

10

References

Advocacy for families in local authority decision-making

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

HRA: Human Rights Act 1998

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

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

WT: WT: Working Together to Safeguard Children, 2006 HM Government

Introduction

When local authorities provide services to families regarding the care and protection of their children, they are required to follow certain procedures, in order to decide how those services can be provided best in individual cases. The procedures are outlined in the Children Act, and regulations and guidance. In this advice sheet, we have set out the specific legal requirements regarding families involving an advocate or supporter on their behalf when they are involved in local authority decision-making procedures.

Do local authorities have to involve families in decision-making?

The general principle is that local authorities must work in partnership with families when making any decisions about children to whom they provide services, for example:

*Department of Health,
Child Protection:
Messages from
Research, HMSO,
1995*

Child Protection cases:

These are cases in which the local authority is making enquiries under s.47 Children Act 1989 because they suspect that a child is suffering significant harm. In such cases,

- government guidance in Working Together (2006) flags up the importance of the local authority working in partnership with

WT p.75

The information contained in this advice sheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact Family Rights Group

parents as one of *the* fundamental principles underpinning the successful protection of children at every stage of the process “*it is important to listen and develop an understanding of (the child’s) wishes and feelings. The importance of developing a cooperative working relationship is emphasised , so that parents and caregivers feel respected and informed.....*”

- guidance in Working Together also makes a number of **specific recommendations** that parents and other important family members should be informed both about the child protection concerns and the procedures to which their child is subject, including normally being invited to child protection conferences, given copies of reports produced at meetings, being involved in core group meetings etc

WT (paras 5.69-5.70, 5.84-5.86 & 5.89-5.90)

For more information about this see FRG advice sheet on child protection

Accommodation cases:

These are cases in which a child is being looked after by the local authority by agreement with the parents/those with parental responsibility (PR). In such cases, the local authority must

- ascertain and give due consideration to the wishes and feelings of parents and other significant people in the child’s life when making plans for the child; and
- agree their plan for any child they are looking after with one person with PR, or if none, then with the person last caring for the child, unless the young person is 16 or 17 in which case they must agree the plan with the young person themselves.

s. 22 (4) & 5 (CA)

Reg 3, ACPR

Care cases:

These are cases in which a child is being looked after by the local authority under a care order or an emergency protection order. In such cases, the local authority **must**

- ascertain and give due consideration to the wishes and feelings of parents and other significant people in the child’s life;
- although it does not have to agree the plan for the child with the people with PR, 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;*’ and
- there have been a number of recent court cases decided

s 22 (4) & 5 (CA)

Guidance and Regulations 1991, Volume 3 at para 2.19.

Re M (Care:

The information contained in this advice sheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact Family Rights Group

under the Human Rights Act 1998 which confirm that parents have a right to be involved in decision-making for a child **after** a care order has been made, particularly where there are fundamental changes to the care plan presented at court. If the local authority fails to involve them, they may be in breach of the Human Rights Act and their decision could be overturned. For further information about this see the box on the next page and/or contact FRG's advice line.

Challenging Local Authority Decisions [2001] 2FLR 1300; Re L (Care: Assessment: Fair Trial) [2002] EWHC1379 (fam); [2002] 2 FLR 730; Re: C [2007] EWCA Civ 2

How can I be helped to participate in planning for my child?

Parents and other family members often find it difficult to participate in meetings held by the local authority, particularly when they do not agree with the social worker's view of what is in the child's best interests, or do not understand the processes in which the decisions are being taken. Many report to FRG that they do not feel heard. In these circumstances, family members may want to be supported by an independent advocate to be able to participate effectively in the decision-making processes.

Hunt, J & McLeod, A, 1999, The Last resort: Child Protection, the Courts and the Children Act, HMSO, London at pp149-152; P. Freeman, & J Hunt, Parental Perspectives in Care Proceedings, 1998;

Research suggests that involving an advocate can be very helpful in promoting partnership between local authorities and families. However, local authorities are sometimes reluctant to allow family members to involve advocates in this way. We have therefore set out below the basis on which families can argue that they should be allowed to involve an advocate if they wish.

Lindley B, Richards M & . Freeman P, 'Advice and advocacy for parents in child protection cases – what's happening in current practice? [2001] Child and Family Law Quarterly 167

Do I have the right to involve an advocate or supporter on my behalf?

Parents do not have a statutory *right* to involve an advocate on their behalf when local authorities invite them to attend internal meetings. However there is a strong presumption that they should allow them to, as follows:

Child protection cases:

The government's guidance on child protection procedures set out in Working Together states that:

- parents should routinely be given information about how they can access local advice and advocacy services, and that they can bring an advocate friend, or supporter to the child protection conference;
- Local Safeguarding Children Boards (LSCBs) are expected to

WT para 5.84

The information contained in this advice sheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact Family Rights Group

monitor agency protocols covering the involvement of [children and] family members in child protection conferences, and the role of advocates;

- case law has also confirmed that parents should be allowed to involve an advocate on their behalf provided the advocate is not too adversarial. In a recent judicial review case, the local authority's policy, which prohibited solicitors from attending conferences on behalf of parents for any purpose other than to read out a prepared statement, was declared unlawful. Whilst acknowledging that legal representation in conferences was not appropriate, Scott Baker J concluded: "*it seems to me that in general solicitors ought to be allowed to attend **and participate** [emphasis added] unless and until it is felt that they will undermine the purpose of the conference by making it unnecessarily confrontational*".
- The Review of Child Care proceedings recommended that parents have access at an early stage to independent legal advice when there are concerns about their child which may lead to care proceedings, and the new scheme for public funding developed by the Legal Services Commission, enables parents to have public funding to see a solicitor where the local authority are considering issuing care proceedings. So if the local authority have sent you a letter informing you that they are contemplating issuing care proceedings you should take it to your solicitor who can help you with negotiations prior to care proceedings under level 2 of the LSC scheme;
- The Human Rights Act 1998 also requires that local authorities' procedures for making decisions to keep children safe, which can impinge on the parents' ability to exercise their parental responsibility, must be fair. It can be argued that this includes the parents having the right to independent legal advice and support.

R-v- Cornwall CC ex parte LH (1999 [2000] 1 FLR 236, at p.244C.

Review of Child care Proceedings System in England and Wales, DCA/DFES May 2006, p26-7

See box below

Accommodation and care cases:

There have been several recent court decisions which have established that, when the local authority wants to make fundamental changes to the care plan (even after a care order has been made) the decision-making procedures have to be fair to parents, otherwise the decisions of those meetings may be quashed. Fairness in this context has been held by the court to mean that

Re M (Care: Challenging Local Authority Decisions) [2001] 2FLR 1300; Re L (Care: Assessment: Fair Trial) [2002] EWHC1379 (fam); [2002] 2 FLR 730; Re: C [2007] EWCA Civ 2

- parents should be notified of the shortcomings in their parenting, and advised on how they may overcome these shortcomings; and
- a parent or other party who wishes, should have the **right to attend and/or be represented** [emphasis added] at professionals' meetings so as to answer allegations made against them.

These cases are the strongest authority yet for arguing that family members have a right to involve an advocate when they participate in local authority meetings to plan for children who are looked after.

What does the Human Rights Act do?

The Human Rights Act 1998 places a duty on local authorities to respect individual's human rights when making decisions about the care and protection of children. It provides that it is *"unlawful for a public authority to act in a way which is incompatible with a Convention right"*. This means that

- **any** decisions made by local authorities (or any other child care agencies involved in child protection cases within a child protection framework) must not breach any of the rights established by the European Convention on Human Rights and Fundamental Freedoms. The most relevant rights are:
 - the right to a fair trial in the determination of civil rights, and
 - the right to respect for private and family life, although this subject to the state having the right to take action to protect the safety and well being of others (which would include being able to take action to protect a child who was at risk even if this breached the parents rights provided the processes they followed were fair).
- if decisions are made by local authorities which are not compatible with the person's rights (both the children and adults involved) it is possible for the victim (i.e.: the person whose rights have been breached) to apply to the court for an injunction to stop the breach, and/or for damages.

This means that if you have these or any other rights under the European Convention, the local authority must make sure they do not breach these rights otherwise you may be able to apply to court for their decision to be overturned.

s.6 Human Rights Act 1998

Article 6, ECHR

Article 8, ECHR

ss.7-8 Human Rights Act 1998

For further advice contact FRG advice line

Where can I get more information?

- Contact FRG's freephone advice line for further advice, on 0808 801 0366 Monday-Friday 10am-3:30pm or visit the website www.frg.org.uk/advice_sheets.html where you can download other advice sheets.
- Contact a solicitor who specialises in child care law. Ask your local Citizens Advice Bureau to recommend one, or search on www.lawsociety.org.uk . If you are on a low wage, or on income support or job seekers allowance, you may be able to get free advice and advocacy from the Legal Services Commission.

Last updated Oct 08