent danger must be actually established.

There can also be grounds for an EPO where the local authority is making section 47 enquiries and efforts to access child/ren are being unreasonably refused and access is required as a matter of urgency (frustrated access).

The EPO will grant the local authority [Parental Responsibility](http://trixresources.proceduresonline.com/nat_key/keywords/parental_respons.html) for the child/ren which will enable the child/ren to be removed to other accommodation or to remain in a place where they are being accommodated (e.g. a hospital or foster placement).

An EPO can be made for a maximum period of eight days, with a possible extension of up to a further seven days but no EPO should be made for any longer than is strictly necessary to protect the child.

An application for an EPO should only be made by the local authority in exceptional circumstances where there are compelling reasons which require the local authority to share parental responsibility for the child and, where necessary, separate the child from the care of his or her parents. It should also be noted that in such situations consideration should be given as to whether the preferred application should be an abridged notice ICO. Legal advice should be sort in relations to this issue.

It is important to note that a local authority must return a child to the parent(s) during the currency of the EPO if it appears to the local authority that it is safe to do so; that a parent and child should be separated for no longer than it is necessary to secure the child’s safety.

Cases of [Emotional Abuse](http://trixresources.proceduresonline.com/nat_key/keywords/emotional_abuse.html) will rarely, if ever, warrant an EPO. Likewise, cases of [Sexual Abuse](http://trixresources.proceduresonline.com/nat_key/keywords/sexual_abuse.html), where the allegations are non-specific and where there is no evidence of immediate risk to the child, will rarely warrant an EPO. Cases of [Fabricated or Induced Illnesses](http://trixresources.proceduresonline.com/nat_key/keywords/fabric_induced_ill.html), where there is no medical evidence of immediate risk of direct physical harm to the child, will rarely warrant an EPO.

Where the real purpose of the application is to ensure that the child is assessed, then consideration should be given to whether that objective cannot be equally effectively achieved by an application for a [Child Assessment Order](http://trixresources.proceduresonline.com/nat_key/keywords/child_assessment_order.html) or by the initiation of [Care Proceedings](http://trixresources.proceduresonline.com/nat_key/keywords/care_proceedings.html) and seeking the court's direction under section 38(6) of the Children Act 1989 for an assessment.

1.2 Decision to Apply for an EPO

Before an application for an EPO can be made, consultation with legal services should take place to establish whether there is sufficient evidence to establish that the [Legal Criteria](http://trixresources.proceduresonline.com/nat_key/keywords/threshold_criteria.html) for an application are met.

Consideration should always be given to the need for an EPO if a child is subject to police protection. The police have power under the Children’s Act 1989 (section 46) to take the child/ren into police protection for up to 72 hours where a police officer has ‘reasonable cause to believe’ that the child/ren would otherwise suffer significant harm. This power is available when it is not possible to leave a child in a situation for the few hours that it would take to apply for an EPO without leaving the child at risk of significant harm. The social care legal team should be informed as soon as reasonably practicable that a child has been taken into police protection and a copy of the authorisation should also be sent via secure email.

In such emergency situations the Group Manager, following consultation with the Social Worker and Practice Manager, will seek their Service Leader’s (SL) approval by outlining the reasons for the application, the outcome of the legal consultation and the proposed plan for the child should an EPO be granted. Any available documentation, for example the child protection conference report or a medical report, should also be provided to the SL. The case will then be discussed retrospectively at Legal Gateway Panel.

Before giving the approval, the guidance given by Mr. Justice Munby in X Council v B should be considered by the Service Leader. This is set out in [Section 1.14, Key Cases](http://leedschildcare.proceduresonline.com/chapters/p_court_orders.html#key_cases).

1.3 Preparation of the Application

As soon as a decision has been made to apply for an EPO, the Social Worker should prepare a written statement of evidence to support the application for an EPO. Where the statement is hand written, it must be legible; a typed copy of the statement must be filed with the court as soon as practicable after the court hearing.

The evidence must be provided from the best available source; usually this will be the Social Worker who will have thorough knowledge of the factual background and will have made a clear and reasonable assessment of the risks to the children balanced against the rights of the parent(s). Where the application refers to medical opinion, the application must be supported by a written medical report (a faxed copy if necessary) provided by the medical practitioner with direct knowledge of the child.

Where a child protection conference has been held, the minutes of the most recent conference should be produced to the court.

The social care legal team will arrange legal representation in respect of EPO applications and will make arrangements for the notice of the application to be served upon the appropriate parties unless the application is to be made without notice.

The Social Worker and Practice Manager should also consider whether any of the following ‘directions’ should be applied for under the EPO:

* Whether the court should include an ‘exclusion requirement’ excluding a person from the home in which the child lives see [Section 1.10, Exclusion Requirements](http://leedschildcare.proceduresonline.com/chapters/p_court_orders.html#ex_require);
* Authorisation or prohibition of medical, psychiatric and other assessment of the child;
* Contact with parent(s) and others;
* Authorisation to enter and search for the named child or other child;
* Assistance by a registered medical practitioner, nurse or by a health visitor;
* A warrant which would authorise police assistance in entering and searching using reasonable force if necessary see [Section 1.11, Warrants](http://leedschildcare.proceduresonline.com/chapters/p_court_orders.html#warrants).

1.4 Ex Parte Applications

Where it is considered that the application for an EPO should be made without prior notice being given to the parents and the Head Service Leader has agreed this course of action, the leave of the court will be required and the Social Worker or his/her legal representative should contact a legal adviser at the Family Court in order to apply for such leave.

The court usually requires that parents/ those with parental responsibility are given 24 hours notice of the application but can give permission for shortened notice. In unusual or exceptional cases the court may allow an application without any notice where there are compelling reasons for believing that the child/ren’s welfare would be compromised by giving notice or that the parent(s) may abscond with the child/ren.

1.5 EPOs Made During Normal Working Hours

Where the need for an EPO is apparent to a Social Worker they must seek authority from their Practice Manager before contacting the social care legal team. This should be sought as early as possible. If agreed the Social Worker and Practice Manager must then discuss the evidence with a member of the legal team.

If the evidential requirements are met, the legal team will contact the Justice’s Clerk’s Office at the Family Court to alert the court to the possible application for an EPO.

1.6 Applications made for EPOs made Outside of Working Hours

Outside working hours, Emergency Duty Team (EDT) will make contact with the available solicitor, through using the contact list held by EDT. EDT will present the case and complete the relevant forms where appropriate. The solicitor will liaise with the judge on duty who will consider whether permission should be given for the EPO application.

In all cases the following details will be required:

* Child’s name and date of birth, if known;
* Brief details of any injuries and description of circumstances;
* Parent(s) full details and any other person with [Parental Responsibility](http://trixresources.proceduresonline.com/nat_key/keywords/parental_respons.html);
* Details of any other siblings;
* Current risk to the child/ren;
* Social work contact details.

The Social Worker must attend as directed by the court.

The other option available after hours to legally sanction the removal would be for the police to exercise their powers under s46 Children Act 1989 and this would, in most cases be the appropriate course of action for the Emergency Duty team’s work alongside the police.

1.7 Hearing of the Application

The Social Worker who attends Court in support of an application for an EPO must ensure that the guidance given by Mr. Justice Munby in X Council v B is brought to the attention of the Court.

Where the parents have not been given notice of the hearing and/or do not attend the hearing, the local authority legal representative or, in the absence of a legal representative, the Social Worker who attends court must also ensure that a full note is made of the hearing so that a copy can be provided to the parents. This should be handed to the parents as soon as possible after the hearing, together with a copy of the EPO, the application, any written evidence submitted to the court and the justices' reasons.

1.8 Action Following the Hearing

A copy of the EPO and any explanatory information should be delivered to the parent(s) and those with the actual care of the child if different, by the Social Worker within 48 hours of the order being made.

The Social Worker must explain to the parents and where possible the child, what action they are taking and why, and should refer to the explanatory notes on the reverse of the EPO.

If the order is to remove the child, the Social Worker must be accompanied by a colleague (ensuring they have proper identification) and/ or where appropriate by police. The Social Worker should seek the co-operation of the parent(s) in removing the child and where relevant, inform other parties that any person who obstructs the child’s removal or retention at a safe place is committing an offence

Where the EPO gives ‘directions’ authorising the entry of premises specified and a search for the children named in the order, the Social Worker should act accordingly.

The EPO does not sanction the use of force for the purposes of entering and searching premises. If entry to the home or access to the child is refused, or if it is likely that the Social Worker will be prevented from exercising the powers under the EPO, renewed legal advice must be sought about an application for a warrant. See [Section 1.11, Warrants](http://leedschildcare.proceduresonline.com/chapters/p_court_orders.html#warrants).

If it appears that the child may have injuries or otherwise appears to be in poor health, they should be taken to hospital for a medical examination. The child must be informed about how any examination or assessment will be conducted beforehand and be accompanied by the Social Worker and/or any other appropriate professional. Subject to their expressed views the child should be assessed in accordance with any direction of the court.

Where the child is found to be safe consideration must be given to leaving the child where they are. Discussion between the Social Worker, Practice Manager and Group Manager must take place in these circumstances.

If the child is placed with foster carers the Social Worker must provide the foster carers with clear instructions and details regarding the following:

* Contact arrangements;
* Medical examinations which the child/ren must attend;
* School details;
* Any other relevant information that will enable the foster carer(s) to appropriately meet the needs of the child/ren whilst they are in placement during the duration of the EPO.

As soon as practicable after the hearing the social work team should liaise with both Legal and the Service Lead as to decide whether care proceedings are necessary to safeguard the child and to co-ordinate the collection of evidence. The approval of the Legal Gateway Panel is required to initiate care proceedings where necessary. In an emergency situation, discussion must take place with the relevant Service Lead. The case will then be discussed at Legal Gateway Panel retrospectively.

1.9 Contact

There is a general duty on the local authority to allow the child reasonable contact with:

* Parents;
* Any person who is not a parent but has parental responsibility;
* Any person with whom the child was living with before the order was made;
* Any person who held a [Child Arrangements Order](http://trixresources.proceduresonline.com/nat_key/keywords/chi_arrange_orders.html) specifying with whom the child is to live.

The Social Worker must consider what contact arrangements, if any, should be made during the EPO and actively discuss the issue of contact with their Practice Manager, taking into account whether the contact should be supervised, the nature of any allegations and the person against whom they have been made, any on-going police investigation, any risks posed to the child and any other factor which the Social Worker considers relevant.

1.10 Exclusion Requirement

On the making of an EPO, there is provision for the exclusion of a person from a house in which a child lives, where this would protect the child. However, there must be another adult in the home who can care for the child and who consents to the exclusion requirement.

Where the court makes an interim care order and the conditions are satisfied, the court may include an exclusion requirement in the interim care order.

Undertakings are promises made to a court to do or not do certain things. If the court accepts an undertaking it is enforceable as if it were a court order. An undertaking will cease to have effect if, whilst it is still in force, the local authority removes the child from the home from which the relevant person is excluded for a period of more than 24 hours.

The social care legal team’s advice must be sought where exclusion requirements or undertakings are being considered by the social work team.

1.11 Warrants

A Social Worker has no independent power to see a child or obtain entry to premises. To do so an application to the court must be made under Section 48 of the Children Act 1989. A warrant can be issued by the court that authorises the police to assist the Social Worker in exercising the powers granted to them by virtue of an EPO. Decisions to apply for a warrant should be taken by the Social Worker in consultation with the Practice Manager, Group Manager and the legal team.

1.12 Removal of a Child at Birth

Where there are concerns pre-birth or post-natal, a baby must not be removed from its mother’s care without parental consent, even if this is only to move the child to a different part of the hospital, unless:

1. There is judicial sanction for removal via an ICO or EPO; or
2. The police have exercised their powers under s46 Children Act 1989; or
3. Removal is justified either because a) the mother poses a risk of exposing the child to immediate physical attack or physical harm or b) there is a medical justification for the separation/intervention, i.e. the baby needs to placed on special care baby unit

A pre-birth Strategy Meeting should be chaired by the Practice Manager with midwifery, police, the Designated Safeguarding Lead for the relevant hospital, and the Social Worker in attendance in all cases where there is a plan to seek removal following birth. This Strategy Meeting needs to consider the arrangements and the safety plan whilst the baby is in the care of their mother, on the hospital ward, whilst any order is sought. Any birth plan in place must be made available to hospital staff and will need to make reference to the three points above, as well as confirming, among other things, the arrangements for contact.

See [Section 1.14.3, R (G) v Nottingham City Council (2008) EWHC 152 (Admin)](http://leedschildcare.proceduresonline.com/chapters/p_court_orders.html#notts_city_council)

1.13 Challenge to an EPO

There is no appeal process for an EPO but where the person wishing to make the challenge was not present at, nor given notice of, the hearing, an application to have the order discharged after 72 hours can be made by:

* The child;
* Child’s parent(s);
* Any person with parental responsibility for the child;
* Any person with whom the child was living immediately before the EPO was made.

Where an EPO is extended, a challenge cannot be made during the period of the extension (which can be up to seven days).

If an EPO is challenged, the social care legal team will present the case for the local authority.

The Social Worker and their Practice Manager will discuss with the legal team whether an application for an interim care order should be made whilst the EPO is in force.

1.14 Key Cases

All practitioners need to be aware of three key cases:

*1.14.1* *X Council v B (2005) 1 FLR 341*

Mr Justice Munby set out in full both the domestic and European Court of Human Rights (ECHR) case law relating to emergency protection orders and formulated 14 points summarising the current law:

1. An EPO, summarily removing a child from his parents, is a draconian and extremely harsh measure requiring exceptional justification and extraordinary compelling reasons. Such an order should not be made unless the Family Court is satisfied that it is both necessary and proportionate and that no other less radical form of order will achieve the essential end of promoting the welfare of the child. Separation is only to be contemplated if immediate separation is essential to secure the child's safety: imminent danger must be actually established;
2. Both the local authority which seeks and the Family Court which makes an EPO assume a heavy burden of responsibility. It is important that both the local authority and the Family Court approach every application for an EPO with an anxious awareness of the extreme gravity the relief being sought and a scrupulous regard for the European convention rights of both the child and the parents;
3. Any order must provide for the least interventionist solution consistent with the preservation of the child's immediate safety;
4. If the real purpose of the local authority's application is to enable it to have the child assessed, then consideration should be given to whether that objective cannot equally effectively, and more proportionately, be achieved by an application for, or by the making of, a [Child Assessment Order](http://trixresources.proceduresonline.com/nat_key/keywords/child_assessment_order.html) under section 43 of the Children Act 1989;
5. No EPO should be made for any longer than is absolutely necessary to protect the child. Where the EPO is made on an ex parte (without notice) application, very careful consideration should be given to the need to ensure that the initial order is made for the shortest possible period commensurate with the preservation of the child's immediate safety;
6. The evidence in support of the application for an EPO must be full, detailed and compelling. Unparticularised generalities will not suffice. The sources of hearsay evidence must be identified. Expressions of opinion must be supported by detailed evidence and properly articulated reasoning;
7. Save in wholly exceptional cases, parents must be given adequate prior notice of the date, time and place of any application by a local authority for an EPO. They must also be given proper notice of the evidence the local authority is relying upon;
8. Where the application for an EPO is made ex parte, the local authority must make out a compelling case for applying without first giving the parents notice. An ex parte application will normally be appropriate only if the case is genuinely one of emergency or other great urgency - and even then, it should normally be possible to give some kind of albeit informal notice to the parents - or if there are compelling reasons to believe that the child's welfare will be compromised if the parents are alerted in advance to what is going on;
9. The evidential burden on the local authority is even heavier if the application is made ex parte. Those who seek relief ex parte are under a duty to make the fullest and most candid and frank disclosure of all the relevant circumstances known to them. This duty is not confined to the material facts; it extends to all relevant matters, whether of fact or law;
10. Section 45(7)(b) of the Children Act 1989 permits the Court to hear oral evidence. But it is important that those who are not present should nonetheless be able to know what oral evidence and other materials have been put before the Court. The Court must keep a note of the substance of the oral evidence and must record in writing not merely its reasons but also any findings of fact;
11. The local authority should immediately on request inform the parents of exactly what has gone on in their absence. Parents against whom an EPO is made ex parte are entitled to be given, if they ask, proper information as to what happened at the hearing and to be told, if they ask: (i) exactly what documents, bundles or other evidential materials were lodged with the Court either before or during the course of the hearing; and (ii) what legal authorities were cited to the Court. The local authority's legal representatives should respond forthwith to any reasonable request from the parents or their legal representatives either for copies of the materials read by the Court or for information about what took place at the hearing. It will, therefore, be prudent for those acting for the local authority in such a case to keep a proper note of the proceedings, lest they otherwise find themselves embarrassed by a proper request for information which they are unable to provide;
12. Section 44(5)(b) of the Children Act 1989 provides that the local authority may exercise its [Parental Responsibility](http://trixresources.proceduresonline.com/nat_key/keywords/parental_respons.html) only in such manner 'as is reasonably required to safeguard or promote the welfare of the child.' Section 44(5)(a) provides that the local authority shall exercise its power of removal under Section 44(4)(b)(i) 'only...in order to safeguard the welfare of the child.' The local authority must apply its mind very carefully to whether removal is essential in order to secure the child's immediate safety. The mere fact that the local authority has obtained an EPO is not in itself enough. The Family Court decides whether to make an EPO. But the local authority decides whether to remove. The local authority, even after it has obtained an EPO, is under an obligation to consider less drastic alternatives to emergency removal. Section 44(5) requires a process within the local authority whereby there is a further consideration of the action to be taken after the EPO has been obtained. Though no procedure is specified, it will obviously be prudent for local authorities to have in place procedures to ensure both that the required decision making actually takes place and that it is appropriately documented. Consideration should be given to drawing up an EPO removal plan and getting it agreed by the designated manager;
13. Consistently with the local authority's positive obligation under Article 8 to take appropriate action to reunite parent and child, section 44(10)(a) and 44(11)(a) impose on the local authority a mandatory obligation to return a child who it has removed under section 44(4)(b)(i) to the parent from whom the child was removed if 'it appears to West Sussex Children’s Services that it is safe for the child to be returned'. This imposes on the local authority a continuing duty to keep the case under review day by day so as to ensure that parent and child are separated for no longer than it is necessary to secure the child's safety. In this, as in other respects, the local authority is under a duty to exercise exceptional diligence;
14. Section 44(13) of the Children Act 1989 requires the local authority, subject only to any directions given by the Family Court under section 44(6), to allow a child who is subject to an EPO 'reasonable contact' with his parents. Arrangements for contact must be driven by the needs of the family, not stunted by lack of resources.

*1.14.2 Re X (2006) EWHC 510 (Fam)*

McFarlane J delivered judgment in a case where the local authority had removed a child under an EPO, and then successive interim care orders (ICO)s, only to return her to her family after 14 months when the care proceedings concluded with the threshold criteria not having been established.

The judge quoted the Child Act Guidance and Regulations Volume 1, page 51: *'The purpose of the new order, as its name suggests, is to enable the child in a* genuine emergency *to be removed from where he is or be kept where he is, if and only if this is what is necessary to provide* immediate short-term protection*' and said, "The words 'genuine emergency' and 'only what is necessary to provide immediate short-term protection' cannot, in my view, be stressed enough*.'

He then set out additional guidance:

1. The 14 key points made by Munby J in X Council v B should be copied and made available to the justices hearing an EPO on each and every occasion such an application is made;
2. It is the duty of the applicant for an EPO to ensure that the X Council v B guidance is brought to the court's attention of the bench;
3. Mere lack of information or a need for assessment can never of themselves establish the existence of a genuine emergency sufficient to justify an EPO. The proper course in such a case is to consider application for a child assessment order or issuing s31 proceedings and seeking the court's directions under s38(6) for assessment;
4. Evidence given to the justices should come from the best available source. In most cases this will be from the Social Worker with direct knowledge of the case;
5. Where there has been a case conference with respect to the child, the most recent case conference minutes should be produced to the court;
6. Where the application is made without notice, if possible the applicant should be represented by a lawyer, whose duties will include ensuring that the court understands the legal criteria required both for an EPO and for an application without notice;
7. The applicant must ensure that as full a note as possible of the hearing is prepared and given to the child's parents at the earliest possible opportunity;
8. Unless it is impossible to do so, every without notice hearing should either be tape-recorded or be recorded in writing by a full note being taken by a dedicated note taker who has no other role (such as clerk) to play in the hearing;
9. When the matter is before the court at the first 'on notice' hearing, the court should ensure that the parents have received a copy of the clerk's notes of the EPO hearing together with a copy of any material submitted to the court and a copy of the justices' reasons;
10. Cases of emotional abuse will rarely, if ever, warrant an EPO, let alone an application without notice;
11. Cases of sexual abuse where the allegations are inchoate and non-specific, and where there is no evidence of immediate risk of harm to the child, will rarely warrant an EPO;
12. Cases of fabricated or induced illness, where there is no medical evidence of immediate risk of direct physical harm to the child, will rarely warrant an EPO;
13. Justices faced with an EPO application in a case of emotional abuse, non specific allegations of sexual abuse and/or fabricated or induced illness, should actively consider refusing the EPO application on the basis that the local authority should then issue an application for an interim care order. Once an application for an ICO has been issued in such a case, it is likely that justices will consider that it should immediately be transferred up for determination by a county court or the High Court;
14. The requirement that the justices give detailed findings and reasons applies as much to an EPO application as it does to any other application. In a case of urgency, the decision may be announced and the order made with the detailed reasons prepared thereafter;
15. Where an application is made without notice, there is a need for the court to determine whether or not the hearing should proceed on a without notice basis (and to give reasons for that decision) independently of any subsequent decision upon the substantive EPO application.

*1.14.3* *R (G) v Nottingham City Council (2008) EWHC 152 (Admin)*

In this case, Mr Justice Munby made clear that the separation of a newborn baby from his mother (by placing the baby in a different room in the hospital) was unlawful where, in the absence of parental consent, there was no judicial sanction (i.e. via EPO or ICO) and there was no suggestion that either a) the mother posed a risk of exposing him to immediate physical attack or physical harm or b) there was a medical justification for the separation/intervention.

M in this case was only 18 and had a history of alcohol and drug abuse and had self-harmed. She had been in the care of Nottingham. Prior to M giving birth, an inter-agency child protection conference had been held and a birth plan was prepared for medical staff at the hospital where M gave birth.

The conference recommended that the LA should apply for an ICO following the child’s birth and organise a foster placement. The CPC also recommended that the child should not be removed from the ward by M and an EPO should instead be sought if the ICO order was not in place; that the child should remain in the hospital until taken into foster care.

The birth plan given to the hospital stated that the child was to be removed from M's care at birth but made no reference to obtaining either an EPO or ICO.

Approximately two hours after M gave birth, the child was removed from M and placed in a different room in the hospital. M submitted that separating her from her child was unlawful as it had been done without legal authority.

As stated above, Mr Justice Munby held that LAs had no power to remove children from their parents unless they had first obtained judicial sanction for what they were proposing to do. Only a court could make an ICO or EPO. Only if a court had authorised that step, whether by making an ICO or EPO, could a local authority or Social Worker remove a child from a parent. That also applied to a hospital and its medical staff.

However, this was subject to two qualifications:

1. A Social Worker or a nurse was entitled to intervene if that was necessary to protect a baby from immediate violence at the hands of a parent. In this case, there was no suggestion that M posed any risk to the child of immediate physical attack or physical harm;
2. Further, doctors, midwives and nurses were entitled to separate a child from its mother if medical necessity dictated, even if she objected. However, in this case, there was no question of any medical justification for the intervention, let alone any medical emergency. The child was removed simply because of the birth plan.

**2.****Care and Supervision Order Proceedings**

A care or supervision order should only be sought only when there appears to be no better way of safeguarding and promoting the welfare of the child who is suffering or likely to suffer significant harm.

**2.1 Threshold Criteria**

Section 31 Children Act 1989 provides that a court can only make a care or supervision order if it is satisfied the child concerned is suffering or likely to suffer significant harm and that harm or likelihood of harm is attributable to:

* The care given to the child, or likely to be given to him/her if the order were not made is not what it would be reasonable to expect a parent to give him/her;

**Or**

* The child is beyond parental control.

Where the question of whether harm suffered is significant turns on the child’s health and development, his/her health or development shall be compared with that which could reasonably be expected of a similar child.

No care or supervision order can be made in respect of a child who has attained the age of 17 years (or 16 years in the case of a child who is married).

The court may on application for a care order make a supervision order or vice versa.

**2.2** **Applications**

Where a care or supervision order is necessary, applications should be part of a carefully planned process and advice from the legal team must be sought at the earliest point. The case must have been brought and discussed at Legal Gateway Panel prior to any action being taken. In an emergency situation, discussion must take place with the relevant Service Lead; the case will then be discussed at Legal Gateway Panel retrospectively.

To initiate care proceedings, the following documentation will be required:

* Statement;
* Court care plan;
* Court chronology and letter before proceedings (if applicable);
* Any previous orders;
* Child and Family Assessments;
* S7 or S37 reports;
* Single, joint or interagency material;
* Records of discussions with family;
* Key local authority minutes;
* Child’s records including record of strategy discussion;
* Child in Need plans;
* Care plans and child protection plans;
* Case conference reports and minutes;
* Copy of the narrative of the emergency protection application (if applicable);
* Schedule of proposed findings (to be prepared by the legal team);

Before any decision to initiate proceedings is made (taking into consideration risk to the child) the social worker should:

* Have clear evidence that services provided for the child and their family have failed or that there is evidence of insufficient or no co-operation from the parents with the local authority’s plans;
* Have established that there is no suitable person prepared to apply to take over the care of the child via a child arrangement order or special guardianship order;
* In the case of a supervision order, to be satisfied that the child agrees, or is likely to agree and co-operate with the requirements of the order.

**2.3 The Stages of a Care Application**

Once in care proceedings, a key feature of the PLO is the expectation that Judges will be robust in their management of cases, including requiring parties to confirm early which aspects of the local authority’s case they dispute and their reasoning for this. A key part of the PLO is the role of the court in identifying key issues which require determination.

Judges are also now required to give their prima facie views on every case at an early stage.

Children’s guardians also have to set out their views on a case from the beginning by providing CAFCASS Analysis’ although in practice, this rarely happen.

At the initial hearing, the local authority (LA) will usually be seeking an interim care order in order to acquire parental responsibility (or retain it, if it already has PR via an EPO).

If the interim care plan for the child is removal from their parent’s care, the court has also to be satisfied that the test for removal is met, namely that the child’s safety demands their immediate separation.

As with an EPO, an exclusion requirement can be attached to an ICO.

The initial order is made for the duration of the proceedings.

Following the initial hearing, the matter is usually listed for a case management conference (CMC) at which the case is ‘timetabled’, i.e. the court directs the filing of further factual and expert evidence, the local authority’s care plan, parents’ responses, children’s guardian’s report and the matter is listed for a issues resolution hearing.

If not done so prior to proceedings, it is important early on in a case to establish whether there are any family members who might be able to care for the children concerned if the parenting assessments of the parents are negative. The option of a family group conference should always be considered. It is important that the issue of kinship care is explored as early as possible to avoid later delay for the children.

Advocates meetings are required at least two days before the CMC and issue resolution hearing (IRH). These meetings are **not** attended by any parties, including the social work team and the children’s guardian - they are just for advocates. The main objective of these meetings is to prepare draft case management orders.

The timetable for progressing cases will be fixed around the needs of the subject child (e.g. when starting school, moving to secondary school etc).

Another key feature of the PLO is that final hearing dates will normally only be set when the issues in a case have been agreed and narrowed, i.e. at the IRH. The objectives of the IRH are to:

* Resolve and narrow issues;
* Identify key remaining issues requiring resolution.

Despite this, the PLO does provide for the early listing of a final hearing where appropriate.

In cases where there are single issues to be determined, e.g. whether a child has been sexually or physically abused and if so, who caused the abuse and or failed to protect, it may be appropriate for the case to be listed for a finding of fact hearing.

**2.4 Threshold Criteria**

Before making a final care order, the court has to be satisfied that the statutory threshold criteria under s31 Children Act 1989 are met. More particularly:

1. That the child concerned is suffering or is likely to suffer significant harm; and
2. That the harm, or likelihood of harm, is attributable to:
   1. The care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a child to give him; or
   2. The child being beyond parental control.

The burden of establishing that the threshold criteria are met is on the LA. The standard of proof is the balance of probabilities, i.e. more likely than not.

If the court finds that the threshold criteria are met, it will then go on to consider what final order, if any, to make having regard to the welfare checklist, the no order principle. The welfare of the child is its paramount consideration.

In terms of an interim care order, before making an ICO, the court has to be satisfied that there are reasonable grounds for believing that the s31 threshold criteria are met.

As stated above, If the interim care plan for the child is removal from their parent’s care, the court has also to be satisfied that the test for removal is met, namely that the child’s safety demands their immediate separation.

**2.5 The Effect of a Court Order**

The making of a care order, final or interim, gives the LA parental responsibility for the child concerned. The LA shares PR with any parent or guardian or special guardian. The LA has the power to determine the extent to which a parent or guardian or special guardian of the child may exercise his PR for them.

The LA can determine where the child lives.

The LA cannot change the child’s surname and can only remove him from the UK for less than a month, unless it obtains the leave of the court or the written consent of everyone with PR.

A care order lasts until the child reaches 18 unless it is discharged before then.

A supervision order does not give the LA PR. It can be made for up to 12 months and can be extended up to three years in total.

A supervision order places on the supervisor the duty to “advise, assist and befriend the child.”

**2.6 Residential Assessments**

During care proceedings, parents sometimes apply for orders under s38(6) Children Act to require the LA to pay for a residential assessment.

Since October 2007, the cost of such assessments cannot be funded at all by legal aid (public finding).

To come within s38(6), the assessment must involve the child and the primary purpose must be assessment not therapy for the parent.

In opposing such orders, the LA can rely on financial grounds provided evidence is provided to justify this.

**3.** **Twin Tracking/Parallel Planning**

In care cases where early on it is clear that one of the permanence options is adoption (e.g. where the parents have had a number of previous children who have all been adopted), it is important that the case is ‘twin tracked’ to minimise delay for the child(ren) concerned.

Ideally at the ‘time-tabling’ hearing (i.e. Case management conference), a date for a decision by the Agency Decision Maker needs to be fixed/’time tabled in’ for after all the main assessments are in.

It should be noted that without parental consent, no child can be placed for adoption unless the local authority has obtained a placement order from the court. Thus, if the eventual permanency plan for the child is adoption, it is important, to avoid delay, that all necessary procedural steps are taken to ensure that at the IRH or final hearing, the court has before it a placement order application made by the local authority.

No placement application can be made prior to the adoption recommendation by the Agency Decision Maker, hence the need to take into account a date for a decision from the Agency Decision Maker when time tabling the case.

**4.** **Recovery Orders**

Where a child has:

* Been unlawfully taken away or is being kept away from their responsible person;
* Run away or is staying away from the responsible person and is missing.

The court may make an order for the recovery of the child. Where the relevant criteria are satisfied the social worker in consultation with the practice manager must consider an application for a recovery order (Section 50 of the Children Act 1989). The social worker and the legal team will need to prepare evidence to support the application which will be presented orally in court.

When a recovery order is granted the social worker must accompany the police to the premises specified and produce their West Sussex identification as required. If a child usually resident in West Sussex is found in another authority we can approach that Local Authority for assistance.

**5.** **Child Assessment Order**

A child assessment order (CAO) under section 43 Children Act 1989 enables a compulsory assessment of the child/ren to be made where significant harm is suspected but the child is not thought to be at immediate risk and the parents have refused to co-operate.

The court must be satisfied that an assessment of health and development is required to find out if the child is suffering or likely to suffer significant harm and that a satisfactory assessment is unlikely without the order.

The social worker must discuss with the practice manager whether there are grounds for an application for an emergency protection order (EPO). The court can treat an application for a CAO as an application for an EPO if the circumstances regarding imminent harm are apparent.

The duration of a CAO is limited to seven days and it cannot be extended. It cannot be renewed without the permission of the court and a period of six months has elapsed.

**6.** **Family Assistance Orders**

A family assistance order (FAO) under Section 16 Children Act 1989 aims to provide short term help to a family to overcome difficulties an conflict associated with, for example, the separation or divorce of parents. An FAO requires the local authority to make an officer available to advise and assist and (where appropriate) befriend any person named in the order for period of 12 months, unless the order specifies a shorter period. The act sets out that the order cannot require the local authority to do this without the agreement of the local authority. These orders arise from private law family proceedings cases and cannot be made without the consent of every person to be made in the order other than the child.

**7.** **Child Arrangements Orders**

Section 8 orders deal primarily with private law disputes regarding residence and contact arrangements for children whose parents are living apart, separating or divorced. They provide the means for enabling or constraining particular aspects of the exercise of parental responsibility.

A Specific Issue Order deals with matters of parental responsibility where the courts have to intervene due to disagreements between persons holding such parental responsibility e.g. Matters of health care, schooling. A PROHIBITED steps order specifically directs the person named in the order not to do a specified act without the court's permission e.g. Take the child out of the country.

Where a child is in the care of the local authority, a parent or carer cannot apply for contact under section 8; they would need to apply for an order for contact with a child in care under section 34 Children Act.

The local authority cannot apply for a section 8 order regarding residence or contact but can apply for a specific issue order or a PROHIBITED steps order.

For more information on Section 8 orders and parental responsibility see the [**Cafcass website, Child Arrangements Orders**](http://www.cafcass.gov.uk/grown-ups/professionals/child-arrangements-orders.aspx).

**8.** **Investigations Directed Under Section 7 Children Act 1989**

Within section 8 Children Act 1989 private law proceedings, the court may direct the local authority to provide a section 7 report on matters relating to the welfare of the child/ren (this would be where there is no risk that the child/ren may be likely to suffer significant harm).

The local authority is not a party in section 7 cases and staff will not ordinarily have legal representation.

The legal section may become involved in these cases and give advice, however, it will be the responsibility of the social worker in conjunction with their practice manager to complete the section 7 report and file it with the court. Refer to Reporting to the court under the Children Act: A handbook for Social Services HMSO. (This publication is not available electronically and can be ordered from the DH).

If it is suspected that the child/ren are at risk of harm then the social worker should immediately discuss this with their practice manager for consideration of further action to safeguard or promote the child/ren’s welfare.

The social worker may be required to attend court to provide evidence.

**9.** **Investigations Directed Under Section 37 Children Act 1989**

Section 37(1) states that in any family proceedings in which a question arises with respect to the welfare of any child where it appears to the court that it may be appropriate for a care or supervision order to be made with respect to the child, the court may direct the local authority to undertake an investigation of the child’s circumstances.

The social worker undertaking this type of investigation must consider whether it is necessary to:

* Apply for a care or supervision order in respect of the child;
* Provide services or assistance for the child or their family;
* Take any other action with respect to the child/ren.

Where it is decided by the social worker and the practice manager that it is not necessary to apply for a care or supervision order, it will be necessary to inform the court of the following:

* Reasons for the decision;
* Any service or assistance which has been provided, or it is intended to provide for the child/ren and the family;
* Any other action which has been taken, or is proposed should be taken, with respect to the child/ren.

It is also necessary to determine whether a review of the case should be held and if so, on what date.

It is important to note that when the court makes a direction under section 37 it may also make an interim care order or an interim supervision order in respect of the child/ren for the duration of the section 37 investigation even before the authority reports back to the court about whether it is necessary to apply for a care or supervision order.

The report will be required by the court within eight weeks unless the court directs otherwise. If any difficulty is anticipated in complying with this timescale, the legal team must be notified as soon as possible and briefed as to a date by when the required work can be completed.

Unless or until a decision is made to initiate care or supervision proceedings, the local authority is not party and social workers will not ordinarily be legally represented.

**10.** **Contact with Child in Care**

Section 34 Children Act 1989 imposes a duty upon the local authority to allow reasonable contact with:

* The child’s parents;
* Any guardian of the child;
* Any person who held a Child Arrangements Order immediately prior to the making of the order;
* Any person holding an order of the High Court immediately prior to the care/supervision order being made.

In consultation with the legal team, an application for a Child Arrangements Order to determine and prescribe level of contact between the child and relevant others may be made at the time of the care order application or thereafter.

A Child Arrangements Order can be used to authorise the local authority to refuse contact between the child and any of the persons with whom the local authority would normally have a duty to allow contact or where in ‘urgent circumstances’ such an order is required to safeguard and promote the child’s welfare.

Refusal of contact in ‘urgent circumstances’ may only last for a maximum of seven days and the social worker must consider whether it is necessary to apply for a contact order to authorise contact after this period.

**10.1 Notifications of Contact Arrangements**

Under the Contact with Children Regulations 1991, the local authority must send written notifications in respect of contact to the following persons:

* The child (if of sufficient understanding);
* Child’s parent/s;
* Children’s Guardian if involved;
* Any person in whose favour a child arrangement order was in force before the care order by virtue of an order made under the inherent jurisdiction of the High Court;
* Any other person whose wishes and feelings the local authority consider to be relevant.

Written notifications must be sent in any of the following three circumstances:

1. Where a decision is made to refuse contact ‘ in urgent circumstances for a period of up to seven days’ letters must be sent to the person with whom contact is to be temporarily stopped and to any other relevant persons from the list above;
2. Where a formal agreement has been made between the local authority and the child (if of sufficient understanding) and the person named in the Child Arrangements Order to depart from the terms of the order. In this case, the new arrangements must be sent both to the person named in the Child Arrangements Order and relevant persons from the list above;
3. When the local authority decides to vary or suspend any arrangements with respect to contact which have not been made as part of a Child Arrangements Order, the person concerned, as well as the others listed above must be sent a letter.

Written notifications should contain the following information on a need to know basis:

* The local authority’s decision;
* Date of the decision;
* Reasons for the decision;
* Duration if applicable;
* Complaints procedure.

**10.2 Discharge of Child Arrangements Order**

The local authority, the child and any person named in the Child Arrangements Order are entitled to apply for the order to be discharged.

**11.** **Secure Accommodation Orders**

The placement of a child in secure accommodation (accommodation for the purpose of restricting liberty) should be regarded as a placement of choice, where the identified needs of the child require safe and secure placement with skilful staff delivering specialist programmes of care. Secure accommodation should be seen as a range of positive options available to placing authorities when reviewing and planning to meet the needs of children whose behaviour leads to high levels of concern.

A child meeting the criteria for secure accommodation may be kept in secure accommodation for a maximum of 72 hours without court authority. If the social work view is that the child needs to be in secure accommodation for a longer period of time then an application must be made to the court.

Placement in secure accommodation can be sought where the child has a history of absconding and is likely to abscond from any other description of accommodation; and if he/she absconds is likely to suffer significant harm. Also on the basis that if the child is kept in any other description of accommodation he/she is likely to injure themselves or others.

If a child is under 13 years then the prior authorisation of the Secretary for State is required before placement.

The initial secure accommodation order can be up to three months duration and subsequent applications may be for up to six months. Applications should be made to the court via the social care legal team.

**11.1 Court Report**

The social worker should prepare a written report for court, together with a detailed chronology including the following:

* The child’s history of absconding and harmful behaviour;
* Children’s Social Care involvement with the case to date;
* The circumstances surrounding the application;
* The reasons for the application for authority to keep a child in secure accommodation;
* Plans for the young person including the duration of the order sought.

The legal team will liaise with social work staff to assemble the required evidence for the court hearing and witnesses in person.

The social worker must ensure that Mosaic accurately reflects placement and removal from secure accommodation.

**12.****Disclosure of Information**

In the event that a court requests the local authority to present social work files to the court, the duty solicitor must be contacted in the first instance.

**13.** **Special Guardianship Orders**

One of the possible outcomes of care proceedings is the making of a special guardianship order in favour of the child’s carer(s). See Special Guardianship Orders Procedure.

**14.** **Supervision Orders**

**14.1 Legal context**

The Court can make a Supervision Order to a Local Authority if it considers that the threshold criteria under Section 31(2) of the Children Act 1989 have been met, that it is in the child's best interests to do so and that it considers that it is necessary and proportionate to make such an Order.

A Local Authority can apply for a freestanding Supervision Order under Section 31 of the Children Act 1989. This might be in circumstances where the Local Authority are concerned about the care a child is receiving from its parents but not enough to warrant the Local Authority wanting to share parental responsibility for the child and be involved in the day to day decision making for the child. The Local Authority will have to prove to the Court that the threshold criteria are met.

A Supervision Order generally lasts for one year although it can also be made for less. However, the Local Authority may apply for the order to be extended up to three years from the date it was originally made if it is believed there is a need to. It must be renewed before the original order expires or a fresh application will need to be made. It will also end automatically if certain Court orders are made or when the child turns 18.

Any person with Parental Responsibility for the child, the child himself, or the Local Authority can at any time apply to discharge or vary the requirements of the Supervision Order.

A Supervision Order is also often made alongside a Child Arrangement Order / Special Guardianship Order in proceedings to allow the Local Authority to assist with issues such as contact.

In the occasion of the Local Authority seeking discharge of a Care Order, a request for a Supervision Order may be made. These procedures would then apply.

**14.2 What is the effect of a Supervision Order (SO)?**

A Supervision Order places the child under the supervision of the Local Authority. The LA has 3 duties towards the child under the SO:

* To advise, befriend and assist the child;
* To take steps that are necessary to give the order full effect;
* If the order is not followed, or the Local Authority feels that the order is no longer needed, to consider whether to vary the order, attach requirements to it, or even substitute it for a Care Order.

**14.3 Directions**

The Local Authority can seek directions attached to the SO to direct that the child:

* Lives in a particular place;
* Takes part in education or specified training activities;
* Reports to particular places at particular times;
* To allow the Social Worker to visit him/her where he/she lives.

**14.4 Requirements**

A Supervision Order can also have requirements attached to it. Without requirements the SO only requires the Local Authority to advise, befriend and assist the child.

Under the SO, those with parental responsibility for the child become 'responsible persons' and the Local Authority can ask the Court to attach requirements to the SO to ensure the following:

* For the supervised child to comply with directions of the Local Authority on certain matters such as living in a specified place, joining in on specific activities, and allowing the Social Worker to visit them;
* A requirement for the person with whom the child lives with to comply with the directions of the Local Authority. (This requires the parent's consent);
* For the supervised child to have a medical or psychiatric examination;
* For the supervised child to have specified treatment for his mental health.

If the responsible person breaches the SO this does not automatically mean that the SO will become a Care Order. The law does not provide any specific remedy for breaches and the Local Authority will have to think carefully about how that breach might be dealt with. They may wish to return the matter to Court to vary the terms of the SO or consider that the child can only be protected by a Care Order.

If the responsible person refuses to allow the Local Authority access to the child then the Local Authority can apply to the Court for a warrant to do so. In these circumstances, however, again the Local Authority may wish to consider whether a Care Order might be needed.

If the Local Authority wants the child to undergo any medical or psychiatric examination, this must be specifically ordered by the Court. If the child is of sufficient age or understanding he or she can refuse to undergo the examination.

**14.5 Guidance notes**

1. Supervision orders are in the main made when:
   * Children are subject to proceedings but never removed from their parent(s) care;
   * Children have been rehabilitated to the care of a parent during the course of or at the end of proceedings;
   * The child is living with another family member who has been granted parental responsibility through a Special Guardianship Order or Child Arrangement Order and it is felt that a period of support in a legal framework is required. In many instances there is a continued need for support to ensure the needs of a child are met around the issue of contact.
2. The plan agreed in court will be underpinned by the departmental procedures which give guidance regarding visiting frequency, multi-agency meetings and the timing and chairing of reviews;
3. The plan does not need to state the procedures but will need to identify in detail what support is being offered, by whom, the frequency of such support and how this meets the needs of the child;
4. The plan should be agreed by all agencies involved with the child and the family prior to completion and the order being placed before the court;
5. Good practice would dictate that a case is transferred within the department to another team at the three month review. The team who have managed the case through proceedings are best placed in those early months to continue to address identified issues and monitor progress. If the order has been made to another authority, a face to face hand over should take place wherever practical;
6. Post order visiting patterns can only be reduced with agreement from all parties at the three month review;
7. If the order is being allowed to lapse consideration should be given as to whether the child will continue to need support as a Child in Need or through the Early Help Assessment.

**14.6 Procedures when an Interim Supervision Order is in place (when Care Proceedings are on-going)**

1. The case must be allocated to a qualified Social Worker;
2. The plan being implemented and reviewed is that agreed by the court;
3. The child must be seen at minimum every 10 working days and should be seen alone at some point in the visit. Such visits should be both announced and unannounced and should happen at this frequency for the duration of the interim order;
4. The case will be independently reviewed:
   * If the child was accommodated under Section 20 prior to the matter coming before the court, the existing Independent Reviewing Officer (IRO) will continue to chair all future reviews;
   * If the child was subject to a child protection plan prior to the matter coming before the court the Safeguarding chair will continue to chair reviews;
   * If the child was not accommodated or subject to a child protection plan prior to the matter coming before the court, a request to be made to the Integrated Safeguarding Unit for the allocation of an independent chair.
5. Timescales and Frequency of Reviews:
   * The first review will take place within 28 days of the making of the order;
   * The second review to be held within three months of the first review and thereafter every 6 months whilst the matter is before the court;
   * If there is a difference between the field work team's recommendations and those of the independent chair, in the first instance the matter will be referred to the Group Manager. If a resolution is not achieved it would then be referred to Service Lead;
   * Multi agency meetings can be called between reviews, chaired by the Social Worker, if felt necessary. The independent chair should be informed and the minutes of the meeting be made available to them.

**14.7 Procedures when a full Supervision order is in place (at the conclusion of Care Proceedings)**

1. The case must be allocated to a qualified social worker;
2. The plan being implemented and reviewed is that agreed by the court;
3. The Practice manager will chair reviews following the granting of the order and an initial meeting should be held within three weeks of the order being granted;
4. Once the full order is made a review must be held within three months of the making of the order. It may be necessary to undertake this at an earlier stage if the family members/ professionals involved has changed (for example the child has moved address.);
5. Visiting frequency is expected every 15working days. It is only at the 3 month review that the visiting frequency can be reduced from every 15 working days, if proportionate and justified, but will never go below every 6 weeks;
6. At the 9 month review agreement has to be reached as to whether the order will be allowed to lapse or a further application made to court. The reasons for either must be clearly recorded. If there is a difference between the social work practice managers recommendations and those of the other partner agencies involved, in the first instance the matter will be referred to the Group Manager. If a resolution is not achieved it would then be referred to the Service Lead.
7. If agreement has been reached that the order be allowed to lapse, consideration must be given as to what further support may be required in the future. A plan under Child in Need or through the Early Help should be in place prior to the order ceasing if on-going support is required;
8. Multi-agency meetings can be called between reviews, chaired by the Social Worker, if felt necessary.

Good practice would dictate that if the case is to transfer to another team in the local authority that this happen at the first review (i.e. after three months) and that the incoming team attends the meeting.

**Reference Points;**

[**Children Act 1989**](https://www.legislation.gov.uk/ukpga/1989/41/contents)