

Derbyshire County Council

Child Arrangements Order and the Derbyshire County Council Support Scheme

(These procedures replace '*Residence Orders and Derbyshire Support Scheme*' but remain relevant to carers who hold a Residence Order)

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1. Legislative Background and Introduction

The Children Act 1989 introduced Residence Orders. They were granted in private law custody disputes to determine where a child should live but also in any 'family proceedings' concerning the welfare of the child.

As a result of Section 12 of the Children and Families Act 2014, 'Contact' and 'Residence' Orders were replaced with a single order, a 'Child Arrangements Order'.

Section 12(3) sets out that: 'Child Arrangements Order' means an order regulating arrangements relating to any of the following:-

- (a) with whom a child is to live, spend time or otherwise have contact, and
- (b) when a child is to live, spend time or otherwise have contact with any person.

In all situations where Derbyshire County Council is involved in care proceedings, consideration will be given as to whether the child could more appropriately be placed with a relative or friend as an alternative to being placed with foster carers. If permanency away from birth parents is agreed as the final Care Plan, consideration might also be given to placing the child with a relative or friend under a Child Arrangements Order or Special Guardianship Order as an alternative to placing the child in care or for adoption. Where criteria are met, carers will be offered the opportunity of being assessed in relation to eligibility for an allowance, see Section 9.

Child Arrangements Orders are also a way to provide someone who is not a legal parent of a child with parental responsibility.

A Child Arrangements Order comes to an end when a child reaches 18 unless the Court specifies that it should end earlier or another order is made that discharges it. There are no statutory leaving care services available to young people who were subject to a Child Arrangements Order or Residence Order unless they become 'Looked After' beyond 16 years of age. However, assistance under Section 17 of the 1989 Act continues to apply to all children in need.

2. Who May Apply

Applications for Child Arrangements Orders may be individual or joint. Joint applicants do not need to be married. Applicants must be 18 or over.

The following people may apply:

- a. A parent or guardian.
- b. Any party to a marriage or civil partnership where the child is a child of the family.
- c. Any other person who has obtained the consent of all those with parental responsibility, including any who already have a Residence Order or Child Arrangements Order for the child.
- d. Any person who, if the child is in care, has the consent of the Local Authority.
- e. Anyone who the child has lived with for at least three years.
- f. Anyone who already has a Residence Order.
- g. A Local Authority foster parent if the child has lived with them for at least one year immediately preceding the application to Court.

Other people with a genuine interest may apply with the leave of the Court and in deciding whether to give permission the Court will take into account:

1. The nature of the application.
2. The applicant's connection with the child.
3. The risk there might be of the proposed application disrupting the child's life to such an extent that they should be harmed by it.

In some circumstances the court may order that the child is made a party to the proceedings. A Children's Guardian (an officer of Cafcass) is appointed to represent the child in the proceedings and the Guardian will appoint a solicitor. If the child and Guardian do not agree on what recommendations to make to the Court and the child is of sufficient age and understanding, they will be able to instruct a solicitor directly to represent their views and the Guardian will present their own views to the Court

3. Parental Responsibility

A Child Arrangements Order may confer parental responsibility to the holder and the question of parental responsibility will be considered at the time the order is made. Whilst this may be shared with other parties, an allowance may be paid where the Child Arrangements Order confirms that a child's primary place of residence is with the applicant as a result of the order.

Consequently, the person who is granted the order confirming the primary place of residence will have clear responsibility for the day-to-day decisions about caring for the child.

The child's parents continue to hold parental responsibility and their exercise of parental responsibility is unfettered unless it has been restricted by the Court in some way. The parents retain the right to consent or not to the child's adoption or placement for adoption.

In addition there are certain steps in a child's life which require the consent of everyone with parental responsibility or with leave of Court, for example:

- To change of the child's family name;
- The removal of the child from the United Kingdom for longer than a month.

4. Approval of a Child Arrangements Order for a Looked After Child

Where a child is a 'Looked After' child, the decision to support the making of a Child Arrangements Order should be part of the care planning for the child. If the child is subject of on-going legal proceedings, the child's Social Worker will need to reflect the review decisions in the child's Care Plan and in the recommendation to the Court. If the child is looked after under Section 20 of the Children Act 1989, and a plan for a Child Arrangements Order application was agreed at the Looked After Children Review, the child's Social Worker will need to support the applicant in making the application for a Child Arrangements Order. The Local Authority cannot apply for the order.

Where there are child protection concerns and the child is not yet a 'Looked After' child, Derbyshire County Council must consider whether the application for a Child

Arrangements Order by a relative or friend might avoid the child being a 'Looked After' child and the process above will need to be followed.

The person seeking the Child Arrangements Order will need to make the application to Court, but if Derbyshire County Council supports the plan, the child's Social Worker will provide information and guidance.

If a Child Arrangements Order allowance is thought to be appropriate (and it is agreed by the District Manager that an assessment can be recommended) a report should be presented to the Deputy Assistant Director for a decision.

If the application is being made in support of a child who is already a 'Looked After' child and Derbyshire County Council supports the application, financial assistance may be granted to pay for the application. In these cases the child's Social Worker must seek permission from the District Manager and the Deputy Assistant Director.

5. Process and Assessment

Processes for assessing and approving applicants who seek Child Arrangement Orders in respect of children who are 'Looked After' children or who are at risk of becoming 'Looked After' need to be sufficiently rigorous as the proposed arrangement requires.

In reaching the decision to approve and support a person applying for a Child Arrangements Order, the Authority will have due regard to research findings relating to the placement of children with relatives, the proven benefits and desirability of continuity for children and the other potential gains that may accrue from placement within the extended family, with a known carer or within the child's wider community network.

When an application for a Child Arrangements Order is requested or considered for a 'Looked After' child, the child's Social Worker will:-

- Provide full information to the prospective applicants which will explain the effects a Child Arrangements Order will have with regard to the applicant's relationship with the child, the birth parents and the Local Authority.
- Consider any special needs of the applicant that require information to be shared in another format (e.g. large print, different language, use of an interpreter).
- Obtain the views of people who hold parental responsibility for the child (including birth fathers who do not hold parental responsibility) of the intention of a third party, to apply for a Child Arrangements Order.
- Ascertain the child's wishes and feelings regarding the proposed application and consider the child's need for support and/or counselling.
- Undertake an assessment of the proposed applicants to determine whether the placement will meet the child's needs.
- Advise the prospective applicants that they can seek independent legal advice.
- Arrange for an assessment of financial/on-going support, by the Financial Review Team if agreed by the Deputy Assistant Director (financial support does not apply if the child is to live with a parent or step-parent).

In all cases in which Social Care are involved, there will need to be an assessment of the needs of the child, the suitability of the applicant(s), the proposed contact arrangements and the support needs of the child, parents and the applicant.

The assessment of the applicants should include their medical history, the references received and the Disclosure and Barring Service check (DBS) of all adults in the house over the age of 18 years.

Any action/counselling must be recorded on the child's electronic record. Ideally counselling should take place prior to any application being lodged with the Court and the applicant should be advised to seek legal advice where appropriate. The purpose of counselling is to ensure that the applicant, the child and the child's birth parents fully understand the nature and implications of a Child Arrangements Order and that their wishes and feelings are considered.

The applicants should be advised of the personal information which will be required for the Court report.

The applicants should be seen at home both jointly and separately. The child should also be seen in the company of the applicants to enable an assessment of the interaction and relationships. Any other members of the household should be interviewed and appropriate counselling provided.

The child needs to know and have an understanding of his/her birth origins as well as to be aware of the implications of a Child Arrangements Order. He/she should be seen alone if the child is old enough (e.g. over 5 years) and is willing to be seen alone. It is important to note that even young children can understand the difference between a 'parenting' parent and a 'birth' parent. It is essential that the child's views are recorded and taken into account. Where a child has strong bonds with the birth parents it is crucial that this matter is given careful consideration and contact issues addressed.

Counselling the birth parent or anyone who has parental responsibility for the child is essential. The Social Worker for the child is responsible for undertaking this. In addition the birth parent should be advised of the availability of independent support arrangements and how to access these. Any birth parent not agreeing to the application should be advised to engage a solicitor as soon as possible.

6. Contact

Issues of any on-going contact should be discussed fully with all parties. Such arrangements may be made informally if all parties are in agreement. However, there may be child protection concerns and consideration may need to be given to on-going supervisory arrangements and how able the applicants are to supervise contact and ensure the child's safety. A recommendation regarding contact may be made to the Court and can be considered as part of the Child Arrangements Order. However, unless specified within the order, contact is a matter for those with parental responsibility.

7. Report to Court

If the child is a 'Looked After' child, or known to the Local Authority, the Court will usually order a report from the Local Authority.

The Social Worker or Social Workers preparing the Court report should be suitably qualified and experienced. If the applicant is an existing foster carer, the supervising Social Worker will complete the sections on the carers and the child's Social Worker will complete the sections on the child and birth family.

Once completed, the Court report should be submitted by the author(s) to the Service Manager and to Legal Services, if this is considered appropriate.

In cases where the child is already subject to Court proceedings, the Social Worker will need to reflect the plan for a Child Arrangements Order in the Care Plan and in the recommendation of the final Court report.

If the child is not already subject to on-going care proceedings and an application for a Child Arrangements Order is made, the Court may request a Section 7 or a Section 37 report from the Local Authority and will usually do so if the child is already known to the Local Authority. The author of the report must attend the Court with the applicants.

8. Process following the making of the Order

Upon the making of an Order the child's Social Worker will record the Child Arrangements Order as a new Legal Status in the Legal Section on the electronic file. The relevant Social Care District will remain responsible for supporting the CAYA Placements Finance Team with information for the annual reviews; see 10.6.Payment and Review Process.

9. Discharge or Variation of Child Arrangements Order

A Child Arrangements Order can be varied or discharged on the application of:

- The person to whom the Child Arrangements Order was made;

- The Local Authority in whose name a Care Order was in force before the Child Arrangements Order was made;
- Anyone with a Residence Order/Child Arrangements Order in respect of the child before the current Child Arrangements Order was made; or
- With the leave of the Court:
 - The child's parents or guardians;
 - Any step parent who has parental responsibility;
 - Anyone who had parental responsibility immediately before the current Child Arrangements Order was made;
 - The child (if the Court is satisfied that the child has sufficient understanding).

Where the applicant is not the child and the leave of the Court is required, the Court may only grant leave if there has been a significant change in circumstances since the Child Arrangements Order was made.

The Court may during any family proceedings in which a question arises about the welfare of a child who is subject to a Child Arrangements Order, vary or discharge the Order in the absence of an application.

10. Child Arrangements Order Allowances

10.1 Vision and Purpose of the Scheme

Derbyshire County Council aims to promote the welfare and improve the outcomes for children and young people who, because they are unable to live with their parents, are being brought up by members of their extended families, friends or other people who are connected with them. The general principle should be that where a person/s is seeking to make a major commitment towards a child by means of a Child Arrangements Order, this commitment by the individual should be taken to include a willingness to meet costs associated with such a commitment. To this there will however be exceptions.

Derbyshire County Council is committed to supporting family/friend carers in a variety of ways.

The majority of children and young people can and will have their needs met using universal and targeted services, but the Child Arrangements Order Allowance Scheme recognises that some children and their prospective permanent carers may have additional needs arising from their individual circumstances.

Therefore the scheme exists to provide where relevant, essential financial support to underpin arrangements for children and young people to live with family, friends and other carers where the Local Authority has usually been involved.

10.2 Legal Context for Payments and Support

The Children Act 1989 sets out a number of duties and responsibilities which are placed on Local Authorities and have as an aim the placement of children with family or friends if a child cannot live with a birth parent(s).

Local Authorities are required under Section 17, Children Act 1989 to:-

- safeguard and promote the welfare of children within their area who are in need; and
- so far as is consistent with that duty, to promote the upbringing of such children by their families, by promoting a range and level of services appropriate to these children's needs.

The option of providing support without a Legal Order should also be considered where all parties are in agreement that no order is necessary to underpin the care arrangements applying the so called 'no order principle'. Where a Legal Order is required, Child Arrangements Orders should be considered as a means of preventing children and young people from becoming and/or remaining 'Looked After', and to provide them with a stable home.

In promoting stable family placements for children, consideration will be given to the payment of a Child Arrangements Order Allowance and reasonable support with legal and court costs.

In special circumstances a request for financial support at a higher rate than the usual Child Arrangements Order Allowance may be considered by the Deputy Assistant Director. This will require a report setting out the individual circumstances, the child's assessed needs, the funding request and how that would enhance the welfare of the particular child.

There is no absolute right to an assessment for support for carers with Child Arrangements Orders. However, Local Authorities have the power to pay a Child Arrangements Order Allowance in a proper case where this is the most appropriate way to safeguard and promote the child's welfare. (*Children Act 1989, Schedule 2, Section 15*). This means that Local Authorities have a discretionary power to make payments towards the cost of maintenance and accommodation of a child who is the subject of a Child Arrangements Order.

Derbyshire's Child Arrangements Order Allowance is set at 66% of the Fostering Network recommended minimum fostering allowance. This is not an arbitrary figure. It is based on the Fostering Network's calculation that it costs 50% more to raise a child in foster care than in their own home and in formulating this policy due consideration has been given to the responsibilities, roles and duties underpinning the respective orders and arrangements. For example, a Child Arrangements Order confers parental responsibility on the holder but this is shared and thus does not effectively place the ultimate decision making burden on any one individual. It is also a Private Law Order which does not entail an obligation to work within the looked after children's system which is an onerous and specialised task requiring assessment and training. It is perhaps for these reasons that there is currently no legal obligation to meet the National Minimum Fostering Standards 2011 which mean carers under Child Arrangements Orders are not subject to on-going monitor and review. This is reflected in the level of the allowance being set at 66%, two thirds of the equivalent fostering allowance for children within that age band. It also reflects the added burdens and responsibilities which are assumed by those who choose to be special guardians for children and the role they play.

10.3 Eligibility for Assessment for an Allowance

The child's Social Worker must advise potential Child Arrangements Order applicants in writing of the availability of financial support and inform them of the provision and criteria for Child Arrangements Order allowances.

Applicants should be informed that in special circumstances, if it can be demonstrated that extra costs are incurred to meet the additional needs of a child, the allowance may be payable at a higher rate. Initially, this would be time limited to six months but prior to the end of the six month period, the applicant will be contacted and advised that the higher rate will reduce to the standard rate at the end of the six month period unless they make contact and are able to demonstrate that the special circumstances remain the same.

All applicants must be informed that the Child Arrangements Order Allowance paid will be subject to an annual review.

Derbyshire County Council does not pay a Child Arrangements Order allowance when the order places the child in the care of a person who is his/her parent or step-parent. Assistance might however be available under Section 17 of the 1989 Children Act if the child is assessed as a 'child in need'.

Derbyshire County Council will ordinarily only assess in relation to the payment of a Child Arrangements Order allowance in respect of children:

- Who immediately prior to the Child Arrangements Order being made, were 'Looked After' by the Local Authority for a period of at least three months and the Child Arrangements Order application is part of his/her Care Plan and has been confirmed with the Independent Reviewing Officer through the reviewing process.
- Who are subject to a Child Arrangements Order as part of a disposal of Care Proceedings or as a direct alternative to care proceedings, whether or not the child/children were looked after by the Local Authority for a period of at least three months.

and

- The Local Authority supports the placement of the child with the person(s) taking the Child Arrangements Order.

or

- Following an assessment of the circumstances of the child and carer, the Deputy Assistant Director agrees that the case is exceptional. Examples of this could include:
 - a child who was 'Looked After' for less than three months due to the intervention of the applicant
 - a carer who has been receiving an allowance from another Local Authority moves in to the County, the allowance under the other Local Authority's scheme ceases and assessment informs that eligibility criteria is met.
 - there is already a Residence Order/Child Arrangements Order in force and the order was an alternative to involving the Local Authority in the likely initiation of care proceedings.
- The applicant must live within the United Kingdom.

Please also note that if the Local Authority opposed the Child Arrangements Order application but the applicant is successful in their application, the Local Authority will assess the applicant for eligibility of the allowance as if they had been in support of the placement.

Anyone currently receiving a Residence Order Allowance from Derbyshire County Council who would not fit the above criteria, will not lose their allowance with the introduction of this revised policy. It will continue to be reviewed annually to determine eligibility for an allowance.

10.4 Calculation of Allowances Payable

The Child Arrangements Order allowance will:

- Not include any reward element.
- Be means tested and take into account the financial resources of the Child Arrangements Order applicant including any financial benefit arising from the placement of the child e.g. child benefit, tax credit or any benefit which has been or can be claimed for that child. Derbyshire County Council uses the Department for Education and Skills recommended standardised means test model.
- Take into account the financial needs/resources of the child (if any) excluding mobility/attendance allowance/benefits related to disability.
- For the reasons referred to above, be ordinarily set at 66% of the equivalent age related fostering allowance rate at the point of the Order being made and increase annually in line with the fostering allowance rate.

In exceptional circumstances a request for a higher payment may be considered by the Deputy Assistant Director on production of a report setting out the individual circumstances, the child's assessed needs and the funding request.

It is not the function of the Derbyshire County Council to accept responsibility for income maintenance. Help in determining eligibility to benefits can be provided by; Derbyshire's Welfare Rights Service who can be contacted on 0845 1202985 Monday to Friday 11.00am - 4.30pm.

The payment of a Child Arrangements Order Allowance may affect receipt of benefits and advice should be sought of the appropriate Benefit Agency.

10.5 Discretionary Payments

The Local Authority will consider a settling in payment and/or 'one off' payments under Section 17 1989 Children's Act, for carers with a Child Arrangements Order who are experiencing financial problems. These discretionary payments can be considered whether the applicant would or would not be eligible for Child Arrangements Order Allowances. Eligibility for these Section 17 payments will be decided by the relevant District Manager.

10.6 Payment and Review Process

The Deputy Assistant Director will inform the child's Social Worker of the decision to make the payment and following a financial assessment, how much that allowance will be.

Payment commences as from the date of the Child Arrangements Order or from the point at which it is approved.

The CAYA Placements Finance Team will write to the holder or applicant of the Child Arrangements Order setting out the amount of financial support agreed by the Deputy Assistant Director and information in relation to the following:

- How the decision was made.
- Whether financial support is to be paid in regular instalments and if so, the frequency of payment.
- The amount of financial support.
- The period for which the financial support is to be paid.
- When payment will commence.
- Conditions for continuing payment and date by which conditions are to be met, i.e. annual review.
- Arrangements and procedure for review, variation and termination of the allowance.
- It is the carer's responsibility to notify the Local Authority of any changes in their circumstances or those of the child.

The case will remain open to the Local Authority to deliver financial support. The relevant Social Care District is responsible for supporting the CAYA Placements Finance Team with annual reviews where necessary. For the first annual review this will usually be the previous Social Worker. For any future reviews, the District Duty Service will assist. If there is a substantial change of circumstances, e.g. a serious change in the behaviour of the child, it would normally be necessary to conduct a new assessment of needs.

The allowance is reviewed annually and this is to;

- Establish that the young person continues to meet the requirements for an allowance.
- Complete a financial review.
- Determine that the allowance is still appropriate and consistent with legislation and departmental policy.

When a review is due, a Financial Assessment Review form will be generated by the CAYA Placements Finance Team (regulated services) for completion by the carer. The team will review cases on an annual basis and will record any changes and outcomes onto the electronic record as a financial review. The carers will be required to complete an allowance review questionnaire. This will include entitlements to child benefit and tax credits.

In order for allowances to continue up to 18 years of age, Derbyshire County Council will need to confirm that the young person:

- Continues to reside full time in the care of the person who holds the Child Arrangements Order - up to 18 years.
 - Is not in receipt of any benefits other than specific grants to support training/education in their own right. For young people in employment, the Child Arrangements Order allowance will cease once the young person is earning the equivalent of the household element of the weekly fostering allowance. An appeal can be considered if the young person's circumstances are exceptional.
- and
- that the financial circumstances of the carers in receipt of the allowance remain unchanged.

If an overpayment has been made for example because it is found that the child is no longer resident, or for any other reason, the Local Authority will recover the overpayment.

The Child Arrangements Order Allowance will change as the child moves into the next age band as set out in fostering allowances.

Payment of the Child Arrangements Order Allowance will automatically end when:

- The child ceases to live with the Child Arrangements Order holder before 18;
or
- Reaches 18 years of age.

10.7 Notifications

The Child Arrangements Order Allowance is only payable in respect of the child who is subject to a Child Arrangements Order and who is resident with the person named in the order.

Those in receipt of Child Arrangements Order Allowances are to agree that they will inform Derbyshire County Council immediately of any significant changes in the family: for the carers themselves, their children and the child/children subject to the Child Arrangements Order.

Where information has been given orally, the carers must confirm the information in writing within seven days.

Derbyshire must be informed of the following:

- The child or young person ceases to have a home with the person who holds the Child Arrangements Order.
- The child or young person ceases full time education or training and commences employment.
- The child or young person qualifies for welfare benefits in his/her own right.
- Change of address.
- The child or young person dies.
- There is a change in financial circumstances or the financial needs or resources of the child and/or the carer which may affect the amount of financial support payable to the carer.

The relevant District Office must notify the CAYA Placements Finance Team if they are informed of a change of address for the family to ensure that payment is sent to the correct address. They must also notify the CAYA Placements Finance Team if they are made aware that the arrangement has ended and the child is no longer living with the person who holds the Child Arrangements Order, so that payments can be stopped.

The CAYA Placements Finance Team must make a referral to Call Derbyshire if they receive information from the person that holds the Child Arrangements Order that raises concern about the child's welfare or if they fail to return the annual financial review form after the second reminder has been sent.

10.8 When a Child Arrangements Order Allowance is not granted

The applicant will be informed of this in writing and the reasons for the refusal clearly set out. Reasonable time will be given to allow the applicant to make representation to the Deputy Assistant Director.

The Local Authority remains required to:

- safeguard and promote the welfare of children within their area who are in need;

and

- so far as is consistent with that duty, to promote the upbringing of such children by their families, by promoting a range and level of services appropriate to these children's needs. *Children Act 1989 S.17.*

The Local Authority may consider a settling in payment or discretionary payment. Eligibility for these Section 17 payments will be decided by the relevant District Manager.

11. Foster Carers Applying for a Child Arrangements Order

Where foster carers are applying for a Child Arrangements Order in respect of a child they have been fostering, and Derbyshire County Council supports this plan, the carers will ordinarily receive a Child Arrangements Order Allowance until the child is 18. This is to support a permanence plan for the child and is considered under 'special circumstances'. The allowance will be minus any welfare benefits, including child benefit and tax credits that become payable to the foster carer on obtaining a Child Arrangements Order.

Fostering payments will cease from the date of the order.

In the case of foster carers only, this payment is set at the same rate as the fostering allowance for a child in that age band. This will not be subject to a means test but a financial assessment will be applied which takes account of benefits etc. This should be reviewed annually.

Christmas, birthday and holiday allowances will cease at the point that the order is made, however where this has been paid prior to these procedures, they will continue to be paid up until the next annual review.

Any enhancements that had been paid through Derbyshire's Children First Scheme (Disability) in relation to a child's additional or specific needs will be paid for a transitional period of two years and will then be reviewed to determine whether the additional support is still required.

At the end of the two year period and following review by the child's District Social Care Office, a decision will be made to continue enhanced payments, reduce them or cease payments. Payment of any on-going additional allowance beyond two years would need to be justifiable and reviewed annually to ensure that it remains appropriate. Professional advice may be sought to ascertain whether or not the exceptional circumstances continue to exist and whether the specific needs require additional financial support. If there is a substantial change of circumstances, e.g. a serious change in the behaviour of the child, it would normally be necessary to conduct a new assessment of needs.

The additional allowance would not be guaranteed, although the basic fostering allowance would be.

In the case of the Foster Plus Scheme, payments will reduce over the two year period in order to assist the former foster carers to make the financial adjustment from fostering to the new legal status.

If the applicant is a foster carer from an independent fostering agency placement, the above would apply.

In special circumstances a request for a higher payment may be considered by the Deputy Assistant Director on production of a report setting out the individual circumstances, the child's assessed needs, the funding request and how it would enhance the welfare of the particular child.

and if:

- Such an enhancement was previously paid as part of the fostering allowances.
- The child's specific care needs require additional financial support.

12. Children not known to Derbyshire County Council

If a child subject to a Child Arrangements Order is normally resident in another Local Authority and has been placed with a family in Derbyshire for whatever reason, it is expected that the placing Authority should have made the decisions about financially supporting the placement prior to it being made and be responsible for any financial support agreed.

If Derbyshire as the resident Authority is requested to financially support the placement of a child that moves into their area, this will be subject to the same full assessment as any other new referral.

13. Child Protection Concerns

Version 3

If any Child Protection concerns arise within the course of assessment or the provision of support services, the worker should immediately consult with their line manager and refer the matter following Child Protection procedures.

End