

# Supporting parents with a learning disability through the Child Protection System

## Mencap WISE Student Advice Project

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## Introduction

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Although the same approach should be taken to protecting all children, where a parent has a learning disability it is likely that the family's circumstances will be more complex and that the family will be receiving input from both adult social care and children's services. The purpose of this tool kit is to assist people who are acting as learning disability advocates (be that parent, carer, volunteer or professional) by setting out the key responsibilities that adult social care departments and children's services departments have, and explaining how parents with a learning disability should be supported through the child protection process.

This tool kit has been prepared as part of the Mencap WISE project, funded by the Welsh Government. Therefore, it focuses on the law and procedure applicable in Wales, and includes information about the Social Services and Well-being (Wales) Act 2014, which came into force on 6<sup>th</sup> April 2016. The tool kit is divided into the following Sections:

- **Key Concepts**
- **What duties do local authorities have where a parent has a learning disability?**
- **The child protection process: Pre-proceedings**
- **The child protection process: Going to Court**
- **Guidance from case law**
- **Private law proceedings**
- **Additional Resources**

As well as including a list of Additional Resources, the tool kit also includes hyperlinks to key online resources. Wherever a reference appears underlined in the text there is a hyperlink, which will take you to the relevant external resource.

## Key Concepts

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Social workers and lawyers will often use terminology that can be difficult to understand. This section explains some of the key concepts that you are likely to hear referred to if you are supporting someone involved in child protection proceedings.

### Terminology

Where legal terminology is used in a section of the tool kit for the first time, it will be in **bold type**. If you click on the word it will take you to the **Glossary** (Appendix 1) and provide you with an explanation of what the term means. The Family Justice Young People's Board have also produced a very good [online Glossary](#), which is designed to help young people understand the child protection process. You may find this useful if you are having to explain terminology to a parent with a learning disability.

### Personnel

A number of different agencies are involved in child protection cases. Local government is undertaken by **local authorities**, which have responsibilities towards both adults and children living in their area. Services for adults and children are provided by different departments, so it is very likely that a family will have a social worker allocated to support the disabled parent and a separate social worker, whose job it will be to ensure that the child is protected.

If child protection proceedings begin it will be important to get legal advice from a **solicitor**. The Law Society operates a 'Children Panel' accreditation scheme, which is a list of solicitors who specialise in cases relating to children. You can use the Law Society's '[find a solicitor](#)' webpage to help you find a Children Panel solicitor in the local area. In some cases a **barrister** may be instructed to present the parents' case in court.

If the local authority decides that it needs to apply to the court for an order, a **children's guardian** will be appointed to act on behalf of the child. The children's guardian will appoint a solicitor who will be the solicitor for the child.

## The Family Court

In April 2014 a new Family Court was created for Wales (and England). Virtually all child protection cases will be dealt with by the Family Court. Cases in the Family Court will be heard by either a bench of **magistrates** or by a **judge**. The Courts and Tribunals Judiciary website has an [overview of the Family Court](#).

## Legislation

The law is complicated and is divided into **primary legislation, secondary legislation** and **codes of practice**.

The main primary legislation relating to child protection cases is the Children Act 1989 (CA 1989), which sets out the duties and responsibilities that local authorities have towards children and families. However, on 6<sup>th</sup> April 2016, the Social Services and Well-being (Wales) Act 2014 (SSWBWA 2016) came into force, and replaces some aspects of CA 1989 in Wales. In particular, Part III CA 1989 (sections 17 to 30 inclusive) no longer applies in Wales.

The most important secondary legislation is the [Family Procedure Rules](#) (FPR), which govern the way in which the Family Court operates.

In addition, a number of [codes of practice](#) support the SSWBWA 2014. Section 145 SSWBWA 2014 requires local authorities to comply with any *requirements* set out in the codes of practice, and local authorities must have regard to any *guidelines* contained in the codes. Effectively, this means that local authorities must follow all requirements under the codes and should follow the guidelines unless there is a good reason why the guideline cannot be complied with.

Prior to the implementation of the SSWBWA 2014 a considerable amount of guidance relating to child protection had been issued by both the UK Government and the Welsh Government. That guidance will all eventually be replaced by new codes of practice. In the interim, whilst the guidance is no longer binding on local authorities in Wales, it is likely that local authorities will continue to follow it. The key documents are:

- Safeguarding Children: Working Together Under the Children Act 2004 (Working Together Wales).
- The Children Act 1989 Guidance and Regulations Volume 1 Court Orders: March 2008 (Volume 1 Guidance Wales).
- The Children Act 1989 supplemental guidance: Volume 1 Court Orders (Volume 1 Supplemental Guidance Wales).
- All Wales Child Protection Procedures.

Since the introduction of devolution, it can be difficult to ascertain which law applies in Wales, and whether the law in Wales and England differs. Dr Julie Doughty, at Cardiff School of Law and Politics, has set up a free website which explains Children's social care law in Wales.

Sometimes there will be disagreement about the meaning of a piece of legislation or about how guidance should be applied, and the courts will be asked to resolve the dispute. Some of the key decisions that the courts have made in cases involving parents with a learning disability are discussed in the **Guidance from case law** Section.

## What duties do local authorities have where a parent has a learning disability?

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There are two main ways that a parent with a learning disability can access services. The first is via adult social care, where an assessment of the parent's needs will be undertaken. The second is where care is being given to a child, and the child needs care and support in addition to, or instead of, the care and support provided by the parent. Assessments linked to the needs of children are discussed in **The child protection process: Pre-proceedings**. This Section focuses on accessing services via adult social care.

### Assessing support needs

Assessment is the gateway to social care services. Any adult is entitled to an assessment of their entitlement to services if it appears to the local authority that the person "*may have needs for care and support*" (s19 SSWBWA 2014). Unless the person (or someone acting on their behalf) refuses the assessment, the local authority must assess:

- whether the person does have needs for care and support; and
- what those needs are.

Therefore, if you are supporting parents with a learning disability, who are not currently receiving social care services, they are entitled to be assessed. Usually, the best way to request an assessment is to send a letter to the local adult social care department. You should be able to obtain the relevant contact details from the **local authority's** website. (If you need request an assessment you may find it helpful to look at the free [Precedent Letters](#) that are available. However, you should note that these materials are usually prepared in relation to the law applicable in England, so you are likely to have to adapt them to refer to the SSWBWA 2014.)

Guidance regarding the way in which assessments should be carried out is contained in the [Code of Practice \(assessing the needs of individuals\)](#). The



assessment should be conducted in a way that allows the person with a learning disability to participate fully, as paragraph 17 of the Code notes that an “*assessment starts from the presumption that an adult is best placed to judge their own **well-being***”. Therefore, you might be asked to support a parent during an assessment to help ensure that they understand the process and can express their wishes clearly.

Although the legislation does not set timescales during which assessments should be completed, assessments must be completed within a reasonable time. Previous guidance from the **Ombudsman** suggests that most assessments should be completed within 4 – 6 weeks, and straightforward assessments should be completed more quickly. If the local authority cannot complete an assessment within a reasonable time period (e.g. because it has a waiting list), then it is possible to make a complaint on the basis that the local authority is not providing sufficient resources to comply with its duty to provide assessments within a reasonable time.

### **What support does a local authority have to provide?**

The assessment should identify all of the parent’s needs for care and support. The identified needs are often referred to as ‘presenting needs’. However, local authorities are not automatically under a duty to meet every need that a parent has. The Code of Practice (Meeting needs) sets out national eligibility criteria for Wales, and only if those criteria are met will social care services be provided. Therefore, a local authority only has to provide services where the need is eligible for care and support. If a parent has presenting needs, which do not meet the eligibility criteria, then the local authority does not have to provide support in relation to those needs. This means that some parents will have ‘unmet needs’ (i.e. needs which do not require the local authority to provide services).

In deciding whether the identified needs meet the eligibility criteria, the local authority will consider whether the needs can be addressed by the provision of care and support. If the needs cannot be addressed by care and support, then the local authority will not be under a duty to provide

services. If the needs can be addressed by care and support, the local authority will consider whether the needs can be met through provision that is available without the need for a **care and support plan** (such as community services or support from family). Only if the parent is unlikely to achieve their personal outcomes without care and support from the local authority will the local authority be required to provide care and support. If a need means that the parent is at risk of abuse or neglect, then the local authority must meet that need regardless of the outcome of the eligibility assessment.

At the end of the assessment process the local authority should normally produce a care and support plan, setting out the needs that meet the eligibility criteria and the services that the local authority will provide to ensure those needs are met. The local authority's duty to meet eligible needs is not dependent on resource implications. This means that all eligible needs have to be met by the local authority regardless of the financial implications. However, if more than one option is available to meet a parent's eligible needs, then the local authority is able to offer the cheapest option, provided it is sufficient to meet the relevant need.

The local authority will have discretion regarding what services it chooses to provide. Services typically include: aids and adaptations, social work support, meals, recreational activities, assistance with travel and respite care. The local authority does not have to provide the identified services itself, and may choose to commission them from external sources.

### **Challenging the outcome of the assessment**

If a parent disagrees with the local authority's assessment of their eligible needs, or believes that the care and support plan is inadequate, then it is possible to challenge the outcome of the assessment.

There are a number of ways in which the outcome can be challenged:

- *Complaints Procedure*: every local authority is required to have a complaints procedure, which should be available on the local

authority's website. A complaint should explain why the local authority's decision is wrong (e.g. if the local authority has failed to take into account a supporting letter from the person's GP then the complaint should highlight the error). Usually, the local authority must make sure that a discussion with the person making the complaint takes place within 10 working days. If the complainant asks for a formal investigation, the local authority must usually respond within 25 working days of the request. The complaint should be investigated by an Independent Investigator, who does not work for the local authority. The Investigator will produce a report.

- Additionally, sometimes asking a local councillor or Assembly Member to raise or support a complaint can bring effective pressure to bear.
- Public Services Ombudsman for Wales: the Ombudsman is an independent person who is able to review decisions made by public bodies in Wales. Before you can ask the Ombudsman to investigate you will usually need to have already made a formal complaint to the local authority.
- *Judicial Review*: this is a legal process that allows the court to review a decision by a public body. If the court decides that the way in which the decision was taken was wrong in some way (e.g. because important information was not taken into account), the court can order that the decision-making process is undertaken again. Judicial review is a complex process and must be started within 3 months of the date of the disputed decision. If it appears that judicial review may be necessary, then it is important to consult a solicitor to see whether grounds for judicial review exist and whether legal aid is available to cover the costs involved.

## The child protection process: Pre-proceedings

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Unless it is an emergency, the **local authority** must support families to ensure that all children have the opportunity to be looked after by their families. There are a number of options that the local authority must normally pursue before any application is made to the court for an order. These things happen before court proceedings start and are known as ‘pre-proceedings’ interventions.

### Children who need care and support

Under s5 SSWBWA 2014 local authorities are under a general duty to promote the **well-being** of children (and adults) who require care and support.

Under s21 SSWBWA 2014 a local authority must assess the needs of any child:

- who appears to the local authority to need care and support in addition to, or instead of, the care and support provided by the child’s family.

In addition, s21(7) SSWBWA 2014 states that all disabled children are presumed to be children who need care and support.

An assessment under s21 can be requested by contacting the local children’s services department. The assessment will be undertaken by a social worker and will follow the Assessment Framework set out in Annex 2 of Part 3 Code of Practice (assessing the needs of individuals). The Assessment Framework focuses on three key areas:

- the child’s individual and developmental needs;
- parenting capacity; and
- family and environmental factors.

As the Assessment Framework requires that the impact of parenting capacity is assessed, it may be possible to secure additional support for a parent with a learning disability via a s21 assessment if support for the parent would help safeguard the child or promote the child's well-being.

Where the child is identified as having care and support needs, s37 SSWBWA 2014 requires that the local authority must meet those needs where:

- the child is within the local authority's area; and either
- the needs meet the eligibility criteria; or
- the local authority considers it necessary to meet the needs in order to protect the child from abuse, neglect or other harm.

In addition, s6(4)(a) SSWBWA 2014 requires that local authorities must promote the upbringing of children in need of care and support by their families provided it is consistent with the child's well-being. This is very similar to the duty that previously existed under s17(1) CA 1989.

Where a child is entitled to services, a **care and support plan** will be created, setting out the services to be provided and how the plan will be implemented and reviewed. The services provided may be for the child directly or to assist the child's parents to care for the child.

The Assessment Framework also requires that consideration is given to the support available from the wider family. If there are family members, who would be able to help, it may be appropriate to convene a **family group conference**. The key principle underpinning a family group conference is that the family knows how to best look after the child. Usually, a social worker will attend the conference to explain the local authority's concerns. Then the family, assisted by an independent facilitator, will discuss the position and try to devise a plan that meets the child's needs. At the end of the conference the social worker is invited back and will review the plan to ensure that it adequately protects the child and promotes their well-being.

The Family Rights Group has produced a series of short films showing how a family group conference works in practice.

If a parent is unable to provide the child with suitable accommodation or care, they can agree that the local authority should provide accommodation for the child under s74 SSWBWA 2014. This is sometimes referred to as 'voluntary accommodation', as the agreement does not require the local authority to obtain an order from the court. Usually, s74 agreements should only be used on a short-term basis, for example where a period of respite care is required. If it is likely that the child is going to need local authority care for a long period, the local authority will usually need to apply to the court for an order.

A child who is accommodated under s74 is known as a 'looked after child'. Under SSWBWA 2014, local authorities have specific obligations towards looked after children and Part 6 Code of Practice (Looked After and Accommodated Children) explains these obligations in detail. In particular, local authorities have to hold regular meetings to review the plan for the child. Previously, these were known as LAC reviews (looked after children reviews), and you may still hear this terminology used. You may be asked to accompany a parent to a review meeting, which will be chaired by an **independent reviewing officer**. If a child is taken into care under a court order they will also become a looked after child, and will also be subject to the review process.



### Key Information and Resources:

General duties that local authorities have towards children who need care and support

- It may be possible to secure additional support for parents by requesting a s21 assessment if the additional support would help safeguard the child or promote their well-being.
- If there are other family members who may be able to provide help and support it could be beneficial for the parents to request a Family Group Conference.
- It is possible for the parents to arrange for a child to be accommodated on a voluntary basis under s74.

## Child Protection Investigations

If a local authority suspects that a child is suffering or is likely to suffer significant harm then s47 CA 1989 places an obligation on the local authority to conduct an investigation. The way in which a child protection investigation should be conducted is set out in 'Working Together Wales' and the 'All Wales Child Protection Procedures'. (This guidance will eventually be replaced by a code of practice issued under s145 SSWBWA 2014, and the Care Council for Wales has a Learning Hub that you may want to check to see if any new guidance has been issued.)

A child can be at risk of significant harm in a wide range of circumstances, including physical abuse, sexual abuse, emotional abuse and neglect. Once the local authority identifies that significant harm may be occurring it will convene a **strategy discussion** to decide what further action is necessary to safeguard and promote the child's welfare. The strategy discussion will often conclude that further assessments are required. If you are supporting parents you should emphasise that it is very important that they co-operate fully with all assessments as refusal to co-operate could force the local authority to apply to the court for an order.



The All Wales Child Protection Procedures make it clear that, unless there is a risk to the child, the family “*should always be enabled to participate fully in the child protection enquiry process*” (section 3.8.1). In particular, where a parent has a learning disability, the means of communication should be in the parents’ preferred medium to ensure they are able to understand and engage in the process. Therefore, one of your key roles is likely to be to ensure that the social worker communicates with the parents appropriately, otherwise the investigation and assessment process may be rendered unfair.

One of the things that the strategy discussion will consider is whether a **child protection conference** should be arranged. The purpose of a child protection conference is to share information about the child’s circumstances and to assess the level of risk that exists. The key consideration for the conference is whether the child is at continuing risk of significant harm. Parents will usually be invited to attend the conference and should be encouraged to take someone with them for support; so you could be asked to accompany a parent to a conference. It is also possible for a pre-birth child protection conference to be convened if possible risks have been identified during the mother’s pregnancy. The All Wales Child Protection Procedures (section 3.14) contain a detailed explanation of the scope and purpose of an initial child protection conference, including a pre-birth conference.

If the members of the child protection conference believe that the child is at continuing risk of harm, they can recommend that the child’s name is placed on the **child protection register**. If the child’s name is registered it will be under one (or more) of the four categories of risk: physical harm, sexual abuse, neglect or emotional abuse. Understandably, parents find the registration process very upsetting. Where a child’s name is registered, the conference will devise a **child protection plan** to ensure that the child is looked after safely in the future. The plan will almost certainly place obligations on the parents, and they may be asked to sign a ‘contract’ setting out what they are expected to do. Therefore, it is essential to



ensure that parents understand the information set out in the plan, as failure to comply with the plan could lead to the local authority making an application to the court.

It is important to remember that a child protection conference cannot remove a child from the parents' care. However, the conference could recommend that the local authority should apply to the court for an order to remove the child. If the conference believes that a child has been deliberately harmed, it could also make a referral to the police. If the child's name is placed on the register, a review conference must take place within 3 months of the initial conference to assess whether the child protection plan has resulted in an improvement in the child's situation. If any further review conferences required, they will take place at six monthly intervals.

It is possible for parents to obtain free legal advice about the implications of a child protection conference. However, the advice is means tested and so is only free to parents who are on a low income or in receipt of certain welfare benefits. A **solicitor** will be able to tell you if the parents whom you are supporting qualify for free legal advice. However, even if the parents do qualify, it is unlikely that a solicitor will be able to attend the child protection conference as the legal aid fee does not usually cover attendance. Another agency offering support to parents with a learning disability is [Advocacy Matters \(Wales\)](#), and they may be able to arrange for someone to attend a conference if required.



## Key Information and Resources: Attending a child protection conference

Attending a child protection conference can be daunting for both parents and anyone supporting the family. The Family Rights Group has produced a series of online resources to help prepare people to attend a child protection conference, and you may find it helpful to watch these so that you know what to expect and can explain what is likely to happen to the parents whom you are supporting.

The video guides can be accessed here: [What is a child protection conference: A guide for parents](#)

In addition, Citizens Advice produces a series of information guides about different aspects of [local authority involvement](#) with families.

The 'Working Together with Parents Network' at the Bristol School for Policy Studies has researched the types of intervention that can produce positive results where parents have a learning disability, and has produced a guide to positive social work practice for [Supporting Parents with Learning Disabilities](#).

## Letter Before Proceedings

If the child protection plan does not lead to an improvement in the child's circumstances, the **local authority** will consider making an application for a court order.

Unless it is an emergency, the local authority should send a 'letter before proceedings' to the parents before beginning any court proceedings. The purpose of the letter is to make the parents aware that, unless improvements are made, then it is very likely that the local authority will make an application to the court. The letter should explain in simple language:

- the local authority's concerns;

- the support that has been provided to the parents;
- what the parents need to do to improve the situation and what future support the local authority will provide; and
- the timescales during which the improvements need to be made.

The letter will also invite the parents to attend a pre-proceedings meeting, which will usually involve the social worker and team manager. Parents are entitled to be supported throughout the child protection process and so you may be asked to attend a pre-proceedings meeting. The letter should also explain that the parents are entitled to have legal advice at the pre-proceedings meeting, and legal aid is automatically available to any parent who receives a letter before proceedings. It is a special category of legal aid, which is not means tested, so you should always encourage parents to consult a solicitor, as the solicitor will be able to meet with the parents before the pre-proceedings meeting to provide initial advice and also attend the meeting.

At the pre-proceedings meeting the local authority will explain what improvements they expect to see the parents make and how progress will be monitored. Usually, there is a formal review within six weeks of the pre-proceedings meeting. It is very important that the parents understand that if sufficient progress is not made, then the local authority is very likely to make an application to the court.

## The child protection process: Going to Court

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There are two main circumstances in which a **local authority** will make an application for a court order. The first circumstance is in urgent cases where there is an immediate risk to the child. Secondly, where the local authority has been through the pre-proceedings options, but these have failed to ensure that the child is properly safeguarded. This Section will explain the key issues that arise when an application is made to the court, and will provide some information about how urgent cases are dealt with.

### What orders can the local authority apply for?

If a local authority believes that a child is suffering, or is likely to suffer, significant harm, which cannot be addressed using the pre-proceedings options, then an application will usually be made to the court for either a **supervision order** or a **care order**.

Supervision orders and care orders are very different. The main difference is that if a care order is made the local authority will acquire **parental responsibility** for the child. This means that the local authority can decide where the child lives and will also be responsible for ensuring that their needs are met (e.g. schooling, health etc.). Whilst the local authority will still need to consult with the child's parents about any key decisions, it will be the local authority which makes final decisions relating to the child's welfare and upbringing. Usually, if a care order is made, the child will be removed from the family and placed with foster carers. If a supervision order is made, the local authority will be under a duty to supervise the child's welfare, but will not have parental responsibility. This means that decisions regarding the child's care will be made by the parents, and the child will usually remain living with the parents or other family members.

When an application for a care/supervision order is made, the local authority should continue to assess the parents' situation throughout the proceedings. If the local authority concludes that it is not safe for the child to be cared for within the family it will make an application for a **placement**

**order.** A placement order authorises the local authority to place the child for adoption, which usually means that the child will go to live with a new family and contact with the birth family will come to an end. The new family will then make an application for an **adoption order**, but it is very unlikely that the parents, or any other members of the birth family, will be involved in the adoption proceedings as the court will have already approved the plan for adoption when making the placement order.



Key Information and Resources:  
The implications of adoption

When a local authority plans to place the child for adoption the implications for the child and the parents are very significant. Therefore, it is essential that the parents receive clear information regarding the effects that an adoption order has. The key implications of adoption are:

- The child is treated as being the legitimate child of the adopters rather than the birth parents.
- The birth parents lose their parental responsibility for the child, and parental responsibility is given to the adopters.
- Most adoptions proceed on a 'closed' basis, which means that there is no contact between the child and the birth family, so the parents will not usually see the child again after the adoption takes place.
- The parents will usually be allowed to have 'post-box contact', which means that they can send cards/letters on key dates (such as Christmas and the child's birthday), and these will be given to the child when they are old enough to have an understanding of their circumstances.

It is also essential that the parents are supported to come to terms with the possibility of adoption, and local authorities are required to offer independent counselling and support to all birth parents when adoption is the plan for their child. Solicitors can overlook the need to access this type of support, so if you are supporting parents you may need to raise the issue of ensuring that appropriate services are provided.

Sometimes the local authority will apply for a care/supervision order and, during the proceedings, it becomes clear that a different order would be in the child's best interests. This means that you may hear other orders being referred to. The main orders you are likely to encounter are a **special guardianship order** and a **child arrangements order**. If these orders are being considered, it usually means that the local authority is planning to place the child with a member of the birth family. This can be a positive outcome for the parents, as it usually means that they will continue to see their child, even if they are not going to be responsible for the day-to-day care.

If the local authority's main concern is that the child needs to be assessed to determine whether s/he is suffering, or is likely to suffer, significant harm then an application may be made for a **child assessment order** under s43 CA 1989. A child assessment order will usually be applied for where there is concern about a child's welfare and the local authority is having difficulty gaining access to the child. If granted, the order will authorise the assessment of the child, and will usually specify when the assessment will take place and by whom it will be conducted. If you are supporting a parent, and a child assessment order is made, it is essential that the parent allows the assessment to go ahead, otherwise the local authority may have no option but to apply for a care order. Once the assessment has been completed, the local authority will decide if any further action is needed to safeguard the child. Again, this could mean that an application for a care/supervision order is issued.

### **Getting legal advice**

If a local authority makes an application for a care/supervision order, it is essential that the parents seek legal advice. Parents involved in applications for a care/supervision order are automatically entitled to non-means tested legal aid and so will not have to pay for their legal advice. If another family member (e.g. a grandparent) is putting themselves forward as a carer for the child, they are unlikely to be automatically entitled to legal aid. However, they may still qualify for funding if they are in receipt of

welfare benefits (or are on a low income) and their application has reasonable prospects of success.

It is important to get specialist legal advice, and the parents should be encouraged to instruct a **solicitor** who specialises in children proceedings and who is a member of the Law Society's Children Panel. Although meetings between a solicitor and client are confidential, a third party can attend solicitor/client meetings provided the client agrees. Therefore, you might need to attend meetings between the parents and their solicitor to support the parents and help to ensure that they fully understand the proceedings.



Key Information and Resources:  
Conflict of interests

Sometimes the local authority will have different levels of concern about the parents. For example, where a child is being exposed to domestic violence, the father may be seen as a risk, if he is the perpetrator of the violence, whilst there may also be concerns about the mother's ability to protect the child. Where the concerns are different, it may not be possible for the same solicitor to represent both parents, as there may be a conflict of interests between the parents' positions. The solicitor will provide advice about any possible conflict of interests.

If it is not possible for the same solicitor to represent both parents, then it may make it very difficult for the same person to support both parents, as you may be told confidential information by one parent, which you cannot share with the other parent. If you are a professional supporting parents whose interests may conflict, you should seek guidance from your line manager regarding whether you can offer support to both parents.

### The '26 week' rule

As children's perceptions of time are very different from those of adults, the courts are keen to ensure that decision-making for children takes place as quickly as possible. Since April 2014, the timescales for care/supervision

order proceedings have been set out in s32 CA 1989, which states that cases must be concluded within 26 weeks. The time period runs from the day the application was issued.

### **The Public Law Outline**

The court rules that apply to applications for a care order or a supervision order are set out in the Public Law Outline (usually referred to as the 'PLO').

The PLO divides any application for a care/supervision order into '3 Stages':

- Stage 1 - Issue and Allocation.
- Stage 2 - Case Management Hearing.
- Stage 3 - Issues Resolution Hearing.

The PLO identifies the objectives, which should be achieved at each stage in the proceedings, and also establishes target times for the completion of each stage. If the proceedings do not conclude by Stage 3, then there will be a Final Hearing to determine the outcome. The following sections explain what should happen at each Stage under the PLO.

#### ***Stage 1 – Issue and Allocation***

The **applicant** for a care/supervision order will be the local authority. The day that the application is issued is Day 1 of the 26 week timetable. The local authority will also send a copy of the application to CAFCASS CYMRU so that a **children's guardian** can be appointed.

The court will check the application and will decide whether the case should be dealt with by the **magistrates** or by a **judge**. The magistrates will deal with less complex cases (e.g. where the concerns relate to neglect), and a judge will deal with the case if it likely to be complex (e.g. there is a disputed allegation of non-accidental injury). The court will also fix a date for the first court hearing.



Once all of the paperwork has been processed by the court, the local authority will then have to serve the application on the **respondents**. The child's parents will automatically be respondents if they have parental responsibility for the child. Usually, this means that the mother will always be a respondent, and the father will be a respondent if he is named on the child's birth certificate or is married to the mother. If you are supporting parents who are served with court papers it is essential that they seek legal advice immediately as it is likely that the first court hearing will take place within a few days of receiving the papers.

### ***Stage 2 – Case Management Hearing***

The first court hearing is known as the Case Management Hearing (CMH), and will usually take place between Day 12 and Day 18. The purpose of the CMH is for the court to consider what the key issues in the case are and what evidence the court needs to decide those issues. The court will also review the interim plans for the child to ensure that they are in the child's best interests. If the local authority is applying for a care order, the plan for the child will often be removal from the parents' care on an interim basis pending the outcome of the proceedings. If the plan is removal, then s34 CA 1989 states that the parents should have contact with the child unless contact is not in the child's best interests. If you are supporting parents at a CMH, it is likely that you will be helping them to understand where their child will live in the interim and the contact they will be able to have.

Before the CMH the lawyers representing all of the parties will usually have attended an Advocates' Meeting to try and agree what issues the court needs to deal with at the CMH. The purpose of the Advocates' Meeting is to try and save court time by identifying in advance which issues are likely to be agreed and which are disputed. Following the Advocates' Meeting, the lawyers will prepare a draft order for the court to consider.

At the CMH the court will review the draft order and either approve it or make any changes that the court thinks are necessary. The order will set the timetable for the proceedings, and will specify whether any further assessments are needed and what witness statements need to be prepared. If an assessment by an expert is required (such as a consultant

psychologist) this will be considered at the CMH, but the court will only order expert evidence to be obtained if the evidence is “*necessary to assist the court to resolve the proceedings justly*”. It is very important to emphasise to parents that they must co-operate with any assessments ordered by the court, and must also attend all meetings with the local authority or the children’s guardian and all contact sessions to maintain their relationship with their child.



Key Information and Resources:  
Parenting Assessment Manual (PAMS Assessment)

It is essential that any assessment of the parents takes account of their learning disability to ensure that the parents are able to fully participate in the process, and that the assessment provides an accurate picture of the parents’ ability to provide good enough parenting for their child. It is important that, when an assessment of the parents is being considered, the methodology to be used by the assessor is discussed in advance to ensure that it is appropriate.

The leading model for assessing parents with a learning disability is a PAMS assessment, which focuses on issues such as lifestyle, support mechanisms, ability to work with professionals and ability to accept and sustain change. Therefore, when an assessment of the parents with a learning disability is being commissioned, it is likely that a PAMS trained assessor will be needed.

### **Stage 3 – Issues Resolution Hearing**

The date for the Issues Resolution Hearing (IRH) will be set at the CMH. The purpose of the IRH is for the court to review all of the evidence, which has been filed since the CMH, and to ascertain what key issues are still in dispute. In some cases, the issues in dispute will be very wide ranging (e.g. the parents do not accept the concerns raised by the local authority or the plans for the child). In other cases, the issues will be very narrow (e.g. the parents accept the local authority’s concerns and the general plan for the child, but wish to challenge the proposed contact arrangements).

If all of the key issues are agreed, then the IRH is likely to be the final hearing in the proceedings, and the court will make a final order. If not all of the key issues are agreed, the court will list the case for a Final Hearing and give any directions necessary to make sure that the case concludes at that hearing (e.g. preparation of court bundles).

### **The Final Hearing**

The Final Hearing should take place by no later than week 26. The purpose of the Final Hearing is for the court to decide all the key issues that remain in dispute. The court does this by reading the documentary evidence (witness statements and expert reports) and hearing oral evidence from witnesses.

Once the court has heard all of the evidence it will decide what order, if any, should be made. This is a two-stage process. The first issue for the court to consider is whether the child has suffered, or is at risk of suffering, significant harm. This first stage is often referred to as assessing whether the **threshold criteria** have been established. If the court is not satisfied that significant harm has occurred, or is likely to occur, that will be the end of the proceedings. It is rare for cases to end at this stage, as the local authority will usually have gathered sufficient evidence to satisfy the court regarding the risk of significant harm before proceedings were commenced. In many cases the parents will not dispute the issue of significant harm, and will only contest the local authority's plan for the child.

If significant harm is established, the court must decide the best plan for the child's long term care, taking into account the nature of the harm established by the local authority. Whenever a court makes any decision about a child's upbringing, s1 CA 1989 requires that "*the child's welfare shall be the court's paramount consideration*". When deciding what course of action is in the child's best interests the court will apply the checklist of factors set out in s1 CA 1989, including the child's wishes and feelings, and the capability of the child's parents to care for the child. If what the parents want and what is best for the child are different, then the court will always take the course of action that is in the child's best interests. This can often

be difficult for parents to understand, particularly where the parents have not caused the child any deliberate harm.

### **Fact Finding Hearings**

Sometimes it is not possible for the local authority to put forward any plans for the child until key factual issues have been decided by the court. For example, if it is alleged that a child has suffered a non-accidental injury, but there are several possible perpetrators of the injury, it is very difficult for the local authority to assess which members of the family may be able to safely care for the child without first establishing who the likely perpetrator of the injury is. In these circumstances, the court may decide to hold a preliminary fact-finding hearing to determine the disputed factual issues. Holding fact-finding hearings can cause delay, and so the court's preference is always to deal with all disputed issues at a single Final Hearing where possible.

### **Urgent Cases**

Sometimes a local authority will decide that a child is at immediate risk of significant harm. If this happens the local authority will usually do one of two things: either it will apply for a care order, without going through the various pre-proceedings processes, or it will apply for an **emergency protection order**. In either case it is likely that the plan will be to remove the child from the family, so it is essential that the parents seek legal advice. In these circumstances the parents will automatically be entitled to non-means tested legal aid.

In very urgent situations the local authority can obtain an emergency protection order without notifying the parents, but these cases should be very rare. Again, if you are supporting parents who receive a court order, which has been made without notice, the parents should seek legal advice immediately. However, if a without notice court order is obtained you should also emphasise to the parents that they must always comply with the order.

It is also possible for the local authority to ask the police to intervene and place the child in **police protection**. This will only usually happen where the child is at immediate risk and it is not possible for the local authority to make an application to the court for an order, for example an emergency that arises late at night or at a weekend. The decision to place the child in police protection is made by the police and does not require an order from the court. The police will remove the child to a place of safety and the local authority will then decide what further action is necessary to protect the child. Usually, the local authority will apply for either an emergency protection order or a care order at the first available opportunity.

### **What happens at court?**

If you are supporting parents involved in court proceedings you will probably need to help them understand what will happen at court.

Although the Family Court is less formal than a general civil court or a criminal court, it will still be set out like a court room. This means that the magistrates or judge will be seated away from everyone else, usually on a raised dais. If the magistrates/judge are not already in the court, then everyone will be expected to stand when they enter. The lawyers representing the parties involved in the case will sit facing the magistrates/judge, and everyone else will sit behind the lawyers. As proceedings relating to children are private, members of the public cannot come into court. This means that, if you are supporting parents, their lawyer will need to obtain permission from the court for you to be present, although permission will almost certainly be given. It is possible for members of the press to attend the Family Court, although this is very rare. If a member of the press is present, they will need to obtain the court's permission before being able to report what happens in court.

What happens in court will usually depend on the type of hearing. Most court hearings will be conducted without witnesses giving oral evidence. So, unless the case is listed for a Final Hearing, it is unlikely that any of the parties will need to address the court directly. This means that if you are

supporting parents at a CMH or IRH you can reassure them that they will not need to say anything when they are in court, as the lawyers will do all of the talking.

Usually, the lawyers will address the court in a set order, which is normally:

- local authority first; followed by
- parents' representative; followed by
- the solicitor for the child.

If the case is listed for a Final Hearing then witness evidence will normally be required. **Appendix 2** contains a Table that summarises the usual sequence of events at a Final Hearing.



## Key Information and Resources: Resources for Litigants in Person

The scope of legal aid has been reduced considerably, and many people who would previously have qualified for legal aid now have to represent themselves as **litigants in person**. As a result a number of resources have been created to help people who have to go to court without a lawyer. Although parents involved in child protection cases will usually be eligible for legal aid, so can be represented by a solicitor, you may find it helpful to refer to some of the resources for litigants in person as they will help you to become familiar with the procedures which apply in court so that you can help explain the process to the parents you are supporting.

This series of videos will introduce you to the procedures that apply in the Family Court and contain lots of practical advice about how to best prepare for attending court. Although they focus primarily on private law children disputes (i.e. disputes between the parents, rather than cases involving the local authority) the basic principles apply equally to child protection cases:

- [The Family Court without a Lawyer](#)
- [How to represent yourself in the Family Court](#)

The [Bristol Family Court](#) has created its own website explaining the work of the Family Court and providing links to a range of resources. Although it is a court in England, the majority of the information provided applies equally to courts sitting in Wales.

## **What happens after the proceedings have concluded?**

This will depend on what order the court has decided to make. If a supervision order is made, the child is very likely to remain living within the family, either with the parents or with another relative. If the child is living with a relative it is likely that there will be contact between the child and the parents. The supervision order will usually be made for a period of 12



months, and can be extended by the court so that it lasts for up to 3 years. If the child's circumstances were to deteriorate, the local authority would need to make a new application to court as a supervision order does not allow the local authority to remove the child.

If a care order is made, it is likely that the child will be placed with foster carers and that some contact will take place between the child and the parents. The contact arrangements will be set out in the **care plan** for the child. It is possible that a child could be made subject to a care order and placed with their parents (or another family member), but this is quite rare. A care order will last until the child is aged 18 years, unless it is brought to an end sooner by the court. If the child is placed with parents, or a family member, and the child's circumstances deteriorate, the local authority would be able to remove the child without making a new application to court. However, unless it was an emergency, the local authority would normally be expected to notify the parents of their intention to remove the child to provide the parents with an opportunity to seek legal advice. If the parents' circumstances change, and they believe that the care order is no longer in the child's best interests, it is possible for them to make an application to discharge the order. Before making a discharge application the parents should seek legal advice in order to assess whether there is an arguable case for discharging the order. In some cases, the local authority will decide that the care order is no longer necessary and it will make a discharge application.

If a placement order is made, the child will be placed with foster carers until the local authority can identify an adoptive family. It is likely that the child will still have some contact with the parents whilst the local authority is searching for the adoptive family, but the contact will not be frequent (e.g. once per month). Once an adoptive family has been identified, the parents are likely to be offered a 'farewell' contact session, which will usually be the last time that the parents see the child. Once the child has been placed with the adopters, the adopters will apply for an adoption order.



## Participation in Proceedings and Capacity

One of the fundamental principles protected by the Human Rights Act 1998 is the right to a fair hearing. This means that all parties must be enabled to understand and participate in the court process. The support provided may be on an informal or a formal basis, and in some cases may involve an assessment of capacity.

### *Informal Support*

Parents with a learning disability may find it difficult to participate in proceedings, and not all lawyers will be experienced or skilled at working with clients who have a learning disability. It may be sufficient for parents with a learning disability to be accompanied by someone who they know, who is able to explain things in a way in which the parents will understand and to check their understanding. This informal support could be provided by a family member or a professional working with the parents.

Although meetings between a lawyer and client are confidential, the client can request that another person is present at any meeting and the lawyer will usually agree, especially where the other person's presence is going to help facilitate the parents' understanding. Therefore, you might be asked to attend meetings between the parents and their lawyer, or to attend court hearings, in order to help ensure that the parents understand the legal process. This role is sometimes referred to as being a **learning disability advocate**.

### *Formal Support*

Sometimes a party, or a witness, needs to have formal support to help them give instructions to their lawyer or to provide evidence to the court. The process of arranging formal support is sometimes referred to as 'special measures', and the most common form of special measures where a parent has a learning disability is to provide an **intermediary**.

Intermediaries are often speech and language therapists, teachers, psychologists or professionals with experience in supporting communication. The intermediary's role is to ensure that the person with a

learning disability is able to participate effectively in the court process. For example, an intermediary may make recommendations regarding the questioning and communication strategies that should be used, or recognise and indicate to the court when breaks are required. In order to assess what, if any, formal support is required the court may order that an expert assessment is undertaken. Other forms of special measures which may be considered include use of screens (to shield the witness from the other people in court), or giving evidence via video link.

### **Capacity**

If, even with informal or formal support, a parent with a learning disability is unable to understand the issues involved in the case it may mean that they lack 'litigation capacity'. This means that the parent is not capable of deciding whether or not they wish to contest the proceedings, and that someone else is required to make decisions on their behalf. A person appointed to conduct proceedings on someone else's behalf is known as a **litigation friend**, and the person on whose behalf the litigation friend is acting is referred to as a **protected party**.

Acting as a litigation friend is a very significant responsibility, as the litigation friend effectively decides how the protected party's case should be presented. Whilst it is possible that a family member could be appointed as a litigation friend (for example if they held a power of attorney), in child protection cases it is usually the **Official Solicitor** who is invited to act as the litigation friend.

Appointing a litigation friend is a very significant step and there are detailed provisions in the court rules regarding the appointment process (Part 15 FPR - Representation of Protected Parties). Usually, a capacity assessment is required, which will normally be obtained from a consultant psychiatrist. If the parent has not previously had a capacity assessment undertaken, the court will usually be asked to order the assessment at the Case Management Hearing. If the assessment concludes that the parent does not have capacity, then the Official Solicitor will usually be invited to

become the litigation friend. The Official Solicitor will give instructions on behalf of the protected party. The Official Solicitor's instructions will reflect the actions that the Official Solicitor believes are necessary for the benefit of the protected party. The Official Solicitor will also make representations regarding whether or not the protected party should give evidence to the court, although the ultimate decision regarding whether a protected party should give evidence will be made by the court. In deciding whether to compel a protected party to give evidence the court will have to balance the benefits, which hearing the protected party's evidence will bring to the court's determination of the issues, against any risk to the well-being of the protected party.

## Guidance from case law

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Sometimes there will be disagreement about how the law should be interpreted, and the courts will be asked to resolve the dispute. This Section provides information about cases in which the courts have considered issues relating to how parents with a learning disability should be supported, and summarises the key guidance issued by the courts. If you decide to read the cases, you will find that many of them refer to the right to a fair hearing (Article 6) and the right to family life (Article 8). These are rights that we all have, enforceable via the Human Rights Act 1998, which must be respected by all public bodies. Local authorities and the courts are public bodies. This means that local authorities and the courts are under an obligation to ensure that all parents, and children, receive a fair hearing and that their rights to family life are given due regard.

Recent cases also make increasing reference to the United Nations Convention on the Rights of the Child 1989 (UNCRC). Although the UK is a signatory to the UNCRC, the Convention is not directly enforceable in our courts. However, on 6<sup>th</sup> March 2011, the Welsh Assembly passed The Rights of Children and Young People (Wales) Measure 2011. This means that Welsh Ministers must have regard to the rights of children and young people under the UNCRC when making any decision. This includes decisions made by agencies acting on behalf of the Welsh Government, such as CAFCASS Cymru. In addition, where a decision is made about a child under the SSWBWA 2014, s7 requires the person taking the decision to consider the rights set out in Part 1 UNCRC. The UNCRC covers a number of important areas, including that children should be brought up by their parents (Article 9), and the Children's Rights Wales website has a lot of relevant information, which is presented in an accessible format.



## Key Information and Resources: Understanding Case References

If you are unfamiliar with the references for legal cases, they can appear very confusing. Here is a brief explanation in order to assist your understanding.

### Example:

*Kent County Council v A mother and others* [2011] EWHC 402 (Fam)

- The applicant in the case was ‘Kent County Council’.
- The respondents were ‘A mother’ and other members of the family. (The names have not been given to protect the identity of the child.)
- ‘EWHC’ refers to the court that decided the case, which means the High Court of England and Wales. Since the creation of the Family Court, it is more usual to see the letters ‘EWFC’ (i.e. the Family Court of England and Wales). If the case was heard in the Court of Appeal, the letters will be ‘EWCA’, and ‘UKSC’ if the case was dealt with in the Supreme Court.
- The number ‘402’, means that it was the 402<sup>nd</sup> case decided in the year 2011.
- ‘(Fam)’ refers to the section of the law reports in which the case can be found (i.e. the Family section).

Often cases involving children will be referred to as ‘*Re B*’ or ‘*Re A*’ in order to protect the child’s identity. ‘Re’ means “in the matter of”.

## **What is ‘good enough’ parenting?**

Children can only be removed from the care of their parents if the child has suffered or is at risk of suffering significant harm. The courts have emphasised on many occasions that the fact that a child may receive better care in another family setting does not, of itself, justify the child’s removal.

**Re L (Children) [2006] EWCA Civ 1282** – Lord Justice Wall emphasised that “*the family courts do not remove children from their parents into care because the parents in question are not intelligent enough to care for them or have low intelligence quotas. Children are only removed into care (1) if*

*they are suffering or likely to suffer significant harm in the care of their parents; and (2) if it is in their interests that a care order is made. Anything else is social engineering and wholly impermissible” (para. 49).*

**Re L (A Child) (Care: Threshold Criteria) [2007] 1 FLR 2050** – Mr Justice Hedley noted that *“society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, whilst others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event, it simply could not be done” (para. 50).*

**Kent County Council v A Mother and Others [2011] EWHC 402 (Fam)** – Mr Justice Baker stated that *“The last thirty years have seen a radical reappraisal of the way in which people with a learning disability are treated in society. It is now recognised that they need to be supported and enabled to lead their lives as full members of the community, free from discrimination and prejudice. This policy is right, not only for the individual, since it gives due respect to his or her personal autonomy and human rights, but also for society at large, since it is to the benefit of the whole community that all people are included and respected as equal members of society. One consequence of this change in attitudes has been a wider acceptance that people with learning disability may, in many cases, with assistance, be able to bring up children successfully. Another consequence has been the realisation that learning disability often goes undetected, with the result that persons with such disabilities are not afforded the help that they need to meet the challenges that modern life poses, particularly in certain areas of life, notably education, the workplace and the family” (para. 132).*

**Re B (A Child) [2013] UKSC 33** – Lady Hale held that *“the court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life, but to be satisfied that the statutory threshold has been crossed”* (para. 193).

Therefore, the law is clear: if the child is receiving ‘good enough’ care there is no basis to remove the child. However, difficulties arise where the care being provided is not adequate, and the child is exposed to either risk of or actual significant harm, but the parents have not received an adequate support package. In these cases, the parents’ lawyer should be inviting the court to scrutinise the nature of the parents’ needs and whether, with a package of support, those needs can be met so as to enable the parents to provide good enough parenting. This is particularly vital where the local authority’s plan for the child is adoption.

**Re B (A Child) [2013] UKSC 33** – Lord Neuberger held that *“before making an adoption order in such a case, the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support”* (para. 105).

**Re B-S (Children) [2013] EWCA Civ 1146** – Sir James Munby noted that *“The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order. Judges must be alert to the point and must be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority's thinking”* (para. 29).

**Bristol City Council v S [2015] EWFC B64** – HHJ Wildblood QC noted that, in cases where a parent has a learning disability, *“a meeting of professionals from the Local Authority’s Children’s and Adults’ Services in the early stage of the Local Authority’s intervention”* was essential (para. 16).

However, the local authority only has to provide a reasonable package of support. This means that if the parents' support needs are so great that they cannot be reasonably met, then that may justify the local authority arguing that the child's welfare can only be safeguarded if they are removed from the parents' care.

Where the local authority has been working with the family and decides that the parents cannot provide adequate care, before granting an interim care order allowing the child to be removed pending the outcome of the proceedings, the court must be satisfied that there is an imminent or immediate risk to the child (**Re L (Children) [2016] EWCA (Civ) 1110** para. 29).





Key Information and Resources:  
'Good enough' parenting and learning disability

Applying the case law, the correct approach to assessing whether a parent with a learning disability can provide good enough parenting appears to be:

- A learning disability, either alone or in combination with other factors, does not automatically mean that a parent cannot provide good enough parenting for their child.
- If the care being provided is good enough, there is no legal basis to remove the child from a parent.
- If the care being provided exposes the child to the risk of or to actual significant harm then the local authority has a legal duty to intervene.
- The court's approach should be to consider the least interventionist approach necessary to protect the child, and so should first assess whether the parents can be supported to provide good enough care.
- If the parents can be supported to provide good enough care then the local authority should facilitate the provision of the necessary support unless the level of support required is unreasonable or it would result in a regime of care that is not in the child's best interests.

Information regarding research relating to the experience of parents with a learning disability who become involved with the child protection process is available via the [Child Protection Resource](#) website.

## Assessing parents with learning disabilities

The purpose of assessment is usually to evaluate whether the parents have the ability to provide good enough parenting to the child. To be an accurate evaluation, any assessment must be conducted in a way that enables the parents to fully engage with the process.

**Re C (A Child) [2014] EWCA Civ 128** – allowing an appeal by a mother who had a low level of cognitive functioning and a speech and hearing impediment, and a father who was profoundly deaf, Lord Justice McFarlane noted that the way in which the proceedings had been conducted “*failed to meet the disability needs of the parties and failed to produce an effective evaluation of the parents’ potential to look after their child*” (para. 34). Lord Justice McFarlane went on to emphasise that both the local authority, from its initial work with the family, and the parents’ lawyers have a duty to raise any concerns relating to disability by no later than the Case Management Hearing, and should ask the court to give directions for any necessary specialist assessments, even if this means that the 26-week deadline may not be able to be complied with.

**McG v Neath County Borough Council [2010] EWCA Civ 821** - The Court of Appeal set aside care and placements orders on the basis that all parties agreed that the mother had been prejudiced by the fact that no assessment had been undertaken by anyone with specialism in the field of learning disability.

**Re S (A Child) [2013] EWCA Civ 1073** – Lady Justice Black noted that the local authority’s evidence was deficient as children’s services had failed to liaise with adult services and undertake “*a reliable assessment of M’s likely future care of K and of her support needs and proper information about what could be made available to her by way of support in the community*” (para. 34).

## **Ensuring parents' participation in the child protection process**

To be valid, child protection procedures have to be conducted fairly, which means that parents with a learning disability have to be enabled to participate in the process and must not be disadvantaged by virtue of their learning disability. This applies both pre-proceedings and once court proceedings have begun.

### **Re H (A Child: Breach of Convention Rights - Damages) [2014] EWFC**

**38** – HHJ Bellamy was critical of the local authority's failure to properly engage with learning disabled parents, despite the fact that the local authority was aware of the parents' difficulties, as both parents had themselves been in care. The parents were awarded £12,000 in damages as the court held that their rights to a fair hearing and to family life had both been breached.

**Re N-F (Children) [2009] EWCA Civ 274** – Lord Justice Thorpe was critical of the local authority for using a lengthy written agreement, which the parents refused to sign, noting that "*the management of the case by way of a three-and-a-half-page contract was in itself risk-laden, given the cognitive disability of the parents*" (para. 10).

**Re CA (A Baby) [2012] EWHC 2190 (Fam)** - Mr Justice Hedley noted that an agreement, between a parent and the local authority, that a child should be accommodated under s20 CA 1989 was only valid if the parent had "*the requisite capacity to make that agreement*" (para. 27). Hedley J also noted that it was the social worker, seeking the consent, who ultimately had to make a decision regarding whether the parents had capacity, and that "*if the social worker has doubts about capacity no further attempt should be made to obtain consent on that occasion and advice should be sought from the social work team leader or management*" (para. 46). (If valid consent is not obtained the removal of the child may constitute a breach of Article 8 and may lead to an award of damages; see for example **Williams & Anor v London Borough of Hackney [2015] EWHC 2629 (QB)**.)

**Re A (A Child) (Vulnerable Witness) [2013] EWHC 1694** – Mrs Justice Pauffley emphasised that the judge has a responsibility to ensure that every witness is enabled to give their evidence, using special measures if required, noting *“I have an undoubted and ever present responsibility to be at all times vigilant so as to ensure the wellbeing of every individual participant at all hearings”* (para. 38).

**Re D (A Child) (No 2) [2015] EWFC 2** – Sir James Munby stated that where a parent requires an intermediary in court, then HM Courts and Tribunals Service must fund the intermediary as the intermediary is required *“to enable the litigant to communicate effectively with the court”* (para. 17).

**Re D (A Child) (No 3) [2016] EWFC 1** – Sir James Munby reviewed the existing research and case law, and set out the key principles that should be applied by professionals and the court in cases involving parents with a learning disability (see para. 29 and Annex).

## Private law proceedings

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Where a **local authority** decides to apply for a court order, the proceedings are known as *public law proceedings* as the local authority is a public body. Where the dispute is between the parents, or other members of the family, the proceedings are known as *private law proceedings* as all the parties involved are private individuals. Sometimes a local authority can become involved with a family, but will decide that there are no grounds to apply for an order as the child is not at risk of significant harm. However, there may still be court proceedings if the parents/family members cannot agree about the arrangements for the child. Therefore, you may become involved in supporting parents who are involved in private law proceedings, and this Section will explain the main differences between private law and public law proceedings.

### The private law orders

Private individuals cannot apply for **care orders** or **supervision orders**. Private law disputes usually decide who the child lives with and who has contact with the child, and so private law cases usually involve applications for **child arrangements orders**.

Private law orders are made under s8 CA 1989, and so are sometimes referred to as 'section 8' orders. In addition to child arrangements orders, there are two other section 8 orders - **specific issue orders** and **prohibited steps orders**.

If a father does not have **parental responsibility** for his child, then he can apply for a **parental responsibility order**, and this will also be classed as a private law applications. However, since 1<sup>st</sup> December 2003, if the father is named on the child's birth certificate he will automatically have parental responsibility, and so applications for parental responsibility orders are now less common.

## **Mediation information and assessment meeting**

Anybody who wants to apply for a private law order must first attend a 'Mediation Information and Assessment Meeting' (MIAM) unless an exemption applies. The main exemptions are:

- there is evidence of domestic violence;
- there are child protection concerns;
- the application is urgent.

The MIAM will be conducted by an accredited mediator, who will explore whether it is possible to resolve the dispute without court proceedings. This may involve the mediator meeting the parties individually, or holding a joint session that brings the parties together. Therefore, if you are supporting a parent involved in private law proceedings, you may be asked to accompany them to a MIAM.

If the mediator is successful in helping the parties to reach an agreement, then there will be no need for an application to be made to the court. If no agreement is reached, the mediator will provide a certificate confirming that mediation has been unsuccessful and an application for a court order can be made.

Whether any charge is made for attending the MIAM will depend on the parties' income. Usually, if at least one of the parties satisfies the financial eligibility threshold for legal aid, the MIAM will be free. Information about MIAMs is available on the [Family Mediation Council's website](#).

## **The Child Arrangements Programme**

The court rules that apply to applications for private law orders are set out in the [Child Arrangements Programme](#) (usually referred to as the 'CAP').

The CAP sets out the different stages that any application for a private law order should go through, with the main stages being:

- First Hearing Dispute Resolution Appointment;

- Dispute Resolution Appointment; and
- Final Hearing.

The following sections explain what should happen at each of the key hearings under the CAP.

### ***First Hearing Dispute Resolution Appointment (FHDRA)***

The FHDRA is the first court appointment. Unless the case is urgent, the FHDRA will usually take place approximately six weeks after the application is issued.

The **magistrates** or **judge** hearing the case will have the application form, which will set out the orders that the **applicant** is seeking and why the orders are required. In addition, the court will normally have directed that the **respondent** files a response, setting out what the objections to the application are. The court will also have asked CAFCASS Cymru to prepare a safeguarding report to identify any possible risks to the child. The report should be made available to the court at least 3 days before the FHDRA. The parties do not normally see the safeguarding report.

Usually, the magistrates or judge hearing the case will give the parties an opportunity to attend a conciliation appointment, at court, with an officer from CAFCASS Cymru, in order to explore whether there is any scope for agreement. After the conciliation appointment, the CAFCASS officer will explain to the court whether an agreement has been reached and whether there are any outstanding issues.

If an agreement has been reached, the court will decide whether an order is required in the best interests of the child. If the court is satisfied that the parties can make the agreed arrangements work without an order, then it is unlikely that an order will be made. If agreement is reached, the case will usually end at the FHDRA. If no agreement is reached, the court will review what the key issues are and will give directions for the preparation of the evidence required to resolve the key issues. This is likely to include statements from the parties, and any necessary assessments from

CAFCASS Cymru or an expert witness. The parties may also be directed to undertake an activity to assist their parenting and minimise any conflict in their relationship, such as attending a Separated Parents Information Programme (SPIP).

### ***Dispute Resolution Appointment (DRA)***

Where the court has directed that the parties undertake an activity, or has asked CAFCASS Cymru or an expert witness to prepare an assessment, the case will be listed for a DRA. The purpose of the DRA is for the court to assess whether the activity or assessment has assisted the parties to reach an agreement. In more straightforward cases, where an activity or assessment is not required, the court may decide that a DRA is unnecessary and may move straight to the Final Hearing.

As with the FHDRA, if the parties reach an agreement at the DRA the case will usually come to an end, and the court will decide whether it is in the child's best interests to make an order.

### ***Final Hearing***

If the parties have been unable to reach an agreement, the application will be listed for a Final Hearing at which the court will hear evidence and determine the issues in dispute. As with public law proceedings, the court will apply s1 CA 1989 and will have the child's welfare as the paramount consideration.

### **What happens at court?**

Although the procedure at court will be similar to the procedure that applies in public law cases, there are some significant differences. First, the local authority will not be a party to the proceedings. If a social worker has been involved with the family it is possible that the court will direct them to prepare an assessment, but the local authority will not be asking the court to make a care order or a supervision order.

Second, a **children's guardian** will not usually be appointed to represent the child. Whilst CAFCASS Cymru may be asked to provide an



assessment, the child is not usually made a party to private law proceedings and so there is no need to appoint a children's guardian to represent the child. In very complex private law cases, the court can make the child a party and can ask CAFCASS Cymru to appoint a children's guardian. If this happens, the children's guardian will perform the same role as in a public law case, including appointing a solicitor for the child.

### **The Legal Aid, Sentencing and Punishment of Offenders Act 2012**

From April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed legal aid from private law proceedings. This means that legal aid is generally not available for private law cases even if a person is on a low income. As a result many people applying for private law orders have to act as **litigants in person**, representing themselves without a lawyer. Therefore, you might find it useful to refer to the **Resources for Litigants in Person**.

There are some exceptions, and legal aid might be granted if the person applying for the order has been a victim of domestic violence or there are child protection concerns. The Legal Aid Agency has an [online eligibility checker](#), which asks a series of questions, about the type of dispute and the person's financial circumstances, and then provides an indication regarding whether legal aid may be available.

## Additional Resources

The following websites contain useful information (*Ctrl + click to follow each link*):

Organisation	Website
Advocacy Matters (Wales) (Charity offering support, including representation, to parents with a learning disability)	<a href="http://www.advocacymatterswales.co.uk/">www.advocacymatterswales.co.uk/</a>
Advicenow (Charity which provides information on rights and the law)	<a href="http://www.advicenow.org.uk/">www.advicenow.org.uk/</a>
British and Irish Legal Information Institute (BAILII) (Provides free access to law reports)	<a href="http://www.bailii.org">www.bailii.org</a>
CAFCASS CYMRU (Provides information for adults and young people involved in child protection cases)	<a href="http://cafcass.gov.wales/?lang=en">http://cafcass.gov.wales/?lang=en</a>
Care Council for Wales (Produces an online training module about the SSWBWA 2014, and an online guide to Child Law in Wales (although this was written before the SSWBWA 2014 was introduced)	<a href="http://www.ccwales.org.uk/learning-resources-1/overview-and-awareness/">www.ccwales.org.uk/learning-resources-1/overview-and-awareness/</a>  <a href="http://www.ccwales.org.uk/child-law/">www.ccwales.org.uk/child-law/</a>
Child Protection Resource (Provides resources and a discussion site for parents and professionals involved in the child protection system)	<a href="http://www.childprotectionresource.online/">www.childprotectionresource.online/</a>
Children's Commissioner for Wales (Provides advice and support to children and young people)	<a href="http://www.childcomwales.org.uk/">www.childcomwales.org.uk/</a>
Children's social care law in Wales (Provides access to the key legislation applicable in Wales)	<a href="http://sites.cardiff.ac.uk/childrens-social-care-law/">http://sites.cardiff.ac.uk/childrens-social-care-law/</a>

Citizens Advice (Wales) (Provides a range of legal information guides, which can be searched to identify legislation applicable in Wales)	<a href="http://www.citizensadvice.org.uk/wales/">www.citizensadvice.org.uk/wales/</a>
Dewis Cymru (Provides information about well-being services in Wales)	<a href="http://www.dewis.wales/">www.dewis.wales/</a>
Family Rights Group (Charity advising families involved with children's services)	<a href="http://www.frg.org.uk/">www.frg.org.uk/</a>
Good Practice Guidance on Working with Parents with a Learning Disability (The Guidance was produced by the Department for Health in 2007, and contains a lot of useful information regarding how social workers can best work with parents with a learning disability)	<a href="http://webarchive.nationalarchives.gov.uk/20080910224541/dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH075119">http://webarchive.nationalarchives.gov.uk/20080910224541/dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH075119</a>
HMSO UK Legislation (Provides free access to all UK legislation)	<a href="http://www.legislation.gov.uk/">www.legislation.gov.uk/</a>
Law Society (Will help you find a Children Panel solicitor in your area)	<a href="http://www.lawsociety.org.uk">www.lawsociety.org.uk</a>
Learning Disability Wales (Charity providing network for parents with a learning disability)	<a href="http://www.ldw.org.uk/networks/parents-with-a-learning-disability.aspx#.WHfB62dviUk">www.ldw.org.uk/networks/parents-with-a-learning-disability.aspx#.WHfB62dviUk</a>
Luke Clements (Provides free resources relating to social care law written by Professor Luke Clements)	<a href="http://www.lukeclements.co.uk/">www.lukeclements.co.uk/</a>
Ministry of Justice (Provides free access to the Family Procedure Rules and general information relating to the Family Court)	<a href="http://www.justice.gov.uk/">www.justice.gov.uk/</a>
Public Services Ombudsman (Investigates complaints about public bodies in Wales)	<a href="http://www.ombudsman-wales.org.uk/en.aspx">www.ombudsman-wales.org.uk/en.aspx</a>

<p>Research in Practice (Provides free online resources relating to family justice and the Family Court)</p>	<p><a href="http://www.rip.org.uk/resources/court-orders-and-pre-proceedings-learning-resources/">www.rip.org.uk/resources/court-orders-and-pre-proceedings-learning-resources/</a></p>
<p>Welsh Government (Provides explanatory materials regarding the SSWBWA 2014, including an 'Easy Read' version of the legislation)</p>	<p><a href="http://gov.wales/topics/health/socialcare/act/?lang=en">http://gov.wales/topics/health/socialcare/act/?lang=en</a></p>
<p>Working Together with Parents Network (Support network for professionals working with parents with learning disabilities and their children)</p>	<p><a href="http://www.bristol.ac.uk/sps/wtpn/">www.bristol.ac.uk/sps/wtpn/</a></p>

# Appendix 1

## Glossary

Term used	Meaning
adoption order	An adoption order changes a child's legal status. The child becomes the legitimate child of the adopters, and the child's legal relationship with their birth family ends. The birth parents lose their parental responsibility for the child, and it is also likely that the child will no longer have any contact with the birth family, as most adoptions proceed on a 'closed basis'. This means that the relationship between the child and the birth family is severed.
applicant	When an application is made to the court for an order, the person applying for the order is known as the applicant. In child protection cases, the local authority will usually be the applicant.
barrister	Barristers are legal professionals who provide specialist advice and advocacy services. Clients do not normally instruct barristers directly, as barristers are usually employed by solicitors on the client's behalf. Therefore, if you need legal advice you will usually see a solicitor and the solicitor will decide whether a barrister is needed to provide specialist advice or representation at court.
care and support plan	Where a child (or an adult) is identified as having care and support needs, with which the local authority must assist, they must have a care and support plan. The SSWBWA 2014 Part 6 Code of Practice notes that the plan contain all of the key information about the child and his family (paragraph 36).
care order	A care order is made under s31 CA 1989. It places a child in the care of a local authority and gives the local authority parental responsibility for the child. If a care order is made the child will usually be removed from their parents/carers, although it is possible for a care order to be made and for the child to be placed within the family.
care plan	Every child who is subject to a care order must have a care plan, which sets out the local authority's long terms plans for the child, including where the child will live and what contact will take place between the child and family members. The care plan is required under s31A CA 1989, so it is sometimes referred to as a 'section 31A plan'.

<p>child arrangements order</p>	<p>A child arrangements order regulates where a child will live and/or with whom a child is to have contact. Child arrangements orders were introduced in April 2014, and replaced residence orders and contact orders. Where a child arrangements order is made specifying where a child will live, it will also state that the person with whom the child is to live has parental responsibility for the child if they do not already have it (e.g. if the child is to live with their grandmother, the child arrangements order will specify that the grandmother has parental responsibility for the child whilst the order is in force).</p>
<p>child assessment order</p>	<p>An order made under s43 CA 1989, which authorises a local authority to arrange for a child to be assessed. If a parent obstructs the assessment process, the local authority will usually apply to the court for an emergency protection order or a care order.</p>
<p>child protection conference</p>	<p>Working Together Wales describes a child protection conference as a meeting which brings together and analyses all of the information that is available about the child’s needs and the parents’ abilities to meet those needs. The conference will be attended by representatives of all the agencies involved with the family, family members and, where appropriate, the child.</p>
<p>child protection plan</p>	<p>The purpose of the plan is to ensure that the child is safe and their future welfare is promoted. The plan should set out what action is required, who will be responsible for taking that action and by when the action must be completed. In particular, the plan will specify a lead professional (sometimes referred to as a ‘key worker’), who will be responsible for co-ordinating the implementation of the plan, and will also identify a group of people (called a ‘core group’) who will assist the lead professional in putting the plan into effect. The lead professional will usually be the child’s social worker, and the core group will usually consist of both professionals and family members.</p>
<p>child protection register</p>	<p>The register is a list of children judged to be at continuing risk of significant harm and in need of active safeguarding. A child placed on the register will be subject to a child protection plan, and will only be removed from the register when a review child protection conference is satisfied that the child is no longer at risk of significant harm. The child protection register is only maintained in Wales, and local authorities in England simply use a system of child protection plans.</p>

<p>children’s guardian</p>	<p>The children’s guardian will generally be an experienced social worker who will represent the child’s interests in court. Children’s guardians are employed by CAFCASS Cymru, which is part of the Welsh Government. This means that the children’s guardian is independent from the local authority. Usually, the court will ask CAFCASS Cymru to allocate a children’s guardian to the case, and the children’s guardian will then appoint a solicitor for the child. The children’s guardian and the solicitor will then work together to advise the court regarding the child’s wishes and feelings, and the course of action that is in the child’s best interests.</p>
<p>code of practice</p>	<p>Section 145 SSWBWA 2014 allows the Welsh Government to issue Codes of Practice in relation to social services functions. Local authorities must comply with any requirements set out in the Codes, and must have regard to any guidelines set out in the Codes. Effectively, this means that local authorities must follow all requirements under the Codes, and should follow any guidelines unless there is a good reason why the guideline cannot be complied with.</p>
<p>emergency protection order</p>	<p>An emergency protection order authorises a local authority to remove a child to a place of safety, and gives the local authority parental responsibility for the child. It is a short term order designed to be used in urgent cases, and cannot last for more than 8 days. Usually, it will not be possible to resolve the crisis that led to the emergency protection order within the 8 days, and so the local authority will usually make a subsequent application for a care order.</p>
<p>family group conference</p>	<p>A family group conference (FGC) is a meeting of the child’s family. ‘Family’ is defined in its widest sense and so may include close friends as well as blood relatives. The purpose of the conference is to allow the family to reach its own solution regarding how best to meet the child’s needs, on the basis that the solution is more likely to work if it has been generated by the family rather than imposed by professionals. The FGC will be led by an independent co-ordinator, whose role is to facilitate the family’s discussions rather than to impose a solution on the family.</p>

independent reviewing officer	All local authorities are required to have an independent reviewing officer (IRO). The IRO's role is to ensure that the local authority is complying with its legal duties to review the plans for all children looked after by the local authority on a regular basis. If the IRO believes that the plan for the child is not being implemented properly, then the IRO should raise the issue with the children's services department on the child's behalf. If the IRO is not satisfied with the response from children's services a referral can be made to CAFCASS Cymru, who will consider whether the issue should be referred to the court.
intermediary	An independent person whose role is to ensure that a person with a learning disability is able to participate effectively in the court process. If you need to find an intermediary, the Ministry of Justice maintains an Intermediary Register, although its focus is currently supporting witnesses involved in criminal trials rather than in Family Court proceedings.
judge	Before applying to become a judge, the applicant must usually have practised as a lawyer for at least seven years. A number of different categories of judge sit in the Family Court: District Judges, Circuit Judges and High Court Judges. Generally, all judges have the same powers when dealing with child protection cases, and cases will be allocated to a category of judge according to their complexity. The more straightforward cases will be heard by a District Judge, with more complex cases being heard by a Circuit Judge. If the case is very complex it will be allocated to a High Court Judge. Unlike magistrates, judges will sit alone to decide cases.
learning disability advocate	Usually a professional support worker who provides emotional and practical support to enable a parent (or other family member) with a learning disability to participate in court proceedings.
litigant in person	A party to court proceedings who presents their case without instructing a lawyer, usually because they cannot obtain legal aid and cannot afford to pay a lawyer privately.
litigation friend	A person appointed by the court to conduct proceedings on someone else's behalf because the person lacks capacity. In child protection proceedings, it will usually be the Official Solicitor who is asked to act as the litigation friend.



local authority	Local government in Wales (and England) is undertaken by local authorities. Local authorities have statutory responsibilities towards adults and children living in their area. These are delivered via adult services departments and children’s services departments, which are different. Adult services departments will assist and support vulnerable adults (e.g. older people and adults with a learning disability). Children’s services departments are responsible for providing services to children/families, and also have legal duty to intervene where a child is at risk of significant harm.
magistrates	Magistrates hear the least complex cases in the Family Court. They are lay people and so are not legally qualified, but they do have to attend a series of training courses on the role and duties of a magistrate. Magistrates sit in panels, usually called ‘benches’, of at least two and normally three people, and are assisted by a Legal Adviser (who will be a qualified solicitor or barrister). The Legal Adviser’s job is to advise the magistrates on the law, but they cannot take part in the magistrates’ decision-making process. Magistrates are not paid a salary and receive only basic expenses. Sometimes magistrates are referred to as ‘justices of the peace’.
official solicitor	The Official Solicitor and Public Trustee is an independent statutory office, which provides representation in court proceedings for people who are vulnerable because they lack mental capacity. The Official Solicitor is based in London, but will arrange representation for protected parties in cases throughout England & Wales.
parental responsibility	Section 3(1) CA 1989 defines parental responsibility as “ <i>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</i> ”. In practice, someone who holds parental responsibility is entitled to be involved in all the key decisions relating to the child’s upbringing, such as naming the child, where the child goes to school, the child’s religious upbringing and what medical treatment the child receives. A child’s mother always has parental responsibility for her child, and a child’s father will have it if he is named on the child’s birth certificate or if the parents’ are married. It is also possible to acquire parental responsibility for a child by means of a court order; for example, a local authority will have parental responsibility for a child when a care order is in force.
parental responsibility order	An order which gives the applicant parental responsibility for the child for as long as the order is in force. Usually, the application will be made by the child’s father, if he does not already have parental responsibility. However, a child’s step-parent can also apply, and so can the civil partner of a child’s parent.

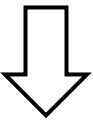
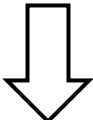
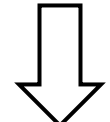
<p>placement order</p>	<p>Where a local authority decides that a child should be adopted, it needs to obtain permission from the court to place the child with the prospective adopters. That permission is usually obtained by applying to the court for a placement order. If granted, the placement order gives parental responsibility to the local authority and allows the local authority to place the child with any prospective adopters identified by the local authority as being able to provide a suitable family for the child. Very importantly, the making of placement order usually means that the birth parents will not be involved in the subsequent adoption proceedings unless they can establish that their circumstances have changed and adoption is no longer the appropriate plan for the child.</p>
<p>police protection</p>	<p>Section 46 CA 1989 permits the police to take a child into police protection if the police have reasonable cause to suspect that the child is otherwise likely to suffer significant harm. Police protection is only used in very urgent cases, and the child cannot be kept in police protection for more than 72 hours. The police will ask the local authority to provide suitable accommodation for the child, as the child should not be held at a police station. The local authority will then usually apply to the court for an emergency protection order or a care order, in order to take over responsibility for the child's welfare.</p>
<p>primary legislation</p>	<p>Primary legislation is passed by Parliament and is known as an Act of Parliament or a Statute. As both adult social care and children's services are devolved matters, in Wales primary legislation can also be introduced by the Welsh Government, and enacted by the Welsh Assembly.</p>
<p>prohibited steps order</p>	<p>A prohibited steps order prevents someone taking a particular decision in relation to a child. Usually, the order is applied for where one person with parental responsibility for a child wants to prevent another person with parental responsibility from taking a major step in the child's life. For example, if one parent wished to emigrate, taking the child with them, the other parent could apply for a prohibited steps order to prevent the child being taken out of England &amp; Wales.</p>
<p>protected party</p>	<p>If a party lacks the capacity to be able to conduct litigation they are said to be a protected party. Usually, before deciding that a person lacks capacity, the court will require expert evidence. If a person is found to be a protected party they are deemed unable to instruct a solicitor directly and will need a litigation friend to be appointed on their behalf.</p>

respondent	When an application is made to the court for an order, the people who are entitled to come to court, and make representations about whether an order should be made, are known as respondents as they have a legal right to respond to the application being made. In child protection cases, the child’s parents will usually be respondents to the proceedings, as will the child (who will be represented by a children’s guardian and solicitor for the child).
secondary legislation	Secondary legislation explains the way that primary legislation is meant to be implemented. Secondary legislation is usually issued as a Statutory Instrument, and will normally set out Regulations, which have to be complied with in the same way as primary legislation.
solicitor	Solicitors are legal professionals who give advice and deal directly with clients. Some solicitors will have a general practice, and will undertake several different areas of legal work, whereas others will specialise in a particular area of law. Solicitors can represent clients in court, although some solicitors will instruct a barrister to deal with court work. If you need a solicitor to represent you in child protection proceedings you should choose one who is a member of the Law Society Children Panel, as members of the Panel specialise in cases involving children.
special guardianship order	A special guardianship order appoints a special guardian for the child and gives them parental responsibility for the child. Usually, the child will live with the special guardian. When a special guardian is appointed, the special guardian will make all of the decisions regarding the child’s care, and does not have to consult with anyone else even if other people also have parental responsibility for the child. A child’s parent cannot be appointed as special guardian for their child, so this means that if a special guardian is appointed the special guardian will be able to make all of the decisions about the child’s upbringing without consulting the parents.
specific issue order	A specific issue order authorises someone to take a particular decision in relation to a child. Usually, the order is applied for when there is a dispute, between two people with parental responsibility for a child, regarding a major step in the child’s life. For example, if a child’s parents could not agree about which school the child should attend, an application could be made for a specific issue order and the court would decide which school was the most appropriate taking into account the child’s welfare.

strategy discussion	Working Together Wales describes a strategy discussion as a multi-agency meeting arranged by the local authority. It will normally include representatives from the children’s services department, the police and other agencies (such as health and education). The purpose of the meeting is to discuss the concerns that have been identified about the child and to plan any future action necessary to safeguard the child.
supervision order	An order made under s31 CA 1989, which places a child under the supervision of a local authority. If a supervision order is made it does not give the local authority parental responsibility for the child, and usually the child will be placed with their parents or another carer within the family.
threshold criteria	The court can only make a care/supervision order if it is satisfied that the child has either suffered, or is at risk of suffering, significant harm. This test is often referred to as the ‘threshold criteria’ as it represents the threshold that has to be established before the court can make a care/supervision order. If the court decides that the threshold criteria are not established, then no care/supervision order can be made and the proceedings will come to an end. If the court finds that the threshold criteria are established, then a care/supervision order can be made, but only if an order is in the child’s best interests.
well-being	<p>Under s2 SSWBWA 2014, a person’s well-being includes any of the following matters:</p> <ul style="list-style-type: none"> <li>• physical and mental health and emotional well-being;</li> <li>• protection from abuse and neglect;</li> <li>• education, training and recreation;</li> <li>• domestic, family and personal relationships;</li> <li>• contribution made to society;</li> <li>• securing rights and entitlements;</li> <li>• social and economic well-being;</li> <li>• suitability of living accommodation.</li> </ul> <p>In relation to a child, well-being also includes <i>physical, intellectual, emotional, social and behavioural development and welfare</i> as interpreted under CA 1989.</p> <p>Adult well-being includes <i>control over day to day life and participation in work</i>.</p>

## Appendix 2

**Table 1: The process at a Final Hearing**

Opening Speech	The local authority will outline the issues in the case and the position of each of the parties.
	
Local authority's evidence	<p>Each witness will first be <i>examined in chief</i> by the local authority's lawyer. This phase is generally quite short as the witness statements and experts' reports will have been exchanged earlier in the proceedings. The witness will be asked to confirm that the contents of his/her statement or report are true, and any examination-in-chief will usually be restricted to clarification of matters contained in the written evidence.</p> <p>Once the witness has completed evidence-in-chief, s/he will then be <i>cross-examined</i>, in turn, by each of the lawyers for the respondents, with the solicitor for the child going last.</p> <p>Once all cross-examination has been completed, the local authority's lawyer is allowed to <i>re-examine</i> the witness on matters which have arisen during cross-examination. Often re-examination is very short, and in many cases may not be necessary at all.</p> <p>The judge/magistrates may also ask questions.</p>
	
Respondents' evidence	<p>The respondents' evidence is usually called in the following order:</p> <ol style="list-style-type: none"><li>i) the respondents with parental responsibility; followed by</li><li>ii) any other respondents; and then</li><li>iii) the children's guardian.</li></ol> <p>As with the applicant's witnesses, each of the respondents' witnesses will give evidence-in-chief, and be subject to cross-examination and re-examination as required.</p>
	
Closing Speeches	<p>Each party has the chance to address the court in a closing speech, and speeches are made in the following order:</p> <ol style="list-style-type: none"><li>i) other respondents;</li><li>ii) any party with parental responsibility for the child;</li><li>iii) the local authority;</li><li>iv) the children's guardian.</li></ol> <p>At the conclusion of the Final Hearing the court will give a judgment setting out the reasons for the decision made.</p>

For More Information you can contact:

Mencap WISE on 0808 8000 300 (Monday to Friday, 9am – 5 pm)

Or e-mail [information.wales@mencap.org.uk](mailto:information.wales@mencap.org.uk)



Acknowledgements:

*The students who have been involved in devising and updating this tool kit are:*

*Version 1 (August 2015) - Nawal Asif, Jan H'Ng, Eli Hughes and Laurie Jefferies.*

*Version 2 (August 2016) - Gabrielle Richardson and Simona Vaipan.*

*Version 3 (January 2017) - Sophie Chester-Glyn, Lycia Goh, Laura Naivar, Jack Rogers and Alice Williams.*