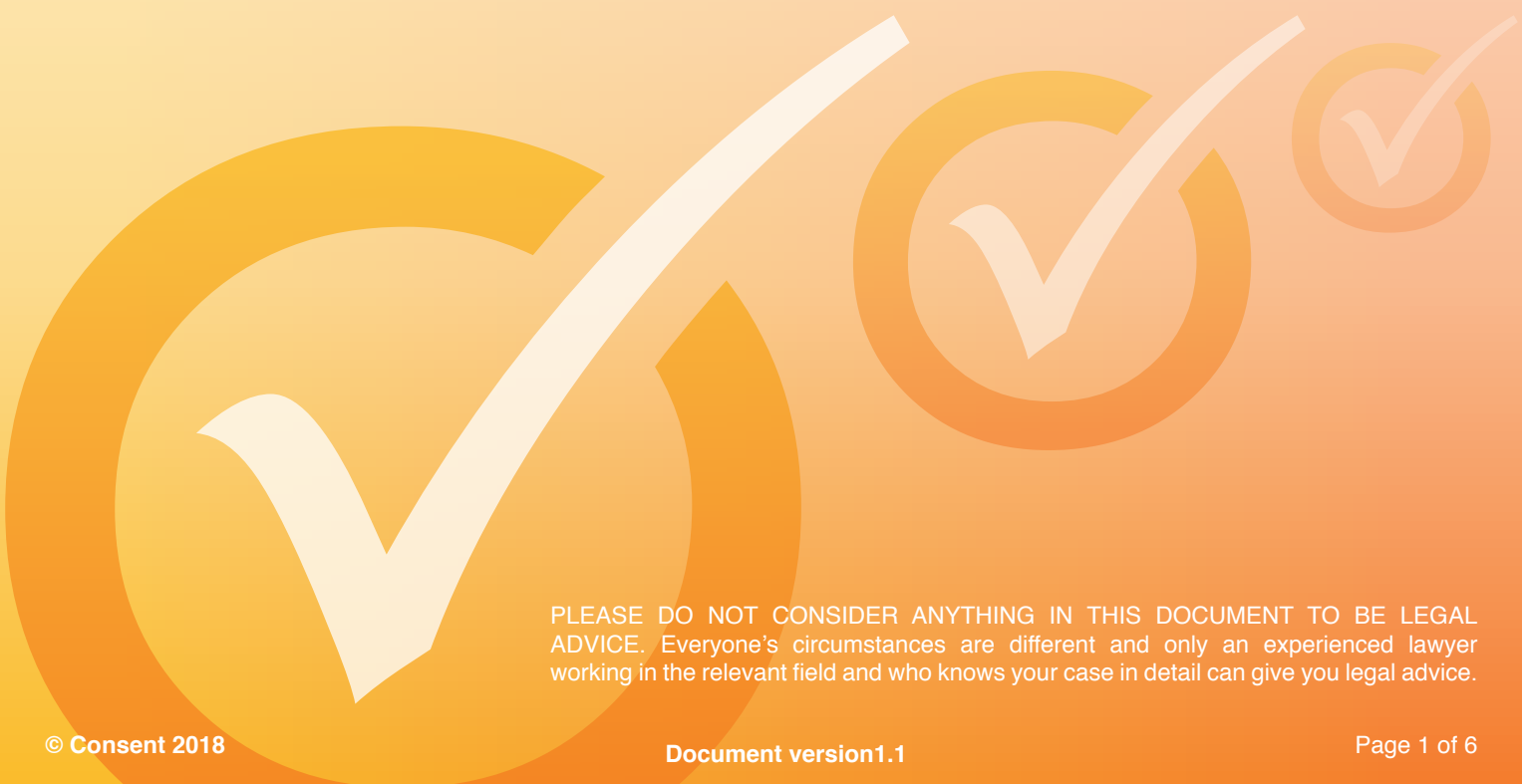


Parental Healthcare Decisions

State Intervention

A GUIDE FOR PARENTS



PLEASE DO NOT CONSIDER ANYTHING IN THIS DOCUMENT TO BE LEGAL ADVICE. Everyone's circumstances are different and only an experienced lawyer working in the relevant field and who knows your case in detail can give you legal advice.

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INTRODUCTION

As a parent reading this document, it is likely you have come across stories about children being removed by social services because the parents didn't agree with doctors' medical advice, declined a certain treatment, pursued alternative treatments or declined vaccinations or other medication.

Some such cases do exist. However they are rare. The law tries to strike a balance between safeguarding children and respecting family life and in the main, the balance is right. The wording of relevant legislation, such as the Children Act 1989, as well as law passed down in form of judgments by the higher courts, is generally the right balance. However, this does not mean that all professionals working with children will always get it right, including medical staff, teachers and social workers. It is possible that you will encounter people with extreme views who will consider your healthcare decisions a safeguarding issue. Of course you need to also bear in mind that it may be you who has the extreme view and continue reassessing your decision.

This guidance is meant to give you an overall understanding of the law, as well as help you understand the possible reasons and motivations behind actions taken by social services or medical staff and how to reduce the chance of any state interference.

EVERYTHING IN THIS GUIDANCE ASSUMES THAT YOU ARE YOURSELF BEING REASONABLE AND DO NOT POSE A THREAT TO YOUR CHILD.

1. Can they really report you to social services?

The answer is yes, regardless of who “they” are, because even a member of the public can make such a referral if they have concerns about a child’s welfare. Professionals, such as doctors, nurses, teachers, etc even have a duty to report concerns. Whether or not your healthcare decision is a matter of such concern, is of course a matter of opinion. This is left to their judgment, by and large. The law does not expect the person reporting you to get it right. Instead the onus is on social services to assess the situation.

2. What will Social Services do?

If a local authority receives a referral about a child, they have to investigate the matter. They need to assess if there really is a safeguarding issue and if so, what action to take. Depending on the outcome they can choose to do nothing or take further actions, which can include applying for court orders. At this point they only need reasonable cause to suspect that a child is suffering (or likely to suffer) significant harm. Often a referral alone is enough to satisfy this requirement. This doesn’t necessarily mean that you will be visited by a social worker. Social services may simply enquire if the professional has any other concerns in addition to the parental healthcare decision and if not, decide that no further action is required.

3. What should you do?

To start with it is worth remembering that most social workers are well-meaning, hard-working and kind professionals. Some may even be on your side, so do not assume that they are the enemy unless you find yourself confronted by an overzealous and unreasonable individual.

If a social worker visits you, let them in and let them meet your child. Refusing to do so will make matters worse as it will put social services under an obligation to escalate the case. The law says that they have to obtain access to the child, so it isn’t even their choice. If they can’t, they will be forced to apply for court orders, which may mean they return with the police and a warrant. Court orders can also require anyone who may know where the child is to tell. The best approach is therefore to co-operate and why not be nice to the social worker who calls? They will appreciate the change from the hostility they so often encounter. Answer their questions as far as is reasonable and let them speak to your child if appropriate. If you have advance notice of a visit, you may want to ask a friend or relative to be there with you at the time.

It is worth repeating and stressing that the advice so often given on social media to “never let anyone in” or to decline all co-operation is wrong! Even if the social worker wants nothing more than to close your case without further action, they now can’t. Help them help you and chances are nothing more will come of it.

4. What will happen next?

All going well, you should hear from social services that no further action will be taken and that the case has been closed. However, there are a number of other possibilities. Social Services will normally have to keep you informed. For example if they arrange a Case Conference about your child, you should be included in it. Equally, if they intend to make any sort of application to a court, you should receive notice in advance. Needless to say you should attend both a conference and any hearings. A local authority needs reasonable cause to believe that your child is suffering or likely to suffer significant harm before they can apply to a court.

Parents are understandably worried about their children being taken from them whenever there is social services involvement. Sadly it has happened in inappropriate circumstances and will no doubt happen again. It is therefore important to get advice immediately if the case does not end after the first visit. The threshold for removal of a child is extremely high. When it happens inappropriately, it is normally because the lower courts have not acted in line with the directions of the higher courts. A good indication of how averse the higher courts are to the removal of children can be seen in the following two quotes.

"...it is the tradition of the UK, recognised in law, that children are best brought up in natural families ... It follows inexorably 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, while 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... Only exceptionally should the state intervene with compulsive powers and then only when a court is satisfied that the significant harm test is made out."

Hedley J, in the High Court case of *Re L (Care: Threshold Criteria)* [2007]. The UK Supreme Court approved these words in a case in 2013.

"A court can only separate a child from her parents if satisfied that it is necessary to do so, that nothing else will do."

Lady Hale in the Supreme Court case of *Re B (A Child)* [2013]

5. EPOs

Sometime social services apply for Emergency Protection Orders (EPOs), which allow for the removal of a child (or other action to be taken) for a period of at most 15 days. You may get very little notice of any related hearing. Courts can also hear applications without telling you about them but this must only happen in wholly exceptional cases.

Emergency protection is for just that: an emergency. It means imminent danger that is actually established and not just suspected or likely. A situation of concern does not become an emergency simply because social services have only just become aware of it. You may have to remind the court of this and point out why your case does not constitute an emergency. Even if the court grants the order, social services have to keep considering alternatives to removing a child and they have to return a child if the situation changes, even before the order has expired. An EPO gives the local authority parental rights but they cannot make any long-term decisions. They can decide where the child should live, for example, but not have her vaccinated.

Care proceedings would be the next step for social services to commence if they were of the opinion that a child needs to be permanently removed but this takes us beyond the scope of this guidance document.

6. Other state interventions

Worth mentioning here are two further state interventions. The police has powers to remove a child if significant harm to the child is likely without taking this action. This needs no court order but can last for only a maximum of 72 hrs. The child has to be returned if the danger has passed before then. A child being taken into police protection puts an obligation on social services to investigate the matter but they are free to return the child.

Further, there is something called the inherent jurisdiction of the High Court, which can be called on in circumstances which do not fit any scenario foreseen by the law makers. The high-profile case of Ashya King fits this example. The High Court's powers over a child are theoretically limitless and include making a child a ward of court. In such a case no major steps affecting a child may be taken without the court's permission.

Summary

Social services should not intervene unless they suspect **significant** harm. Considering the very limited resources and high case loads affecting most social services departments, social workers are unlikely to pursue your case unnecessarily or unreasonably, if you can reassure them at the earliest opportunity that there is no safeguarding issue. However, you should get advice immediately if the case is not closed despite your efforts to co-operate. Make sure social workers and courts can see that you are a loving, reasonable and balanced parent open to listening to views other than your own. Remind them of the very high thresholds set by the higher courts.