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Making plans for children in the care system

References

ACA: Adoption Children Act 2002
CA: Children Act 1989.
CA 2004: Children Act 2004
HRA: Human Rights Act 1998
ECHR: European Convention on Human Rights and Fundamental Freedoms
APCR: Arrangements for Placement of children (General) Regulations, 1991, in G & R Vol 3.
FSR 2002: Fostering Services Regulations 2002.
G & R: Children Act 1989, Guidance and Regulations, 1991, Department of Health, Vols 1-10.
HRA: Human Rights Act 1998
PCPR: The Placement of Children with Parents etc. Regulations, 1991, in G & R Vol 3.
RCCR: Review of Children's Cases Regulations, 1991, in G & R Vol. 3
RCCAR: the Review of Children's Cases (Amendment) (England Regulations 2004)

Introduction

When children are looked after by the local authority in the care system, the local authority has certain powers and duties to make sure that children are well cared for and that they remain in contact with their families if this is in their best interests. They should involve families in all the decisions they make about all children they are looking after, whether they are in accommodation or in care or subject to emergency protection.

- ❑ **'Accommodation'** means that a child is being looked after by the local authority with agreement of his/her parents or others with parental responsibility (PR)
- ❑ **'In care'** means that a child is being looked after by the local authority under a care order.
- ❑ **'Emergency protection'** means the child is being looked after under an emergency protection order.

For further information about who has parental responsibility see FRG Advice sheet 'Parental Responsibility'

In this advice sheet, we have set out the specific legal requirements regarding the arrangements for children who are looked after. The legal references for these requirements are listed in the narrow column on the right.

What are the local authority's powers and duties when children are in the care system?

The duty to promote the child's welfare:

The local authority must '**safeguard and promote the welfare**' of every child they are looking after. This includes a new duty to *promote the child's educational achievement*.

s.22 (3)CA as amended by CA 2004

When the local authority makes any decision about a child they are looking after (whether under a court order or by agreement with the parents), they must give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background.

S.22 (5) CA

The duty to consult on all decisions about the child

When the local authority makes any decision about a child they are looking after (whether under a court order or by agreement with the parents), they must, unless the court declares otherwise, find out, and give 'due consideration' to, the views of:

- ❑ the child
- ❑ his/her parents and others with PR
- ❑ anyone else whom the local authority considers is relevant

Section 22 (4 & 5) CA; *Re: C (Care: Consultation with parents not in child's best interests) [2006]* 2 FLR 787

This means they should discuss with you what you think would be the best arrangements for your child whilst s/he is away from home.

Note: If you have PR, and your child is in accommodation they need your agreement to the plan; however if your child is subject to a care order or emergency protection order the local authority can override your wishes and make plans for your child even if you disagree with them (this is discussed further below).

The duty to make plans for a child who is looked after:

The local authority must draw up a written care plan setting out the arrangements for any child they are looking after either before, or if that is not possible, then as soon as practicable after the child begins to be looked after.

Regulations 3 APCR

A copy of this plan must be given to the parents, the child, others with PR and other relevant people.

Regulations 5 APCR

When a child is in accommodation or subject to an emergency protection order, the local authority shall, **so far as reasonably practicable**, agree with this plan with

*Regulation 3(4)
APCR*

- a person with PR, or if there is no-one with PR,
- the person caring for the child; or
- if the child is 16 or 17, the child himself/herself.

When a child is subject to a care order, the local authority has PR and does not have to agree the plan for the child with the people with PR, but the government's guidance recommends that:

'Where a child is looked after subject to a court order, the local authority should still seek to work in partnership and reach agreement with the parents, wherever possible.'

*Para 2.19 G & R Vol
3*

Contents of the Plan:

The Regulations set out in four different schedules what **must** be included in the plan.

APCR Sch 1-4

For children who are looked after but not subject to a care order, **the plan must include**

APCR Sch 4

- The address of where the child is staying, and the name of the person responsible for them at that place;
- The arrangements for contact between the child and his/her parents or person with PR;
- If there is no contact, the reasons why contact is not reasonably practicable or is inconsistent with the child's welfare
- The duration of the arrangement, and what steps might bring the arrangement to an end.

The government's guidance also recommends that the plan includes:

*Para 2.62 G & R Vol
3*

- the child's identified needs (including needs arising from race, culture, religion, language, special education and health needs), and how those needs might be met,
- the aim of the plan and the proposed timescale,
- the type and length of placement the child will have,
- other services which the local authority or other agencies will provide for the child/family,

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- arrangements for the child to have contact with his or her family and to return home to live with them,
- support for the placement,
- what will happen if the placement breaks down,
- in accommodation cases, the likely length of the placement and the arrangements for ending it,
- details of the person who will be responsible for carrying out the plan, both specific tasks and the overall plan,
- details of the parents' role in the day-to-day arrangements for the child,
- the extent to which the wishes and feelings of the child, his or her parents and anyone else with a sufficient interest in the child (including representatives and other agencies) have been obtained and acted upon or an explanation of why wishes/feelings have been discounted,
- arrangements for input by parents, the child and others into the ongoing decision-making process,
- the arrangements for health care (including consent to examination and treatment) and education, and
- the date when the child's situation will be reviewed.

When a child who is under a care order is returning to live with his or her parents (or others with PR) or other family members, there are also Regulations which require the local authority to carry out an assessment of, and draw up a written agreement with, the future carers (except in certain circumstances).

PCPR; Paragraph 2.19, G & R Vol 3; Regulation 34, FSR; Paragraph 2.62, G & R Vol 3

Duties regarding choice of placement for the child:

The local authority is under a duty to *place* a looked after child in circumstances which will best promote his/her welfare whether it be with a relative, in a foster placement or in a residential setting. Specifically, they should consider **making arrangements for a child to live with family and friends**.

s.23 (2) CA

s23(6)

If placement is with someone other than a parent, they must be approved as a foster carer. However, regulations allow for an *immediate placement* of a looked after child with relatives or friends for up to 6 weeks, with a minimum of checks.

*FSR; Re W and X (Wardship: Relatives rejected as foster carers) [2004] 1 FLR 415].
Reg 38 FSR*

Anyone who is an approved foster carer for a child who is looked after should receive a fostering allowance from the local authority

s.23(2)

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and there should not be a reduction from the normal rate if they are family members.

In addition:

- wherever possible and consistent with the child's welfare, make sure that a child is placed near his or her home and that brothers and sisters together
- where a child is disabled, make sure that the accommodation provided is not unsuitable to his or her needs

Manchester City Council v F (Fam) 1993 & Local Authority Circular (99) 29, 'Care Plans and Care Proceedings under the Children Act 1989' s. 23(7) CA

s. 23(8) CA

Duties regarding contact between a child and his/her family

For all looked after children, the local authority must try to 'promote' between children and their parents, guardians, anyone else with parental responsibility, relatives, friends and others connected with them "**unless** it is not reasonably practicable or consistent with the child's welfare". This means that the local authority should take positive steps to arrange for any child who is accommodated to see, or be in touch with you unless this was not in your child's best interests.

Sch 2 para 15(1) CA

For further information see FRG advice sheet on contact for children in accommodation.

In addition, if a child is in care under a court order, the local authority **must allow** a child in care to have *reasonable* contact with:

S34 CA

- his/her parents,
- his/her guardian and/or special guardian,
- anyone with a residence order immediately before the care order was made and
- step-parents who have parental responsibility for him/her.

For further information see FRG advice sheet on contact with children in care.

unless the court gives permission to the local authority to refuse contact.

This means that if you are a parent/carer of a child in care, or you had a residence order immediately before the care order was made, the local authority must allow your child '*reasonable contact*' with you and **cannot stop all contact** with you unless they has the court's permission to do so. However, they do have the power to suspend contact for up to seven days in an emergency.

In both cases, the local authority has the power to help with contact expenses.

Schedule 2, para 16 CA

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The duty to review plans for the child

The local authority is under a duty to review the case of every child who is looked after at regular intervals:

- the first review must take place within four weeks of the date the child begins to be looked after;
- the second, within the next three months; and
- the third, and any later reviews every six months.

*Regulations 2-3,
RCCR*

Before the review, the local authority must find out, and take into account at the review,

- the views of the child,
- his or her parents,
- others with PR and any other relevant people.

Regulations 7, RCCR

These people should, where appropriate, attend all or part of any meeting, which is considering the child's case.

The local authority should keep a written record of the review in the case records. Details of the result of the review and any decision taken must be given to the child, his or her parents, others with PR and anyone else the local authority considers should have this information.

*Regulations 7(3) and
10 RCCR*

The Regulations require the local authority to consider all aspects of the child's case, and set out a list of items to be considered. These are broadly similar to those listed above regarding the contents of the plan.

Regulations 4 RCCR

What do Independent Reviewing Officers do?

Every local authority must arrange for independent reviewing officers (IROs) who are not involved in the management of the case, to:

- chair review meetings and
- monitor the implementation of the local authority's plans for the child following the review.

*s.26(2) CA as
amended by s.118
ACA;
Reg 2 A RCCAR*

Part of their job is to ensure that the child is able to make a meaningful contribution at the review and that the views of the parents and other family members are presented, if not in person then in some other way, for example in writing.

IROs must check that the plan is being implemented as discussed in the review, and where there is a failure to implement

Reg 2A(6) RCCAR

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any aspect of the plan, they must draw it to the attention of senior management in the local authority.

If senior management do not resolve the problem and there continues to be a failure to implement the plan, the IRO can refer the case to CAFCASS, which is a court based service that appoints officers to represent children in court proceedings. If necessary, they can make an application to the court on behalf of a child where the failure to implement the plan has led to a breach of the child's human rights.

Reg 2A(1) RCCAR

This means that although IROs cannot make decisions about the plans for your child, they will make sure that:

- you have an opportunity to say what you think about the arrangements and
- any recommendations made at a review that an agency provide a particular service are confirmed by the agency and if not they will follow this up to a high level.

Therefore if you have any worries about the arrangements for your child not being followed up after the review, you could get in touch with the IRO and discuss your concerns.

Where your child is unhappy about the plan itself, the IROs may also refer the case to Children's Rights Officers/Advocates and or independent visitors to support the child through their disagreement with the authority. Where your child makes a complaint, they have a right to an advocate to assist them with this.

s.26A CA

If you are unhappy about any aspect of the plan itself you should also tell the local authority and if necessary make a complaint. You can also seek legal advice or contact FRG's advice line.

See FRG advice sheet on complaints.

Permanence plans:

At the second review (i.e.: after 4 months) the local authority is required to make a plan for the permanent placement of every child who is looked after.

*Chapter 2 para 1
Adoption Guidance*

There could be several plans operating in parallel (sometimes called ***twin tracking or contingency planning***).

For example:

- a parent is required to attend a parenting programme to develop their parenting skills and is required to address particular identified concerns within an identified timescale

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- so that they can resume caring for their child, but
- a relative is also assessed as a potential carer for the child if the parent is unable to meet the conditions satisfactorily.

There might even be a third plan that if either of these two plans fail, the local authority will look for long term foster carers or adopters for the child, although they could not act on this against your wishes unless they had a care order or placement order respectively.

It is very important that families work together to develop the best plans for a child when they are looked after so that if the parents needs help, or cannot continue, to care for the child, the child is able to be looked after by other family members rather than remaining in the care system. If this has not already happened before the child was looked after, you could ask the local authority to arrange a family group conference.

What is a Family Group Conference?

A Family Group Conference is a decision-making process in which the whole family makes plans and decisions for children who, because of difficulties in the family, need of a plan that will safeguard and promote their welfare. It offers family members a chance to get together, to discuss how to sort out any problems and make plans for the child which the professionals then consider to see if s/he will be safe and his/her welfare promoted. Professionals are only involved in *part* of the meeting.

For further information about this see FRG advice sheet on Family Group Conferences

The government wants to develop the use of FGCs to help families make good plans for vulnerable children to be safely living with their families. They are now available in many local authorities so it may be a good idea for you to ask the social worker if they can make a referral to a FGC service for you to help you make plans for your child who is in the care system. For more information about this contact Family Rights Group (see 'Where can I get more information?' below)

What about care plans where there are care proceedings?

When the local authority applies for a care order, it is expected to provide a care plan for the court and the court must consider this before making a care order.

s.31A CA

The care plan will be carefully scrutinised by the court, and the local authority is expected to provide evidence in support of the

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plan including placement details where they are known.

If the care plan presented to the court is not fully developed, the court should consider making an interim order rather than a final order, but once the care plan is completed the court cannot defer making a decision about whether or not to make the order just because it does not agree with the local authority's care plan.

Once a care order has been made, the court cannot oversee the implementation of the care plan. The Independent Reviewing Officer will be responsible for monitoring this – see above.

If, after a care order has been made, the local authority changes the care plan it produced at court, it must discuss the proposed changes with the parents and other with PR and the child where they are sufficiently mature. If they fail to do so, there may be a breach of either the child or parents' human rights (see below).

Re S (Minors)(Care Order: Implementation of care plan), Re W (Minors)(Care order: Adequacy of Care Plan)[2002] UKHL 10 [2002] 1 FCR 577
See for example:
Re: C (A Child) [2007] EWCA Civ 2; Re: J (Care: assessment: fair trial) [2006] 2 FCR 107; [2007] 1 FLR 77
G v N County Council (2009) 1 FLR 774

What about the Human Rights Act?

The Human Rights Act 1998 incorporates the European Convention of Human Rights into our domestic law.

It is “*unlawful for any public authority to act in a way which is incompatible with a Convention Right*”. This means that any decision made by a local authority and/or a court must be compatible with a person's rights under the Convention. The key ones which are most relevant to decisions about contact are:

s.6 HRA

- **Article 6:** the right to a fair trial in relation to decisions which affect a person's civil rights; and
- **Article 8:** the right to respect for privacy and family life. This is not an absolute right. The State may interfere with family life provided that it is “necessary in a democratic society for the protection of health or morals, or the protection of the rights and freedoms of others”, and that the interference is “proportionate” in the circumstances of the case.

Article 6 ECHR

Article 8 ECHR

Both children and adults benefit from these rights, although none of them give you or your child any absolute right to see each other or for you to resume caring for him/her, because sometimes this may not be in his/her best interests. However, it does mean that the local authority should be fair in how they make decisions

S.7 HRA
See for example:
Re: C (A Child) [2007] EWCA Civ 2; Re: J (Care: assessment: fair trial) [2006] 2

that affect you and your children.

*FCR 107; [2007] 1
FLR 77*

What does the research say?

Research shows that the plans made for the child whilst she or he is away from home are very likely to influence when and how the child will return home, unless there are good reasons why s/he should not return.

The main research messages are that:

- ❑ placements are much more successful where the plans made are clear about the expectations and responsibilities of all concerned with the child, including the social worker. A written agreement to record the plan is particularly helpful;
- ❑ Brothers and sisters tend to do much better when they are placed together;
- ❑ Children who are fostered by relatives tend to do much better in almost all respects than those fostered by others;
- ❑ Children achieve a return home more successfully when an early decision is made to work towards return home;
- ❑ Contact between the child and his/her family is a key factor in helping a child to return home from the care system; it is therefore essential that there are good plans for promoting family contact without any unnecessary barriers being put in the way of it.

Farmer and Parker, 1991, Trials and Tribulations (HMSO)

Berridge and Cleaver, 1987, Foster Placement Breakdown (Blackwell)
Rowe, J., Cain, H., Hundleby, M., Keane, A., 1984, Long Term Foster Care (Batsford); Rowe, J., Hundleby, M, and Garnett, 1989, Child Care Now (BAAF)
Farmer and Parker, as above
Bullock, R, Gooch, D and Little, M, 1996, Children Going Home: The Reunification of Families (Aldershot, Ashgate).

Tips for Negotiation

Before your child is looked after (or it that is not possible, then as soon as possible afterwards) think about:

- ❑ The type and length of placement you would like for your child,
- ❑ The type and amount of contact you would like, and
- ❑ Your plans for your child's eventual return home, taking account of the local authority's child protection concerns, if any.

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It is a good idea to write down your thoughts before you meet with the social worker so that you can discuss the care plan, or how the plan should be reviewed, with him or her **before** it is finalised.

If the social worker is saying that your child cannot come/stay at home but there is someone amongst your family or friends who would be willing to look after your child, ask the local authority to assess them for an immediate and/or a longer-term placement if appropriate. A placement with relatives or friends would be much less stressful for your child than with strangers.

You can also ask the local authority to arrange a family group conference (see above) and you can contact the IRO if you have concerns about plans for your child not being put into practice whilst s/he is in the care system.

Where can I get more information?

- ❑ Ask your local library to get a copy of the government guidance and research studies mentioned above.
- ❑ Contact FRG's freephone advice line for further advice on 0808 801 0366 between 10am-3:30pm Monday-Friday or visit their website www.frg.org.uk/advice_sheets where you can download other relevant advice sheets.
- ❑ Contact a solicitor who specialises in childcare law. Ask your local Citizens Advice Bureau to recommend one, or check the Law Society website www.lawsociety.org.uk. If you are on a low wage, or income support or job seekers allowance, you may be able to get free advice initially under the Legal Help Scheme.

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