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## References

## Reuniting children with their families from local authority care

*ACA: Adoption and Children Act 2002*

*APCR: Arrangements for Placement of Children (General) Regulations, 1991, in G&R Vol 3.*

*CA: Children Act, 1989*

*ECHR: European Convention on Human Rights and Fundamental Freedoms;*

*FSR: Fostering Services Regulations 2002*

*G&R: The Children Act 1989, Guidance and Regulations, 1991, Department of Health, Vols 1-10*

*HRA: Human Rights Act 1998;*

*RCCR: Review of Children's Cases Regulations, 1991, in G&R Vol 3.*

## Introduction

If you are a parent or relative of a child who is in the care system you may be wondering what steps you can take, if any, to enable your child to return home to your family. Sometimes the circumstances of the case make this very difficult, or even impossible, to achieve but you may still feel it is important that you are doing all you can.

This information sheet outlines the relevant legal framework and research findings for children returning home, and offers practical advice on how to negotiate this as the plan for your child. We have listed above, and in the narrow column on the right the references for all the legislation, regulations and guidance which we refer to in this advice sheet.

### Here are some important terms used in this advice sheet

- ❑ **'Looked after'** means that the child is in care or accommodation with the local authority; s.22 (1) CA
- ❑ **'In care'** means that the child is under an interim or full care order or an emergency protection order;
- ❑ **'Accommodation'** means that a child is being looked after

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by the local authority with the agreement of the parents/those with parental responsibility.

- **‘Parental responsibility’** (PR) replaces the old notion of custody and is defined in law as, ‘All the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to the child and the administration of his/her property’. This means that a person with parental responsibility is responsible for the care and well-being of their child and, unless a court order says something different, that person can make important decisions about the child’s life.

*For further information, see advice sheet on parental responsibility.*

The following people have parental responsibility:

- mothers;
- fathers who are or have been married to the mother at any time since the birth of the child or who is jointly registered on the birth certificate as the father (for children born after 1.12.03) or who have acquired PR by formal agreement with the mother or by court order;
- anyone who has a residence, special guardianship or adoption order in their favour on the child;
- guardians if their appointment has taken effect;
- step-parents who have acquired PR by formal agreement with both parents with PR or by court order;
- prospective adopters who have a child formally placed with them for adoption and
- the local authority when there is an emergency protection or care order in force.

s.4 CA

*For further advice about this contact Family Rights Group*

s.4A CA

## **What does the law say about children being reunited with their families?**

Whenever a child is “looked after” by the local authority (whether “in care” or “accommodation”) the local authority:

s 23(6) CA

- must “make arrangements” to enable the child to live with:
  - his/her parents,
  - anyone with parental responsibility,
  - anyone who had a residence order before the care order was made, or
  - any relative, friend or other person connected with him or her,

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“**unless** it is not reasonably practicable or consistent with the child’s welfare”;

- may place a child they are looking after with a relative/friend on an emergency basis for up to six weeks provided certain checks are made. During this time a full assessment of the carer should be made.
  
- must make, and review, plans for every child they are looking after, in consultation with the child’s parents and family. This task includes:
  - drawing up a written plan which sets out details about the child’s care including the arrangements for contact and return home (if any). If the child is accommodated, this plan must be agreed with at least one person with parental responsibility. If the child is in care under a court order, agreement to the plan by a person with parental responsibility is recommended but not required;
  - finding out the wishes and feelings of the child, his/her parents and others who are involved with the child, and giving due consideration to them, when making any decisions about the arrangements for the child’s care;
  - reviewing the plan for the child after one month, then after three months, and then after every subsequent 6 months, throughout the time that the child is looked after, looking at particular matters listed in the Regulations. This includes reviewing any plans to return the child home; and
  - consulting the parents, those with parental responsibility and others connected with the child in this review process.

*Regulation 38, FSR*

*For further information about this ask FRG for their advice sheet on immediate placements*

*For further information see advice sheet on making and reviewing plans for children who are looked after*

*Regulation 3 APCR 1991 and para 2.62 G&R*

*s 22(4) & (5) CA*

*RCCR 1991*

*Reg 7(2) RCCR 1991*

## **So how is a ‘return home’ arranged in practice?**

If you want to make arrangements for your child to return home, you need to negotiate with the local authority. Here are some **tips to help you negotiate**:

- In the short term, whilst your child is accommodated, instead of him/her being placed with strangers, it may be possible for him/her to be placed with someone else in your family, or close friends, under Regulation 38 (see above) to provide a

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breathing space, whilst longer-term plans are considered.

- ❑ Either before, or as soon as possible after your child begins to be looked after by the local authority, you need to discuss with them the date and/or circumstances in which your child can return home (whether it is to live with his/her parents or relatives).
- ❑ If there is an agreement at the beginning about when your child will return home, make sure this is recorded in the written plan for the child which will be reviewed regularly.
- ❑ If the local authority is not fully in agreement with your request for your child to return home, try to discuss ways in which a return home could become possible, for example ask them
  - to confirm in writing what you would need to change about the way you care for your child for him/her to be able to return home;
  - if you can begin with a plan for your child to come and stay with you for a night or two and see how it goes.
- ❑ Also, if your child is in accommodation (i.e. with your agreement rather than a court order), you could politely remind your social worker that this kind of voluntary arrangement is intended to be part of a package of support services, and should not be used as a means of preventing children from returning home against the parents' wishes.
- ❑ You could also gently remind the local authority of the legal duty in s.23 (6) CA to place a child they are looking after with his/her parents, a person with parental responsibility or other relative before finding a new family for them (see above).
- ❑ If the local authority do not agree to your proposal, ask the social worker to set out in writing his/her outstanding concerns which would need to be overcome before your child can return, or the reasons why s/he does not believe that a return home is in your child's best interests. This will help you to understand what the outstanding issues are.
- ❑ You could also ask the local authority to refer you for a **Family Group Conference** which is a meeting of your whole family to enable you and your relatives to have the opportunity to:

*For further details  
about Family group  
Conferences contact  
Family Rights Group.*

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- draw up a plan for your child which addresses any concerns the local authority has about your care of your child;
  - identify potential placements within your wider family/community, where a return to your home is not possible; and
  - identify support which the local authority could provide to help the return home be successful.
- **Where there is agreement about the plan**, make sure there is a detailed discussion and agreement about the package of support services which will be offered by the local authority when your child returns home. This agreement should include details of the services which will be provided and a date when this will be reviewed, if appropriate.
- **Where there is no agreement about your proposal** even after negotiating, you should seek legal advice from a solicitor specialising in child care law and/or call Family Rights Group's advice line to discuss the options open to you.

Broadly, the legal options open to you are as follows:

- If your child is in accommodation (i.e. by agreement) and you have parental responsibility, you may want to consider removing him/her from accommodation.

Anyone with parental responsibility (usually parents) may remove their child from accommodation by simply telling the local authority that that is their intention, unless:

- a residence order exists, in which case they may not if the person with the residence order objects, and/or
- the child is over 16 and objects;

s.20(7)&(8) CA

s.20(9) CA

You are not required to give notice. However, **a word of caution:** you should be aware that the local authority may make an immediate application to court to prevent you from doing so (as discussed above), so make sure you take legal advice from a solicitor specialising in child care law first.

- If your child is in accommodation but you do not have parental responsibility, then your only option is to apply to the court for a residence or special guardianship order, but you will probably need to apply to the court for leave (i.e. permission

ss.8, 10(3)&(5) and 14(A) CA

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to make this application). If such an order is made you would then have the right to remove the child from accommodation. Again you should contact a specialist childcare solicitor or call Family Rights Group's advice line to discuss this.

- If your child is in care under a care order, then your only option is to apply to the court to discharge the order. Again you should contact a specialist childcare solicitor or call Family Rights Group's advice line to discuss this.
  
- If your child is under a placement order (which authorises him/her to be placed for adoption) you can only apply to discharge the placement order if the court has given you leave (i.e.: permission) to apply to revoke the order and your child is not placed with prospective adopters.

s 39 (1) CA

s.24 ACA

## What about the Human Rights Act?

The Human Rights Act 1998 (HRA) came into force in 2001. The main effect of it is that it incorporates the European Convention of Human Rights (ECHR) into domestic law.

It is now "*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 children returning home 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. However, 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. If decisions about a child's placement are not compatible with the person's rights, it is possible for the victim (i.e.: the person whose Convention rights have been breached) to apply to the court for an injunction to stop the breach, and/or for damages.

s.7 & s.8 HRA

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- There have been several recent court decisions which have established that, in order to comply with the requirements of the HRA, the decision-making procedures in both the courts and the local authority must be fair and must involve the parents, particularly where there is a fundamental change to the care plan after the court order has been made.

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

The main effect of the HRA regarding your child returning home is that the local authority should only prevent this where it is necessary for the protection and well-being of your child. You can ask your solicitor how the Human Rights Act is relevant in your case, if at all.

## What does the research say about children returning to their families?

- 85% of all the children who are looked after return home to their family network (or home communities) within 5 years, and an estimated 92% return eventually. The possibility of a child's return home within the forthcoming 12 months remains high no matter how long a child has been away. Statistically, it is usually the most likely thing to happen to a child.
- Regular, comfortable contact with the family, and the child maintaining a role, and position in the family are key factors in achieving a successful return home.
- Circumstances can improve in the family home over time. Social workers should be willing to acknowledge that families can 'move on' in their personal circumstances from the time when their child is first looked after, and that they may now be able to care for the child when previously they could not.
- The chances of a successful return home are increased where purposeful, planned work is undertaken with the child and the family to support and resource this .
- There can be value in an attempt to return the child home even if it subsequently fails. Children find it hard to adjust and settle in new families if they are very attached, and committed, to living with their birth families, and feel they have not had an opportunity to test this out.

*Bullock, R, Gooch, D and Little, M, Children Going Home: The Reunification of Families, (Aldershot, Ashgate) 1998*

*Bullock, R., Axford, N., Little, M., and Morpeth, L. Predicting the Likelihood of Family Reunification in the Foster Care System Diskurs 2/2003, 26-33*

*Fein, E, Maluccio, A., Hamilton, V., Ward, D., After Foster Care: Outcomes of Permanency Planning for Children, Child Welfare Vol. LXII No. 6 Nov/Dec 1983  
 Hill, M, Lambert, L. and Triseliotis, J., Achieving Adoption with Love and Money, 1989; Fein, et al (as above);  
 &*

*Sellick, C. and Thoburn, J., What Works in Family Placement, Barnardos, 1996  
 Farmer, E., and*

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- When children cannot return to their parent(s)' home, placements with relatives are rated as more successful when compared with placements with new families. They have the particular advantage of helping the child with their identity issues. They are also more likely to stay in touch with their parents, and with other relatives, than children placed in foster care with non-relatives

## Where can I get further help?

- **Contact Family Rights Group Telephone Advice Line** on Freephone 0808 801 0366 if you want to discuss your case further. It is open from 10.00am – 3.30pm Monday-Friday. You can also write to us at : The Print House, 18 Ashwin Street, London, E8 3DL or Email to [office@frg.org.uk](mailto:office@frg.org.uk)
- **Contact a solicitor** who specialises in child care law to help you negotiate with the local authority, and /or represent you in court. Your local Citizen's Advice Bureau should be able to recommend one, or contact  
**Solicitors Regulation Authority**  
Ipsley Court  
Redditch  
Worcestershire B98 0TD  
Phone: 0870 606 2555  
<http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>  
If you are on a low wage or receiving welfare benefits, you should be able to get free advice under the legal aid scheme. Ask your solicitor to advise you about this.

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