CHILDREN IN NEED OF CARE

An overview of the law relating to children

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Social Workers

- Currently in Oxfordshire social workers who carry out statutory work with Children who are looked after are employed by the Local Authority.

- Qualified social workers have completed a three year degree course, for many this is their second degree. Whilst studying, the social work students study generic modules and do not specialise in either adult or child care.

- In order to practise as a social worker, a social worker needs to be registered with the General Social Care Council. This is a professional body. Each social worker pays an annual registration fee. In order to maintain their registration social workers must complete a minimum of 15 days of professional training every 3 years.

- Some areas of adoption work can only be undertaken by social workers who have been qualified for 3 years and have some experience of adoption work.

  Social workers who do not meet this requirement have their adoption work supervised and verified by a suitably qualified practitioner.

- Specialist teams/expertise vs. parents’ need for one person over time.
  - Assessment team
  - Family Support team
  - Looked After team
  - Adoption and fostering.
The Children Act was implemented for the most part in October 1991. It introduced comprehensive changes to legislation in England and Wales. The Act introduced the concept of ‘parental responsibility’ which is intended to alter the emphasis away from parental rights over children towards a focus on their responsibilities towards children.

It is the fundamental legal framework within which Social Workers practise. There are basic principles which apply to the legal orders that are made within it, these are:

- The child’s welfare is paramount
- Delay is not in the child’s interests and should be avoided
- Courts should not make an order unless it is better for the child than leaving things alone.
- Children’s wishes should be heard.
- Contact with the family is important.
Who are Looked After Children?

Looked After Children are those children who are…

accommodated by the Local Authority, away from their family (with some exceptions), in a:

- residential placement or
- foster placement or
- placed for adoption or
- are subject of a Care Order (even if they are living with parents at home) or
- other court order or
- accommodated on a voluntary basis

Accommodation may be provided on a:

- long-term basis or
- a series of planned short term placements
The Looked After Child in your school

1. The child who is Looked After may already be at your school, and known to you.

2. You may have a child who joins your school after they become Looked After.

3. The child who is Looked After, may be in the care of another Local Authority.

Any of these situations will mean that there are suddenly a number of people involved with the child.

You need to know quickly who everyone is and the details of their role or responsibilities towards the child. This is confusing, difficult and at times frustrating, but please remember the child and their family are also experiencing this and trying to manage this tremendous change.

Some of those people who may be involved now that a child is Looked After are:

- Child’s Social Worker
- Foster Carer
- Virtual School
- Supervising Social Worker, Social worker supporting the foster carer
- Leaving care personal advisor
- Designated Health Worker
- Psychologist
- Children’s Guardian
- Independent Visitor
- Youth Offending team
- Independent Reviewing Officer

With all of these people it can be difficult to know who to respond to or get in touch with regarding the child. These details should be in the core document of the child’s PEP. If there are any problems with getting this information you are advised to contact the Virtual School.

If the matter is more urgent then you are advised to always get in touch with the Child’s social worker in the first instance.

Social work geographical areas are different from those in education. For example; a Looked After Child in a school in the south of the county may well have a Social Worker based in the north of the county. Responsibility for that child will almost always remain with the Looked After Team in the north.
The Legal Status of Looked After Children

The biggest effect that a child’s legal status has, is on the parents’ Parental Responsibility, PR, and how much they are able to exercise that responsibility.

Section 3(1) of the Children Act 1989 defines Parental Responsibility as: “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property”

The ‘rights, duties and powers’ have never been legally defined, however legal commentators have suggested that they have often been considered in relation to the rights to determine:

- Where a child should live
- A child’s education
- A child’s religion
- To discipline a child
- To authorise medical treatment
- To supervise a child’s property
- To appoint a guardian
- To agree to an adoption
- To change a child’s name
- To consent to a child’s marriage.

Parental Responsibility lasts until a child’s 18th birthday.

For most children living at home with their parents, their parents have complete Parental Responsibility or ‘PR.’ For these children, their parents receive school reports, come to parents’ evenings, make decisions with their child about ‘GCSE options’, give their permission for school trips and activities. They need to be informed of any incidents that take place in school.

This can be very different for a Looked After child who is ‘subject’ to a legal order.
Section 46 (Children Act 1989)

Police Protection Order (PPO)

- The police are able to make this order immediately and without recourse to a Family Court.

- This order is made in an emergency when a child is considered to be at immediate risk of significant harm. The child is taken into police protection and the Local Authority is asked to provide suitable care and accommodation for the child.

- Social workers may request the police to use their power to make this order if a child is at immediate risk.

- A Police Protection Order lasts for up to 72 hours. A child is subject to this order but not ‘looked after’, the child may return home.

Section 44-45 (Children Act 1989)

Emergency Protection Order (EPO)

- This order is made by a Family Court.

- An Emergency Protection Order allows a child to be removed or detained for their protection.

- The child who is subject to an Emergency Protection Order is in the care of the Local Authority, but may not become a ‘looked after child’ as they may return home.

- An Emergency Protection Order lasts for up to 8 days and can then be renewed for a further 7 days.

A parent may not appeal the making of this order
Section 20 (Children Act 1989) or sometimes referred to as: ‘Voluntarily Accommodated’.

There is no legal order in place. Section 20 relies upon an agreement between the child’s parents and the Local Authority.

A child may be accommodated under Section 20 for the following reasons:

- The child’s parents may have requested that the child be cared for.

- The Local Authority may have decided that the child needs to be cared for away from home and have negotiated with the parents and got their agreement to the child being accommodated.

- The child then has an allocated Social Worker. (Check who to invite to meetings.)

- The child may have been adopted and that adoption has broken down, resulting in the child needing to be accommodated.

There is no time limit to this arrangement.

Parents can remove the child from their placement at any time.

A Family Court does not have to be involved in the decision to accommodate a child under Section 20.

In this situation the Local Authority does not have Parental Responsibility. It is crucial to check with the child’s social worker with regard to what level of parental responsibility the parent can exercise.
Section 38 (Children Act 1989)

Interim Care Order

Arrangements under Section 38 are overseen by a Family Court. A child is usually the subject of an Interim Care Order or ICO when the Local Authority has begun care proceedings.

The court is responsible for deciding whether or not the child should be cared for by their parents or by alternative long term carers.

- The Local Authority shares parental responsibility with the child’s parents.
- The child’s parents have to work within the legal framework and co-operate with the Court’s directives.
- The child’s parents can challenge the Interim Care Order. They can do this through their legal representatives.
- An Interim Care Order lasts initially for 28 days, thereafter it can be challenged or renewed.
- There is no time limit attached to the Interim Care Order however there is a clear expectation that care proceedings conclude within 40 weeks.

The Child’s social worker who is working closely with the parents will use their discretion as to how much parental responsibility they can exercise.

In relation to the child’s school; what information that can be shared with parents about their child’s school will be based on a judgement about any risk to the child, the staff and the other children at the school. The social worker will assess this risk, often in consultation with the Family Court.
Section 31 (Children Act 1989)

(Full) Care Order

At the conclusion of care proceedings in a Family Court, the court may have decided that it would not be in the child’s interests to be cared for by his parents. The court makes the child the subject of a Care Order, the Care Order is granted to the Local Authority.

A Care Order may be the end of the legal process of Care Proceedings for some children, but for others it may continue until ‘permanency’, that is when a permanent placement can be secured for them.

By granting the Care Order, the court is giving the Local Authority a very significant proportion of parental responsibility for the child and entrusts the Local Authority with the task of planning and caring for the child.

- With younger children a Care Order may be the beginning of a longer process of which the aim would be to secure a permanent placement for them through Adoption or with a Special Guardianship Order.
- With older children a Care Order may be their long term legal status and they will remain ‘Looked After’.
- When a Care Order is granted, the Local Authority has a greater share of Parental Responsibility than the child’s parents and can significantly restrict the parent’s ability to exercise that Parental Responsibility.
- Parents can return to the Family Court and under specific circumstances they can be given ‘leave of the Court’ to challenge the Care Order.
- If there is a significant change of circumstances for the child, either the child or the Local Authority may return to the Family Court and make an ‘application’ to revoke the Care Order.
- A Care Order lasts until the child becomes 18 years old. However if an Adoption Order or a Special Guardianship Order is granted, parental responsibility passes from the Local Authority to whomever the orders are granted and the Care Order is automatically annulled.

When a Child is the subject of a Care Order, the Local Authority has the greater share of Parental Responsibility. Social Workers continue to work with the parents who will always retain Parental Responsibility. The Social Workers will set out in the child’s Care Plan how much the parents are able to exercise that Parental Responsibility, that is to say, how much involvement they will have in the child’s day to day life and the ongoing planning and decision making for the child.

A child can be subject to a Care Order and living at home. This may be as part of a rehabilitation plan.
Promoting Education for Children in the Looked After system

- The children may be in a variety of schools ranging from: pre-school provision, nurseries, primary schools, secondary schools, special schools, PRUIS and residential schools.

- The move to care rarely coincides with the common entry points to school such as a start in reception, the move to junior school or secondary school transfer. Any changes of school can be difficult, but more so for a child in care who is also coping with a new home placement.

- A move of school can plunge a child into a school setting unprepared in a highly visible way, leading to feelings of being an intruder. Difficulties with peer group relationships can then follow.

- A lack of continuity affects educational progress, and the children may be less able to make relationships with teachers and trust in their guidance. This then becomes a barrier to enjoyment and success in school.

- Some of the children have special educational needs. There may not have been adequate assessment and effective interagency liaison to understand and support their needs. Moves of school may have disrupted support plans.

- Following on Government concerns with regard to the under-achievement of Children in the Looked After System in terms of their education, all schools have a designated teacher for Children in Care. Services have been asked to prioritise children in Care where there are concerns about their performance in school.

- All Children in the Looked After System should have a Personal Education Plan (PEP). A PEP is a plan which is geared to ensure access to services and support, contribute to stability, minimise disruption and broken schooling, signal particular and special needs, establish clear goals, and act as a record of progress and achievement. The important thing is that a PEP is a process not a piece of paper.

- Local Authorities have a dedicated team, a Virtual School, which is geared to raising the education achievement of children in the Looked After System. This is a team of experienced professionals who work together to do some case work, improve systems for children in the Looked After System, and offer training for colleagues and carers.
Child becomes Looked After.

Within 72 hours;
A planning meeting must be held.

Within one week;
A Statutory visit must be made by a Social Worker.

Within 20 days;
A Personal Education Plan meeting should be held. A review of the PEP takes place 6 monthly unless the child moves school.

Within 28 days;
An Initial health assessment to be carried out. Health Action Plan reviews take place annually thereafter.
The Child’s first Looked After Review must also take place.

6 months later;
The child has their 3rd Looked After review. Reviews take place 6 monthly thereafter.

Within 3 months;
The child has their 2nd Looked After Review. Permanency planning starts

Looked Reviews take place at 6 month intervals unless the Child moves placement or their legal status changes to ‘Placed for adoption’
Section 22 (Adoption and Children Act 2002)

Placement Order

If the permanency plan is for the child to be adopted, then either at the same time as the Local Authority applies for a Care Order or very shortly after, they also make an application to the Family Court for a Placement Order.

- A Placement Order allows the Local Authority to place the child with carers who they have assessed as being able to meet the child’s needs.
- The parents are able to challenge the making of a Placement order.
- Once a Placement Order is granted the parents are not able to challenge the Local Authority’s choice of placement.
- A Placement Order runs parallel to a Care Order. Both are wiped out when the Adoption Order is made.
- A Placement Order lasts until the Child becomes adopted.

If a child is subject to a Placement Order, the social worker will continue to work with the parents informing them of the plans to place the child and sharing selected information. A Placement Order stops the parent being able to make a decision about where the child will live.
SECTION 46 (Adoption and Children Act 2002)

Adoption Order

This order is granted by the Family Court and legally secures the child’s place within a ‘new’ family giving them ‘permanency’. The Adoption Order application is made by the ‘new’ family with the consent of the Local Authority.

- A child who is placed with potential adopters is still a ‘Looked After child’ until the date when the Adoption Order is granted.

- When a child is placed with prospective adopters, parental responsibility remains with the Local Authority and also with the parents.

- When plans are being made to place the child with prospective adopters, the social worker will document what decisions the prospective adopters are able to make without recourse to the child’s social worker.

- The child’s parents can challenge the granting of an Adoption Order.

- When the Adoption order is granted then complete parental responsibility passes to the adoptive parents. The child is no longer ‘Looked After’ and the Local Authority and the parents no longer have any Parental Responsibility with regard to the child.

- Once granted, an Adoption Order cannot be challenged or revoked. It cuts all ties.

- An Adoption Order lasts for a lifetime.

The child’s social worker does not continue to be involved with planning for the child and stops working with the parents.

There is specialist ongoing support for the child, the adoptive parents and the ‘birth parents’
SECTION 14A (Children Act 1989)

Special Guardianship Order

A Special Guardianship Order is granted to a named person by the Family Court. It can be granted soon after a Care Order is granted or it may be years later. The Local Authority is most often, in support of the application for a Special Guardianship Order.

- A child who is the subject of a Special Guardianship Order is still a ‘Looked After’ child until the date when the Special Guardianship Order is granted. Thereafter the child is not a child in the Looked After System.

- The parents are able to challenge the granting of a Special Guardianship Order.

- Parents can return to the Family Court and under specific circumstances, they can be given ‘leave of the Court’ to challenge the Special Guardianship Order.

- The child is allowed under specific circumstances to seek ‘leave of the court’ to revoke the Special Guardianship Order.

- When a Special Guardianship Order is granted, the Local Authority no longer has Parental Responsibility for the child. The child is no longer ‘Looked After’. The Parental Responsibility is shared between the parents and those named people to whom the Special Guardianship Order has been granted, however the Special Guardians assume almost all Parental Responsibility.

- At the time of granting the order, the Family Court may make specific directions regarding the decisions that the Special Guardians may or may not make.

- The Special Guardianship Order lasts until the child is 18 years old.

Once the order is granted the child’s social worker is not involved with planning for the child and stops working with the parents.

There is specialist ongoing support for the child, the Special Guardians and the ‘birth parents’.
Section 8 Specific Issues Orders (Children Act 1989)

Residence Order

A Residence Order is granted to a named person by the Family Court. It is a private law order.

- The Local Authority is not necessarily involved prior to a child becoming the subject of a Residence Order.
- A child who is the subject of a Residence Order is not a Looked After child. If they were ‘Looked After’ prior to the Residence Order, they cease to be ‘Looked After’ on the date the Residence Order is granted.
- A Residence Order can be made to one of the child’s parents i.e. in the case of separation or divorce.
- A parent can challenge the making of a Residence Order.
- Parents can return to the Family Court and under specific circumstances, they can be granted ‘leave of the court’ to challenge the Residence Order.
- The Child, under specific circumstances, can be granted ‘leave of the court’ to revoke or challenge the Residence Order.
- A Residence Order specifies where a child will live. At the time of making the order the court may make specific directions regarding the decisions that the person who is granted the Residence Order can make with regard to the child.
- Parents retain Parental Responsibility, it is shared with the person to whom the order has been granted. This person has a greater share of Parental Responsibility and can exercise this on a daily basis but they will have to consult the other parent or both parents regarding more significant decisions.
- If a child is subject to a Care Order when a Residence Order is granted, then the Residence Order annuls the Care Order.
Kinship Care

There are a couple of principles which have first to be established for a child who is living with a relative or friend.

- Does the child need to be in care i.e. ‘Looked After’, are they at risk of significant harm if they continue to live with their parents?

- If the child does meet the criteria for being at risk of significant harm, then they may live with friend or family under Regulation 28 of the Fostering Regulations. **They are** a Child who is Looked After.

- If the child does not meet the criteria for being at risk of significant harm then family or friends may take on a caring or supporting role without the Local Authority being responsible for the child’s care. The child **is not** Looked After.

If in doubt, consult with the Assessment Team.
Private Fostering

- This is an arrangement between a parent and another person, either family or friend.

- If the child is cared for more than 28 days, the Local Authority has a duty to assess the suitability of the person caring for the child.

- If the care afforded to the child is appropriate, the Local Authority informs the parent and the arrangement may continue for as long as the parent and carer wish it to, without further involvement from the Local Authority.

- If the care afforded to the child is not suitable, the Local Authority informs the parent and requests that the child is removed and either returned home or is cared for elsewhere.

- If the child is privately fostered they are not Looked After.
Looked After Children Leaving Care

From the age of 16, Local Authorities should begin planning for most Looked After Children to leave care, although they will continue to have some responsibilities for former Looked After Children until they are 25.

The Children (Leaving Care) Act 2000 (amended by the Children and Young Persons Act 2008) gives local authorities a number of responsibilities for young people leaving care.

These include a detailed assessment of a young person’s support needs, including provision for further or higher education.

Each young person should have a pathway plan that sets out the young person’s needs and how they are to be met and this can include provision of accommodation, financial support in further education or a higher education bursary.

The pathway plan must be regularly reviewed and updated and this is done alongside the young person’s existing care plan.

The young person must also have a personal adviser who is independent of both their school and their social worker to help them prepare for their future.

In Oxfordshire, planning for leaving care, and the provision of a personal adviser is the responsibility of the Leaving Care Team.
Human Rights Act 1998

The Human Rights Act came into force in the UK in October 2000. The broad effect on UK law is that public authorities have to act in a manner which is compatible with the European Convention on Human Rights.

The European Convention on Human Rights contains Articles and the Article most relevant to Social Workers working with children is Article 8; “the right to respect, to private and family life”.

If a Local Authority is applying to a Family Court for an order pertaining to a child it can be granted if it is considered by the court that to do so; would:

- Be lawful
- Would serve a legitimate purpose
- Be necessary in a democratic society
- Not be discriminatory.
**Useful telephone numbers:**

Telephone numbers of admin support for LAC teams

City 1 & 2 Looked After Teams   01865 323223  
South Looked After Team        01865 897984  
North Looked After Team        01865 816677

Richard Mason:  
Looked After Child Review Coordinator countywide.  01865 323035

The Leaving Care Team          01865 323222

**Some useful website addresses**

- [WWW.COMPACTLAW.CO.UK](http://WWW.COMPACTLAW.CO.UK)  
- [WWW.EDUCATION.GOV.UK](http://WWW.EDUCATION.GOV.UK)  
- [WWW.NTAS.ORG.UK](http://WWW.NTAS.ORG.UK)  
- [WWW.LEGISLATION.GOV.UK](http://WWW.LEGISLATION.GOV.UK)  
- [WWW.CAFCASS.GOV.UK](http://WWW.CAFCASS.GOV.UK)