

4LSCB Protocol on Child Abduction and Removal of Children of Concern from the UK

Scope

This protocol guides agencies on the actions that might be taken and the considerations to be made, in cases where children are at risk of abduction or have been abducted, where the child's welfare is of concern to agencies. It is not designed to guide agencies on cases of children who are subject to parental disputes or subject to private law proceedings

Guidance

The Local Authority will ordinarily only become involved in incidents of familial child abduction, if there is shared parental responsibility in place between a family and the Local Authority.

If a child has been removed from the UK, or away from their normal area of residence within the UK, and the child has never come to the attention of Child Services or is not part of any child protection proceedings, the Local Authority will not be able to assist in the recovery of that child.

In these circumstances there are organisations that can offer support and advice (See Appendix B) and in many such instances a criminal offence will have been committed so the police should be contacted.

Professionals involved in offering support to a Hampshire family (including Southampton, Portsmouth and Isle of Wight), where there are concerns that a child may be removed, or has been removed from the UK unlawfully by family members, must raise their concerns with the Local Authority, via Children Services and/or the police.

These concerns will be discussed within the multi-agency safeguarding hub and a decision made as to which agency will take primacy over the safeguarding of the child. At this time a decision will also be made as to whether the circumstances warrant a criminal investigation to be instigated.

Where there is considered to be an imminent risk of the child being removed from the country and concerns come to light outside of normal working hours, all four Hampshire Children's Services operate an out of hours service or Hampshire Police can be contacted via the 101/ 999 service.

In these instances police can contact the National Ports Office and ask them to alert all UK points of departure to try and prevent the abduction. If the child

has already been taken overseas but their whereabouts is not known, the UK police can work with Interpol to link into police forces overseas to help locate the child.

When approaching either the police or Children's Services with concerns, consideration will be given to both the immanency of the child being removed, and also what risk is posed to the child should they be removed.

Risk elements that should be considered include:

- Seriousness of the concern(s) or likely abuse to a child;
- Source of the concern or risk;
- Repetition or duration of concern(s);
- Family History;
- Capacity of parent/carer to effect necessary changes and engage with a plan for the child's safety;
- Significant Multi-Agency information available;
- Accumulation of sufficient information;
- Vulnerability of the child (through age, developmental stage, disability or other predisposing factor e.g. whether (s)he is a Looked After child or subject to a child protection plan);
- Context in which the child is living - e.g. whether there is a child in the household already subject of a Child Protection Plan;
- The likely level of risk to the future safety and welfare of the child;
- Risk & Protective Factors, including any predisposing factors in the family that may suggest a higher level of risk e.g. mental health difficulties, substance misuse of parent / carer or domestic abuse;
- Analysis & identified actions needed;
- Children of an age and their parents from a culture where Honour Based Violence could be a risk factor (see separate 4LSCB policy procedure for guidance).
- Children of an age and parents from a culture that makes FGM a possible reason for their removal from the UK. (See 4LSCB policy and procedure for guidance).
- Children who have been identified as being exposed to Child Sexual Exploitation (See 4 LSCB policy and procedure for guidance).
- If there information to suggest that the children's removal could be as a result of them being trafficked.
- All to be considered alongside Children Act 1989 & 2004, Working Together 2015 and 4LSCB guidance

Local Authority and Police action once alerted.

If the Local Authority has parental responsibility for the child (See Appendix A) they can take action, but it is much easier to take that action whilst the child is still in the UK, so if a child is considered likely to be at risk of being removed from the country, agencies need to act quickly to prevent the child being removed, if this is possible.

It is usually easier to take steps to prevent the child being removed than to try to retrieve and return the child after they have left.

Where prevention is not possible (e.g. because of the child's legal status, nationality or the circumstances of the child or family), working with the family before they leave the country to ascertain their destination and contact details, will make it easier to involve agencies in the country to which the child is going, should this be thought necessary.

When contacting the police or speaking to Children's Services as much information as possible must be provided in relation to the child and family.

Police in particular will want to know:

- The physical description and nationality of the child and the person who has carried out or will potentially carry out the abduction.
- Who has parental responsibility for the child?
- What is the relationship between the child and abductor?
- Is there any indication that the child has been or is about to be taken?
- Have previous threats of removal been made/has it happened before?
- Does the person who is considered likely to abduct the child have unsupervised access to the child?
- Does the abductor have any links abroad, e.g. relatives, friends, home, job or finances?
- Does the child have its own passport and does the abductor have access to it? Is it a foreign passport? Does the child hold dual nationality?
- What vehicle(s) does the abductor have access to?

- What is the present situation with any matrimonial and/or custody proceedings – are there any court orders in place?
- What is the likely date/time of travel if known?

If the child has not left the UK police can:

Make all Forces in the UK aware that the child is missing via the Police National Computer should they come across the child or abductor.

Ensure All Sea and Air Ports are alerted.

In both these instances Police will then initiate an investigation into the circumstances of the child being abducted and ascertain likely locations where they can be found. They will then direct other Police Forces both in the UK and abroad to assist in locating the child to ensure in the first instance that they are safe and well.

If the abduction has already taken place and it is believed that the child has already left the UK, police will:

Consult with Interpol regarding possible interception at the destination if this is known and pass them all available details to assist with tracing the child.

Add child's details to the Police National Computer which will alert other European Countries.

Criminal Law in relation to abduction:

UK law states that it is a criminal offence for a person connected with a child under 16 years to take or send that child out of the UK without the appropriate consent.

To be 'connected' to the child means they are either the biological parent of the child, the guardian, a person who has a residence order in force for the child or who has custody of the child.

Appropriate consent can only be obtained from:

The child's mother,

The father, but only if they have parental responsibility,

The guardian for the child,
A person named on a court order as someone the child is to live with,
A person who has custody of the child,
The Family Court under provision of the Children's Act 1989

Parental Child Abduction occurs with the removal of a child from their country or area of habitual residence by one parent or person with **parental responsibility** (For meaning see Appendix A), without the permission of the other parent.

If either parent has a Residency Order or Child Arrangement Order in place, they do not need to seek the permission from the other parent having PR, as long as the child is not removed for more than a month.

Some Residency Orders and CAOs have attached conditions which specify where and when the child can be taken out of the UK, so police should have sight of any Orders to ensure that no criminal offence is taking place.

Whilst Police consider whether a criminal offence has been committed Local Authorities have a range of Orders that can be applied for in the Family Courts to assist professionals in either preventing the child from being removed from the UK, or strengthening the case to have the child returned from outside the UK, once they are located. Such an application would only be made in circumstances where there are immediate safeguarding risks for the child

Where the Local Authority shares Parental Responsibility with the parent/s, there will be actions open to it that cannot be used where Parental Responsibility is only held by the parent or person removing the child. It is therefore imperative to have clarity from the outset as to who has parental responsibility for the child.

Local Authority Legal Options and Timeframes

Where a child is known to the local authority or the local authority has shared parental responsibility the following considerations will be made:

If the child still in the UK

i) Child Subject to an Interim Care Order or Care Order (ICO / CO)
A Recovery order can be made on one day's notice (can request shorter notice in more urgent cases). It can also be made ex-parte or inter-parte (on notice to parents or without informing them) depending on circumstances.

ii) Child not subject to an ICO or CO

Police protection, Emergency Protection Order (EPO) and care proceedings are available – the child's whereabouts need to be known. For a Local Authority to seek an EPO or apply for care proceedings, evidence will be required to prove that the relevant threshold standard is met.

Police protection can be taken at the point of the child being found.

EPO – the court could list on one day's notice but if risk of flight is imminent then a court hearing could be sought quickly with the possibility of it being without notice to parents - this would need to be on the basis of very serious concerns.

ICO – the usual notice period is 3 days from date of application but the court only has to list a hearing within 15 working days. In more urgent cases a local authority can request a short notice hearing but decision rests with the court. If grounds are met and an urgent hearing is required, the court may insist on an EPO application.

If proceedings are already underway, for example the child is at home under an Interim Supervision Order (ISO) then the matter could be brought back to the court swiftly for the Local Authority to get an ICO and therefore obtain PR.

If this is a case of radicalisation, those considerations should be made at the earliest opportunity and an application could be made for a child to be made a ward of court, on short notice. Again, a hearing date is likely to be given within a day of the application in an emergency, if evidence supports that need.

If the child is already outside UK

i) Child Subject to an ICO or CO

It needs to be established what country the child is in and whether it is a Hague Convention or EU Member State

A return order can be sought (See Appendix A) on the basis that the child has been unlawfully kept away from a person with parental responsibility.

Timescales will depend on procedure in the other country in terms of enforcement of the order - in theory an order for the return of children is automatically enforceable in another member state / Hague Convention country, but it still has to go through the court, and parents are often given an opportunity to comply before the other court will direct / police / officials to force the return. It relies on the cooperation of those who have taken the child to be enforced effectively.

Local police and Children and families Across Borders (CFAB) (See Appendix B) could be used to enforce if necessary. It is possibility to instruct local lawyers if enforcement is not recognised as it should be, but this is an expensive and time consuming process that may not achieve desired outcome. The International Child Abduction and Contact Unit (ICACU) will confirm whether or not they have a role to play in enforcement – this depends on the Central Authority role in the other country. Time can be saved by obtaining certificate of enforceability of the judgement making the Return Order at the time it is made. The Return Order needs to be clear about the arrangements for return - i.e. where the child is to be returned to in the UK

ii) Child not subject to an ICO or CO

The Local Authority may be unlikely to want an EPO or ICO if the child is outside of UK as they cannot exercise the PR that it confers upon them. Making an application in parallel with an application under the inherent jurisdiction for the child to be made a Ward of Court should be considered. The child can be made a Ward until the successful return to the UK. If parents have left the UK legally - options are limited and consideration may need to be given to referring the family to relevant authorities in that country.

If the concern is that they have fled to avoid the involvement of the Local Authority then court proceedings may need to be considered despite them having left the country.

Depending on the nature of the departure, there may be arguments about jurisdiction. If the family state that they have left UK to settle in another country and have made plans around housing / employment / school etc and have severed ties in the UK then they are likely to argue that they are no longer habitually resident in the UK. Facts of the case will determine how likely this is. If disputed, the court will probably have a contested hearing - if parent's whereabouts are known and they are in contact with the UK authorities.

If it is suggested that this is just a holiday then habitual residence is not likely to have changed. Equally the same applies if departure was not greatly planned and no arrangements made for their arrival in new country. If the court makes child a Ward of Court and is satisfied it has jurisdiction, it can dictate what steps a parent can make in respect of the child. This includes requiring them to return to the UK. If the child is not returned then a Return Order could be made by the court on the basis that the child is not being unlawfully withheld (previously the child had not been unlawfully taken out of the UK if taken with consent of all persons with PR)

If a child is outside of UK then consideration needs to be given to seeking for the child to be made a Ward of the Court pending return to the UK as a Care Order isn't always enforceable in another country.

Jurisdiction Issues

The UK courts generally only have jurisdiction to make orders in respect of children who are habitually resident in the UK. This will be determined on the facts of the case.

If a child is unlawfully taken out of the UK as a result of the Local Authority with an EPO, ICO or CO not consenting to the removal, jurisdiction is not likely to be an issue - unless the family were originally from the country they have fled to / another foreign country and they challenge the jurisdiction of the court in making the original CO / ICO.

The exceptions are those children who are at risk and in need of provisional protection. In theory, this means that the UK courts could make an interim order, whether EPO / ICO to deal with an imminent risk for a child that was in the UK but not habitually resident here. There would then need to be a discussion with the member state that the child is habitually resident for proceedings to be transferred to their courts. This is under Article 20 of the Revised Brussels 2 Regulations BIIR.

Please note - where the LA is seeking to have an order enforced in another country that was made in the UK, the other country will not enforce if there is an appeal outstanding against that order in the UK.

If a child is taken out of the UK by a person who is not a parent / does not have PR then consideration will need to be given to whether an offence of child abduction has taken place and also whether the parents / other persons with PR have consented to the children being taken.

Certain countries have signed up to The **1980 Hague Convention** which operates between the UK and 68 other countries. (See Appendix A)

If the child is located in a foreign country but there is no realistic prospect of having them returned to the UK in the immediate future, there may be

opportunities for Children's Services in the Country to make contact and assess the child's welfare. (See appendix B)

Appendix A: Legal orders and definitions

Parental Responsibility

A mother will automatically have parental responsibility (PR) and does not need an order to obtain it. A father who was married to the mother at the time of birth automatically has PR. An unmarried father to a child born after 1 December 2003 can acquire PR by having their name on the child's birth certificate. Otherwise PR can also be acquired through an order of the court or entering into a parental responsibility agreement with the mother.

Other people may have PR who are not a parent are:

- Special Guardians
- those with a Child Arrangement Order (CAO) specifying that a child is to live with them – (previously a Residence Order (RO))

Same-sex parents - Same-sex partners will both have PR if they were civil partners at the time of the treatment, e.g. donor insemination or fertility treatment. For same-sex partners who aren't civil partners, the 2nd parent can get parental responsibility by either:

- Applying for PR if a parental agreement was made
- becoming a civil partner of the other parent and making a parental responsibility agreement or jointly registering the birth

An adoption order terminates PR of birth parents / anyone else with PR and confers legal responsibility on the adoptive parents

A Local Authority will have PR where there is an Emergency Protection Order (EPO), Interim Care Order (ICO) or Care Order (CO), but this does not end a parents PR.

An ICO / CO brings a CAO / RO to an end so that person will not share PR with the Local Authority

Care Order / Interim Care Order - s.31 and 38 Children Act 1989 (CA 1989). Gives a Local Authority PR for the child along with others who already have PR. Local Authority's are able to determine a child's placement using this

order and can consent to trips abroad for up to one month without the need for the consent of the other persons with PR.

Supervision Order / Interim Supervision Order - Also s.31 and 38 CA 1989 but does not give PR to a Local Authority. Places a duty to advise, befriend and assist. Usually involves a child being placed with a parent / family member.

Emergency Protection Order - an order made under s.44 CA 1989 allowing the Local Authority to keep or place a child in specific accommodation for a period of up to 8 days that in exceptional circumstances can be extended on application by a further 7 days. Used in emergency cases where an application for an ICO is not appropriate and where there is an immediate risk of harm. Gives the Local Authority PR for that period.

Ward of Court - power under the inherent jurisdiction of the High Court meaning those with PR cannot make decisions about the child without consent of the court. Used in cases where care proceedings are not possible - including cases where child is not in the jurisdiction and there are disputes about habitual residence. Cannot be used where care proceedings would achieve the same outcome. Permission is needed for an application to be made.

Section 20 Accommodation - Also known as voluntary accommodation. Child is provided with accommodation by a Local Authority with the consent of parents. Local Authority does not have PR and cannot make any decisions about the child without consent of the parents / persons with PR. Parents / person with PR can choose to seek return of the child at any time.

Recovery Order - An order under s.50 CA 1989. Can be made where a child who is subject to a CO / ICO / Police protection or an EPO has been unlawfully taken away or kept away from a responsible person or has run away / staying away from the responsible person. Responsible person is the person who has care of the child as a result of the order / protection (usually

the foster carer / children's home). It can also order any person who has information about the child's whereabouts to disclose the information. Only the LA named in an order or the designated officer responsible for police protection can make the application. Allows police to enter and search premises and use reasonable force to do this.

Only enforceable within the England, Wales and Scotland (not other parts of the UK). May also be enforceable in New Zealand and Australia.

Specific Issue Order - an order under s.8 CA 1989 giving directions to determine a specific question in connection with the exercise of parental responsibility. Can be used to direct that a child is returned to the jurisdiction. It cannot be made in respect of a child subject to an ICO or CO. It cannot be made to direct that a child is placed in the care of a Local Authority.

Prohibitive Steps Order - an order made under s.8 to provide that a specified action relating to the exercise of PR cannot be taken. Could include preventing a child being removed from the jurisdiction when no other bars are in place. It cannot be made in respect of a child subject to an ICO or CO. It cannot be made to direct that a child is placed in the care of a Local Authority.

Private Law Orders.

The below order is available to adults in private proceedings but would not be granted to a Local Authority.

Child Arrangement Order (was a Residence or Contact Order) - order made under s.8 CA 1989 specifying where a child is to live and who they are to spend time with. An order specifying where a child is to live gives that person PR for the child. Does not terminate another parents PR if they already have it.

Habitual Residence

Will be the place which reflects some degree of integration by the child in a social and family environment" in the country concerned.

Habitual residence is a question of fact and there is no rule that a child automatically takes the habitual residence of its parents. However, the social and family environment of a young child is shared with its carers; therefore the integration of those persons also requires assessment.

The 1980 Hague Convention

The Convention works on the principle of returning children aged less than 16 years who are wrongfully removed or retained away from their country of habitual residence. In order to be considered wrongful, a removal or retention must be in breach of rights of custody which are actually being exercised by a person, an institution or any other body under the law of the state in which the child was habitually resident immediately before the removal or retention to or in another Hague Country (See Appendix B)

The Revised Brussels II Regulation - Also known as Brussels 2 / BIIR applies to cases of parental child abduction within the European Union (with the exception of Denmark) and to the registration and enforcement of orders relating to parental responsibility and enforcement of contact within the European Union.

A **Return Order** can be made under the BIIR or Hague Convention for the return of a child to the jurisdiction of the UK. This order should be enforceable in another member state or Hague convention country.

Tipstaff - High Court officer who would be given direction to locate children in child abduction cases. There may be a 'seek and locate' order backed by a bench warrant ordering any person with knowledge of the child to give that information to the Tipstaff or his deputy or assistants. Related orders may require the alleged abductor to hand his or her passport and other travel documents to the Tipstaff, and order the Tipstaff to take the child and deliver him/her to a designated place. There may also be a 'port alert' executed by the Tipstaff, to help prevent the child being taken abroad. They only work within the UK

In the case of children who have been declared a ward of court the Tipstaff has a role in ensuring that those children are delivered to the locations specified by the court.

European Arrest Warrants (EAW) and the Police Approach

The European Arrest Warrant is a form of extradition under Part 1 of the Extradition Act 2003 (the 2003 Act). The EAW applies to extradition between territories designated as category 1 territories under the 2003 Act and they are member states of the European Union, specifically Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

The process for extradition, both from the UK to those territories and from those territories to the UK, is streamlined compared to other forms of extradition but is still an extradition process. The state that requires extradition whether it is the UK or the EU will submit a certificate which is issued after a proportionality test is applied. The certificate is passed to the territory in which the subject is residing and an arrest takes place, there follows an initial hearing and then there is an extradition hearing. The initial court hearing must occur within 48 hours of arrest.

The process is such that it must be possible to persuade a Judge that there is a matter for which the defendant is either unlawfully at large or should be tried. The European Arrest Warrant should not be used as an investigation tool as it provides the police with no additional powers than any other extradition process.

It can, however, be a useful tool for engaging other agencies throughout Europe due to the fact that once a certificate is issued the responsibility for arrest falls upon the member state in which the defendant is believed to be residing.

In the case of child abduction the issue of an EAW against an individual, does not provide any powers to those executing the arrest to recover the child(ren) who have been abducted to return them to the UK.

There is a right of appeal against the decision of the extradition court, the right of appeal is to the High Court, with a further appeal to the Supreme Court. It is therefore important to note that the European Arrest Warrant is still an extradition process and does still require a significant court oversight and could take some time before the detained person is returned to the country issuing the EAW

Appendix B: Sources of information and support.

More information can be found on the websites for the listed organisations. These organisations can also provide advice and support to the agencies linked to the child as well as to the reporting party in Parental Child Abduction cases.

- **Reunite**

The International Child Abduction Centre
PO Box 7124
Leicester
LE1 7XX
Tel: 0116 255 6234 (24hrs)
Website: <http://www.reunite.org>

Reunite International Child Abduction Centre is the leading UK charity specialising in international parental child abduction. The objectives of Reunite are to provide advice, information and support to parents, family members and guardians whose children have been abducted or who fear abduction. Reunite will also provide advice and information to parents who may have abducted their children to the UK, and also assists and advises in international contact issues and cases of 'permission to remove'. Reunite provides the only advice line service in the UK specialising in international parental child abduction. An essential key feature of the advice line is that it offers an emergency service outside of office hours. **Police and Other agencies are welcome to call Reunite for advice around all aspects of parental child abduction.**

Reunite have produced a useful child abduction prevention guide for parents: <http://www.reunite.org/edit/files/Prevention%20Guide%20E&W.pdf>

A list of countries which have signed up to the 1980 Hague Convention on Child Abduction can be found at: http://www.reunite.org/pages/signatories_to_hague_eu_conventions.asp

- **Ministry of Justice (United Kingdom Central Authority)**

International Child Abduction and Contact Unit (ICACU)
Office of the Official Solicitor & Public Trustee
4th Floor, 81 Chancery Lane

London WC2A 1DD

Tel: 020 7911 7127

E-mail: enquiries@offsol.gsi.gov.uk

Website: <http://www.justice.gov.uk/guidance/protecting-the-vulnerable/official-solicitor/international-child-abduction-and-contact-unit/>

The Ministry of Justice has the policy lead on international Parental Child Abduction for the UK. The International Child Abduction and Contact Unit (ICACU) is the Central Authority which deals with casework where the child has been abducted to or from England and Wales and a country which is party to the 1980 Hague Child Abduction Convention.

- **Foreign and Commonwealth Office (for non-Hague countries)**

Child Abduction Section

Consular Directorate

Old Admiralty Building

London SW1A 2PA

Tel: 020 7008 0878

Out of Hours Tel: 020 7008 1500

Website: www.fco.gov.uk/childabduction

This link contains useful information for dealing with international abduction cases. Where there are no international agreements, **parents** need to contact the Foreign and Commonwealth Office for advice on how to proceed.

- **UK Missing Persons Bureau**

Foxley Hall

Bramshill

Hook

Hampshire RG27 0JW

Tel: 0845 000 5481

Fax: 01256 692571

Email: missingpersons bureau@npia.pnn.police.uk

Website: <http://www.soca.gov.uk/about-soca/missing-persons-bureau>

The Missing Persons Bureau work with police and related organisations to improve the services provided to missing person investigations and increase effectiveness. The Bureau is the UK centre for the exchange of information and the co-ordination of missing person enquiries nationally and internationally. They are the UK member of the Global Missing Children's

Network (GMCN), a group of 17 countries which collaborate to improve the response to missing children around the world.

- **Child Exploitation and Online Protection Centre**

33 Vauxhall Bridge Road

London

SW1V 2WG

Tel: 0870 000 3344

CEOP have a strong and successful record of protecting children and work hard to eradicate the sexual exploitation of children. CEOP took responsibility for national missing children services on 1st July 2011 and now provides a dedicated capability focused on missing children issues, including parental abduction.

Children and families Across Borders - CFAB

Advice line 0207 7358942 Mon - Fri 9.30am - 4.30pm

Email info@cfab.org.uk

www.cfab.org.uk

CFAB is the UK Branch of the International Social Service (ISS) network. CFAB is a non –government organization the UK set up specifically to deal with child protection cases which involve the UK and one or more other countries. CFAB provides guidance, counselling and practical support on a range of international child protection issues.

