

Appendix C – Legal Powers and Duties

It is permissible to physically intervene to prevent a young person running away from care, however any action will need to be justified by an assessment of the risk that a child might experience and physical intervention does not offer a long-term risk management strategy. Building trusting and respectful relationships with children is paramount.

Recovery Order:

The local authority may apply to the Court for a Recovery Order (under Section 50 (1) of the Children Act 1989[11]) when a child is subject to an Interim or Full Care Order and it is clear that the child who is in no immediate danger of Significant Harm;

- 1) Has been unlawfully taken away or is being unlawfully kept away from the responsible person;
- 2) Has run away or is staying away from the responsible person; or
- 3) Is missing.

A Recovery Order:

- Operates as a direction to a person able to do so to produce the child on request to an authorised person.
- Authorises the removal of the child by an authorised person.
- Requires a person who has information as to the child's whereabouts to disclose it, if so requested, to a constable or an officer of the court.
- Authorises a constable to enter any premises specified in the order and search for the child, using reasonable force if necessary.

Emergency Protection Order:

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.

Under S48 (3), an Emergency Protection Order authorises the applicant to enter premises specified by the order and search for the child with respect to whom the order is made.

Under s44(1)(a) the court may only grant the order under this ground if it is satisfied that there is reasonable cause to believe that the child is likely to suffer Significant Harm if either:

- They are not removed to accommodation provided by or on behalf of the applicant; or
- They do not remain in the place where they are being accommodated.

Power to use Reasonable Force or Physical Restraint:

If a constable has reasonable cause to believe that a child would otherwise be likely to suffer Significant Harm, the constable may remove the child to a place of safety and keep the child there (S46 Children Act 1989).

The Children Act legislation implies the power to use reasonable force in appropriate circumstance to take a child into police protection or to keep the child at a place of safety (Home Office Circular 44/2003).

Police Powers of Protection:

Under Section 46 of the Children Act 1989, the police have the power to remove children to a safe location for up to 72 hours to protect them from "significant harm". Police do not require a court order to take such a step

Power of Entry to Recover Child/ Young Person:

Under S17 (1) (e) Police and Criminal Evidence Act 1984:

A constable can use reasonable force, but in some circumstances a Recovery Order would be required to enter premises. The welfare of the child/ young person is paramount and where there are grounds to believe a vulnerable missing child/ young person is on premises and access is being refused, there should be no hesitation in gaining entry under this provision. The reason why there is no power of entry under the Children's Act 1989 to take a child/ young person into police protection is because the power under S17 (1)(e) was considered sufficient.

Under S17 (1) (b) Police and Criminal Evidence Act 1984:

A Police Officer can use reasonable force to enter premises to arrest someone for an indictable offence. Therefore where there is another person on the premises who is preventing access, consideration should be given to entering to arrest that individual for abduction of a child contrary to S2 Abduction Act 1984 or S49 Children Act 1989.

Child Abduction Warning Notices:

These can be served on individuals who allow children and young people to stay at their homes without informing the parent or carer are directly or indirectly encourage them to go missing and stay away from their carers.

West Yorkshire Police complies with Authorised Professional Practice (APP) and has established a local policy and procedure to provide clear standards and guidelines, to reduce repeat incidents of children and young people going missing from the care of those responsible for their welfare and reduce the risk that this exposes them to.

The issue of a Child Abduction warning Notice, on those over the age of 18 in relation to a child or young person under the age of 16 years (under 18 if in local authority care) is a safeguarding measure and may also serve as a disruption tactic to prevent association with suspects / associates who are believed to place the child or young person at risk.

The serving of a Child Abduction Warning Notices is a formal indication of the parent or carers wish that they do not want the child to associate or visit the person named in the notice

Breach of the Peace:

Under Common Law, the police have a power of entry to prevent a breach of the peace.

Warrant:

Under S48(9) Children Act 1989, a warrant can be obtained authorising a constable to use reasonable force to enter and search premises if a person trying to exercise powers under an Emergency Protection Order is being prevented from doing so by being refused entry to those premises.