

## Chapter 5: The principles of children's law

- 1. Read the whole of this chapter carefully and construct a checklist for yourself of the issues you will need to consider before recommending that your department makes a court application in respect of an individual child.**

The first question to ask is which order is the application for. You should obviously consider the statutory criteria for each. An emergency protection order requires a different approach to a care or supervision order. Chapter 8 and 9 provides details of the different orders and the criteria that applies to each. An application for a care or supervision order is most likely to be the application that a social worker will recommend the authority should consider. It is important to recognise the distinction between the evidence necessary for a care or supervision order, which is described in Box 8.1 where the Practice Direction 12A is set out and the Social Work Evidence Template which you can find in the Toolkit, on the one hand and the evidence which should be initially present to court. In respect of the latter, the court must be satisfied that there are *reasonable grounds for believing* that the criteria in s31(2) are satisfied. Reasonable grounds for believing are likely to be that there is some evidence that the child or children are suffering significant harm or that significant harm is more likely than not. In practice this evidence is probably something to do with what the parents are doing which could cause harm or what they are not doing but ought to be doing.

- 2. Locate and read one of the articles listed in Annotated further reading. Summarize the article in 100–150 words.**
- 3. Try to construct a time line of events following the Children Act 1989.**
- 4. What is the relationship between the Children Act 1989 and the Children Act 2004? Do you understand the difference between 'safeguarding children' as a concept and child protection?**

The purposes of each Act are different. The Children Act 1989 simplified and organised existing law in respect of children from as far back as 1933. It introduced a number of safeguards against undue interference from the state particularly the threshold criteria in s31. This provides that the state cannot interfere in family life unless there is a public interest for doing so, in this case the public interest is to safeguard a child from significant harm. The Act strengthened children's rights in respect of secure accommodation, the assumption of contact and set out the welfare checklist as a means of establishing consistent criteria for deciding the best interests of the child. Parental responsibility was defined for the first time, too.

The Children Act 2004 emerged as a response to the Victoria Climbié report. It established the regime for multi-agency cooperation and set out new outcomes for children to which all agencies could aspire. The 2004 Act put the concept of safeguarding firmly on the agenda, hitherto, it was not generally used. The new outcomes for children stretched the professional imagination for how children might experience harm beyond the boundaries of the family. In time institutions like schools picked up on this 'new' concept to explore whether children were 'safeguarded' in education. Other institutions did likewise. Safeguarding became the activity that professionals considered whenever they were concerned about a child's safety, including road safety. Child protection is still largely the term referred to when professionals respond to children who are harmed at home. It is a subset of safeguarding which has become a more substantial activity.

**5. Do you think that working in partnership with parents undermines the professional skills of social workers? Is there a need for greater intervention in family life in order to protect children?**

The concept of working in partnership with parents is a term that has been poorly understood. It emerged in response to the principle in the Children Act 1989 which is set out in Box 5.5, the diminishment of court proceedings. Local authorities should reduce the need to bring care and supervision proceedings amongst others. The effect of this is to encourage local authorities to 'work in partnership' with parents to ensure children are safeguarded and their welfare promoted. In practice working in partnership in this way is very difficult and probably requires advanced social work skills, including the ability to listen and engage vulnerable people to win over their cooperation. Some of the new practice approaches which are being trialled by local authorities are designed to do just that. For example, the restorative practice approach encourages practitioners to work 'with' others rather than 'to' them or 'for' them. Relationship-based approaches do something similar and motivational interviewing is a tried and tested way of working with people who struggle to deal with addictions.

**6. You are investigating an anonymous phone call which expresses concern about a particular family. The caller tells you that there is a young baby and three other children under 10 in the family. Which agencies are likely to have information about the family? What is their role in protecting children? Can you ask for assistance from them?**

School aged children should have the added protection of teachers and other who are concerned about promoting their welfare and safeguarding them from harm. Children below school age may have a health visitor who would be interested to the same for babies and toddler. Sometimes nurseries are

involved with younger children. All of these professionals and their agencies have responsibility under the Children Act 2004 to safeguard children. The local authority social work service can ask them for assistance so long as the parents have given their permission to do so. That is unless the local authority, usually the referral and assessment team manager, has decided that the 'concerns' amount to reasonable cause to suspect a child is suffering or likely to suffer significant harm (s47). Under these circumstances the local authority can ask the other agencies for assistance without the parents' permission. However, in the interests of promoting parental cooperation, permission is normally better than to act unilaterally, unless to do so would put the children at further risk of harm.

**7. A child has been assaulted by her father. What agencies are likely to become involved as a result of the assault? What duties do they have to help with investigations into the incident?**

When a child has been assaulted by her father, the police have the primary duty to investigate since there is a prima facie case that a crime has been committed. A strategy meeting should be held when police officers and social workers can decide what action each agency they represent should undertake. The social work response is about ensuring the child is protected from harm. The child may require medical treatment and consequently doctors and/or nurses may be involved. These professionals may be employed by a local hospital trust or via a GP practice. Subsequently if the father is charged and convicted of a criminal offence, he may be supervised in the community by a probation officer who also has a duty to ensure the child is safe from harm. The child's school (if of school age) may be invited to monitor the child's on-going safety at home.