



HOMELESSNESS AND RIGHTS TO CHILDREN





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I. YOUR CLIENT'S RIGHTS TO SEE AND CARE FOR HIS OR HER CHILDREN

I.1 Parental Responsibility

As the biological (birth) mother your client automatically has parental responsibility for her child. A biological father will have automatic parental responsibility if he was married to the child's mother at the time of the birth or if they married after the birth. If the child's parents were not married and the child was born on or after 1 December 2003, a father will acquire automatic parental responsibility if he is named on the birth certificate.

A biological father who does not have automatic parental responsibility can acquire it by entering into a PR Agreement with the child's mother or obtaining a PR Order from the court.

The Children's Act 1989 allows those with parental responsibility to be involved in the important decisions necessary in a child's life. The only way a parent who has automatic parental responsibility can lose it is when their child is adopted (see section 1.7 below on this particular issue).

Please note that this guidance note is drafted on the understanding that, if your client is a father, he does have parental responsibility for his child as described above. This note does not consider the particular issues that will arise in the case of a father who does not have parental responsibility.

I.2 Rights to Access and Custody

If your client is homeless and his/her children are not with him/her, as they have been taken in local authority care, are living with family members or ex-partners, the explanation of the legal framework set out below should help you and your client to understand the situation, and what your client can do to secure access or regain legal custody.

I.3 Local Authority's duty

If the social services department of the local authority considers that a child is at risk of harm or is in need of help, they have a duty to investigate what actions they should take to safeguard the child or the child's welfare. Whenever a local authority looks after a child they must prepare a care plan setting out the arrangements for the child and a copy of this plan will be provided to your client as the child's parent.

I.3.1 Voluntary arrangements

A local authority has a duty to accommodate a child if the person who has been caring for the child cannot provide suitable care and accommodation for whatever reason. As a parent, your client can enter into a voluntary arrangement with the local authority, pursuant to which she/he retains all of her/his parental responsibility.

In these circumstances the child might live with a foster family or in a children's home, but your client would be entitled to remove him or her at any time and the local authority must ensure that your client continues to have contact. The care plan referred to above must also be agreed with your client, as far as is reasonably practicable.

If your client is pregnant and does not have accommodation, she/he can contact the local authority to discuss making arrangements for accommodation for the child once born.

1.3.2 Care orders

If the local authority considers that a child:

- is suffering or is likely to suffer **significant harm** (this is defined as ill-treatment or the impairment of health or development (e.g. serious neglect as a result of drug or alcohol abuse)); and
- that harm is attributable to (a) the care given to him not being what it would be reasonable to expect a parent to give or (b) the child being beyond parental control,

it may apply to the court for a **'care order'**.

The social services department's primary duty is to work with your client, as a parent, and with his/her child to prevent the child being made the subject of a care order, or to return your client's child home as quickly as possible. When the local authority has investigated the child's circumstances, it will work with your client to resolve the problems by providing support services to the child and to your client as a family in the community. However if, having tried to resolve the problems in the ways outlined above, the local authority believes that the child is still at risk, it will apply to the court for a care order.

The court will decide if the child is suffering or is likely to suffer significant harm, and may want to see reports about your client and the child before making a decision.

Care proceedings are complicated and if your client is involved in such proceedings she should contact a specialist solicitor on the Law Society Children Panel (see **'Useful Contacts'**). Your client may be entitled to free legal representation and advice in relation to care proceedings.

The court will only make a care order if it is decided that it is necessary to protect the child's best interests and it may decide to instead grant a residence order in favour of a relative, or (if your client has a place to live) a supervision order which would mean that the child remains with your client, but is monitored by social services. As the child's parent your client must be kept informed of every stage of the proceedings and the court has a duty to consider your client's views before making a decision.

If a care order is made, the local authority acquires parental responsibility for the child, which is shared with your client, however the local authority can overrule any decision made by your client which it does not believe to be in the child's best interests.

The local authority must produce a care plan when it seeks a care order, and this should set out the child's needs and how it intends to meet these, this should include the proposed contact arrangements for your client and close family members. Your client will be provided with a copy of the plan.

When deciding where the child will live, the local authority must give preference to any connected persons (family or friends) who have been approved as foster parents.

The local authority can also place a child with a connected person on an emergency basis for up to six weeks, provided that certain checks are made, whilst a full assessment is made of the carer. Your client should therefore consider whether there is anyone he/she can ask to look after the child whilst the child is in local authority care.

The local authority has a duty to promote contact between your client and her/his child unless it is not practical, or would interfere with the child's welfare and care arrangements are normally made by agreement between the parents and the local authority. The local authority must allow 'reasonable contact' between your client and the child and cannot stop all contact unless it has the court's permission to do so (although it can stop contact for up to seven days in an emergency).

If your client is unhappy with the contact arrangements pursuant to a care order she/he can apply to the court to change the arrangements, and to do so your client should seek the advice of a specialist solicitor on the Law Society Children Panel (see '**Useful Contacts**'). If the application is refused by the court, your client cannot apply for another 6 months unless she/he receive the permission of the court. Your client may also appeal against a care order, or apply to have it changed to a supervision order, at any time.

I.4 Contact with children who are living with an ex-partner or relative

If your client's child is currently living with an ex-partner or relative, and your client is unable to agree appropriate contact, your client should consider attending mediation.

Mediation is a voluntary process which aims to help parents and relatives negotiate with the help of a mediator. If your client wishes to apply to the court for a contact order, she/he will be required to attend a family mediation information and assessment meeting prior to making an application, unless she/he falls within certain exceptions (for example, the mediator is satisfied that mediation is unsuitable as the other party is unwilling to attend the meeting, or there has been domestic violence in the relationship). A solicitor or, alternatively, the Citizens Advice Bureau would be able to advise how to arrange a mediation meeting (see **'Useful Contacts'**) and advise as to whether your client is eligible for free mediation.

If your client is unable to agree contact arrangements at a mediation meeting, or falls within an exception, your client can make an application to the court for a contact order. A contact order is an order allowing a parent, who does not live with the child, to have the form of contact specified in the order. When making its decision, the court's paramount consideration must be the child's welfare. Generally, courts believe that it is in the interests of a child to have contact with a non-resident parent, unless the child would be at the risk of harm from having contact.

If a contact order is granted and is breached without reasonable excuse, the court has various powers it can exercise (such as imposing fines, imprisonment or transfer of residence to the other party). In these circumstances advice should be sought from a solicitor.

1.5 Residence

If your client is on the road to recovery, and has a place to live, then she/he may want her child to return to live with her/him. The process to be followed will differ slightly depending upon whether your client's child is living with an ex-partner, relative or friend or if the child is in local authority care.

1.5.1 Children living with ex-partners or relatives

If your client cannot agree residence with the person the child is living with, she/he should consider mediation (see section 1.4 above). If your client applies for a residence order, she/he will be required (subject to certain exceptions) to attend a mediation session with the other party before an order is made. Failure to do so could delay the application and affect the court costs your client is asked to pay.

The court's paramount consideration will be the child's welfare and many factors will be taken into account, including the child's wishes, needs and how capable both parties are of meeting the child's needs. At the first hearing the judge, legal advisor or magistrate will discuss with your client and the other party the nature of the dispute and whether it can be resolved by any other means. If the parties are unable to reach an agreement, the judge will make the decision after gathering all of the information he or she requires.

There are two types of residence orders, a full residence order (which states who the child will live with, and the judge may make an order for contact with the other party) or a shared residence order (which will specify the period of time the child will spend with each party).

1.5.2 Children in local authority care

If your client's child is in local authority care and your client wishes the child to return home, she/he should discuss this with the local authority at the earliest opportunity. The local authority is under a duty to place a child they are looking after with his/her parents, unless this is not reasonably practicable or consistent with the child's welfare. If the local authority does not agree, your client should ask that the local authority set out their concerns in as much detail as possible so that your client can understand where the issues are.

It may be that the local authority will agree for the child to return to live with your client, subject to the child being subject to a supervision order. The effect of a supervision order is that the local authority will visit and monitor the child. A supervision order can be made for any period up to one year, and may be extended by a further two years, and will often have conditions attached to it designed to help the child. These may include a requirement on your client to undergo some kind of treatment, such as drug or alcohol abuse treatment, or to attend parenting classes.

If the local authority are not in agreement with your client's proposal for the child to return home, and the child is in local authority care (i.e. is subject to a care order), the only option is for your client to apply for the care order to be discharged. You should advise your client to contact a specialist family solicitor in these circumstances (see **'Useful Contacts'**).

However, if the child is in local authority accommodation pursuant to a voluntary arrangement your client may remove the child by simply telling the local authority that it is her/his intention, unless a residence order is in place and the person with the benefit of the residence order objects. In these circumstances your client should seek advice from a family solicitor (see **'Useful Contacts'**).





2. ADOPTION

A child can only be adopted if your client, as the child's birth parent, agrees or the court decides to go ahead with the adoption without this agreement, which it is entitled to do in certain circumstances (for example where she cannot be traced, lacks the mental capacity to give consent or the welfare of the child requires the adoption to go ahead without consent). The lack of mental capacity is judged with reference to the Mental Capacity Act 2005, and the test is that the person is unable to make a decision for himself because of an impairment of, or a disturbance in the functioning of, the mind or brain. This could include a mental illness.

The court cannot make an adoption order unless it is sure that being adopted is in the child's best interests, and they have to take account of the views of the parents in deciding this. If your client wishes to object to an adoption which has yet to take place, she/he should speak to a solicitor (see **'Useful Contacts'**).

If the adoption has already taken place then the following information may be helpful:

- an adoption order extinguishes the legal relationship between a child and its biological family by transferring parental responsibility to the adoptive parents;
- the adoption agency will be able to advise your client about contact with his/her child if the child has been adopted. Ideally, contact arrangements are agreed between all parties (letters, cards and in some cases meetings) and the arrangements are unique for each child;
- a court will generally not make an order for post-adoption contact unless the adoptive parents are in agreement;
- when the child reaches the age of 18 he or she can apply for a copy of their original birth certificate and for information about their biological family from the adoption agency which arranged the adoption.



3. ACCOMMODATION

3.1 Mother and Baby Hostels

In some areas, there are dedicated hostels for homeless women who are pregnant or have a new baby. These are often particularly suitable for young women expecting their first child, and can provide support both from trained staff and from other young women going through similar experiences.

3.2 Local Authority's Duty to Provide Accommodation

If your client is homeless and has dependent children or is pregnant, the local authority will, in most cases, be under an obligation to house him /her and he/she will be counted as being in 'priority need' (see section 2 below). This issue is considered in detail in another guidance note in this series, '*Homeless Caused by Domestic Violence – Housing Law*', which includes guidance on how to apply for help from a local authority (see in particular section 3).

3.3 Duty of Social Services to provide support

Alongside the local authorities duty to provide accommodation, social services also have an obligation to support a family if a member of the family is under 18 and is classed as being a 'child in need'. A child will be in need if he or she needs help to manage the things that affect health and development, for example if your client doesn't have money for food or doesn't have anywhere to live.

The law doesn't say exactly what help social services should give your client and different councils have different rules. It will depend on your client's personal situation, what is available in the area and how much it costs. Your client should be offered a range of services to help with any problems he or she is having. This could include accommodation, however usually it will be up to the housing department to help to find suitable housing. Social services should help your client to deal with the housing department and can also get your client emergency accommodation.

Social services should aim to keep families together. This means that they can provide accommodation for the whole family. Whether they do this or not depends upon them balancing your client's needs with the demands upon them to help others. Social services must put the interests of the child first.



Useful contacts

Rights of Women Family Law Advice Line

For free, confidential, legal advice on family law issues for women including divorce and relationship breakdown and children

020 7251 6577

<http://www.rightsofwomen.org.uk/adviceline.php#l>

Citizens Advice Bureau

08444 111 444

www.adviceguide.org.uk

The Law Society

For finding a solicitor

020 7242 1222

<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

Shelter

0808 800 4444

www.England.shelter.org.uk

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