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Immediate placements for looked after children with relatives or friends

References

CA: Children Act 1989.

FSR: The Foster Services Regulations, 2002

Vol 1 Guidance: Children Act 1989 Regulations and Guidance, Volume 1 Court Orders <http://www.justice.gov.uk/guidance/careproceedings.htm>

PLO: Public Law Outline <http://www.justice.gov.uk/guidance/careproceedings.htm>

Introduction

When parents have difficulties at home and their child is suffering as a result, s/he may need to be looked after by someone else, for example relatives or friends. This can be a short term arrangement or on a long term basis. The arrangements may be made directly between parents and their relatives or friends. Alternatively, the local authority may be involved because they are concerned that the child is suffering significant harm and do not consider it is safe for the child to remain in the parents' home.

This advice sheet is aimed at those relatives and friends who think they may want to look after such a child.

It sets out:

- the various ways in which a relative or friend can take on the care of such a child,
- the extent to which the local authority may be involved in such an arrangement and
- what support may be available for the arrangement.

It will also refer you to other advice sheets for more detailed information, depending on your circumstances.

If you need further advice you can also contact Family Rights Group advice line. The relevant legal references are set out in the narrow column on the right.

Note: Important terms used in this advice sheet are as follows:

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- ❑ **‘Looked after’** means that the child is ‘in care’ or ‘accommodation’ of the local authority;
- ❑ **‘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 by the local authority with the agreement of the parents/those with parental responsibility.

What are the options for a relative who wants to take on the immediate care of a vulnerable child?

There are a range of possible steps you can take depending on the extent to which the local authority is involved in the case. Whichever option you take there will be consequences in terms of the support you will receive for the placement. The following options may be open to you:

1. Private arrangements:

If you are aware of difficulties within the parents’ home, you may want to offer your support to the family to see if you can help out. If this does not seem adequate, you may want to offer to care for the child for a while until things get sorted out.

If the parents agree that this would be a good idea they can simply make this arrangement with you. If you did this you would not have parental responsibility for the child. This means you would have to refer back to the parents about all major decisions about the child’s care for example medical or dental treatment, school trips, taking the child on holiday etc, and they could remove the child from your care any time. This may be sufficient to help ease the situation at home and you may feel there is no need to take any more formal step.

For further information see FRG advice sheet on ‘Parental responsibility’

In this situation you would need to look to the parents for financial support for the arrangement, but if the child was particularly vulnerable you could also ask the local authority to assess whether or not s/he is a child “in need” and decide what support they may be able to offer, such as a nursery place etc.

s.17 CA; See FRG advice sheet on ‘Family Support Services’

If the parents do not agree to your proposal, then you would need

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to consider whether you think the child's circumstances are so serious that you need to take a more formal step such as applying to court for a residence or special guardianship order. You may also feel you need to get the local authority involved (see Section 3, below).

For more information on Special Guardianship, see FRG advice sheets

Note about private fostering:

If you are looking after a child in a private arrangement, which is, or is intended to be, for 28 days or more, and you are NOT the child's grandparent, uncle, aunt, sibling or stepparent, you will be considered a private foster carer and should notify the local authority. The local authority will then monitor the arrangement and inspect your premises. For further information on this contact FRG advice line.

2. Residence order:

If the parents will not agree to you caring for the child and you don't want to get the local authority involved, but you really feel this is the right thing for the child, you could consider applying to the court for a residence order. (Note: You could also consider applying for a special guardianship order, but these take longer to obtain than residence orders).

See FRG Advice Sheet on 'Special Guardianship-what's in it for carers?'

If you were granted a residence order, it would mean that the child would have his/her home with you and it would give you parental responsibility for the child whilst the order lasts. This means the child would live with you and you could make most decisions about his/her care but there are some exceptions.

For further information about this see FRG advice sheets on 'Placements of looked after children', 'Reunification of children with their families from local authority care', 'Support for relatives or friends caring for a child', and 'Financial implications of a child coming to live with you' or call FRG advice line – contact details at the end of this advice sheet.

If you want to apply for such an order you will probably need to apply to the court for leave (i.e. permission) to be allowed to apply for this order unless you have already been looking after the child for three out of the last five years.

The court would only grant the order if it considered this would be in the child's best interests.

If such an order was granted you would need to ask the parents to provide financial support for the arrangement and you will also be able to claim any benefits or tax credits you are entitled to. These are all means tested apart from child benefit.

In addition, and particularly if the parents cannot give any support, you can ask the local authority to:

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- pay a residence order allowance but they are under no obligation to do so:
- assess whether or not s/he is a child 'in need' and decide what support they may be able to offer, such as a nursery place, extra equipment (e.g. beds, clothing) etc.

Sched 1 para 15 CA

s. 17 CA; for further information see FRG advice sheet on 'Family Support Services'

3. Local authority involvement:

3.1 Child protection enquiries:

Where the local authority suspects that a child is suffering significant harm they are under a legal duty to make enquiries and make plans for that child to ensure that they are kept safe.

s.47 CA

They should work in partnership with the parents and wider family when making these plans. This may involve them holding a child protection conference at which all the professionals and agencies who know the child and family come together to look at the child's needs and decide what needs to change and what support they can provide to make sure the child is kept safe and well cared for.

For further information on this see advice sheet on 'family support services' and on 'child protection procedures'.

3.2 Removal of the child from home:

If, as a result of making these enquiries and plans the local authority still has serious concerns that the child is at risk of significant harm or they perceive the child to be in immediate danger, they may want to remove the child from the home. They can only do this if:

1. the parents agree or
2. they are granted an emergency protection or a care order by the court.

For further information on this see advice sheet on 'Care and related proceedings'.

The police also have the power to remove a child from home for up to 72 hours but this should only occur where there is an immediate danger and it has not been possible for the local authority to apply for an emergency protection order.

If the local authority removes the child from the parents in either of these circumstances they are then formally '*looking after*' the child and they must comply with certain statutory duties in relation to the care they provide to the child.

For further information see advice sheet on 'Making plans for children who are looked after by the local authority'

Does the local authority have to place a child they are *looking after* with a member of their family?

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When deciding where to place a child they are looking after, the local authority is under a **duty to place the child with his/her parents or wider family and friends**, unless this is 'not reasonably practicable or consistent with his welfare'. This means that they should consider placing a child they are looking after with a relative or friend before placing him/her with a new family.

s.23(6) CA

Can the local authority place a child with a relative without a full assessment of that person?

The local authority is able to place a child immediately with relatives and friends for up to **six weeks** provided they have:

Regulation 38 (2)
FSR

- interviewed the person
- inspected the accommodation
- obtained information about other persons living in the household

The relative/friend who is caring for the child must make a written contract with the local authority agreeing to:

Regulation 38 (2)
FSR

- care for the child as if he/she were a member of the person's family,
- permit any person authorised by the local authority who made the placement to visit the child at any time,
- allow the child to be removed by the local authority, or the child's local authority, at any time,
- keep confidential the information they get as a result of the placement, and
- allow the child contact with anyone the local authority agrees to, or anyone who has a Contact Order from the court.

Regulation 38 (2)
FSR

If the placement continues beyond six weeks, the local authority will need to undertake a **full assessment to approve the carer as a foster carer** for that child in order that the placement does not become unlawful. This includes undertaking police checks. The assessment can be limited to consideration of the ability of the relative/friend to care for the particular child in question, rather than being approved as a foster carer for any child.

Re W and X
(Wardship: Relatives
rejected as foster
carers) [2004] 1 FLR
415]

How are placements with family members funded?

If a child is **looked after** by a local authority, they have a duty to

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pay the person whom they have placed the child with, whether this is a relative or friend (whom they will have approved as a foster carer within 6 weeks of the placement being made – see above) or an unrelated foster carer.

In theory, they have a discretion as to how much they pay in these circumstances, but there are now nationally agreed fostering rates which apply in England. Family and friends carers should be paid these approved rates and should not be paid less than unrelated foster carers. They should receive this funding from when they first look after the child.

Local authorities must also make sure that additional payments, such as those made for a child's birthday, holidays and Christmas are the same for family and friends carers as they are for non-related foster carers. If you believe you are not receiving such payments because you are a family or friend carer, you should file a complaint. Back dated payments can be awarded.

NOTE: Not all local authorities have changed their foster care payments for related foster carers in accordance with the *Manchester City* high court judgment cited above. If your local authority pays related foster carers less than "stranger" foster carers, you may need to call their attention to this decision. You may also need to make a complaint. You can speak to a solicitor about it, or call Family Rights Group.

Local authorities are only under a duty to finance a placement with relatives if **they** place the child, rather than if the placement was a private, voluntary arrangement between the parents and the relative. Therefore if the child was placed with you by private agreement not involving the local authority, then the child's parents are liable for his/her maintenance. However, you may also be able to get other support from the local authority if they decide the child is "in need" or if you have a residence order or special guardianship order – see above.

What if the local authority placed the child with me but are now saying that it was a private

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s. 23 (2) CA

Further details of these can be obtained from:

<http://www.everychildmatters.gov.uk/files/NMA-Fostering%20Provide%20rs.doc>
Manchester City Council – V – F (2002) 1FLR 43;

*Dudley Metropolitan Council
Complaint no
06/B/09795
24 January 2008*

For further information see advice sheet on complaints or contact FRG's advice line.

For further information see advice sheet on 'Support for family and friends caring for a child'

arrangement and they cannot help?

Unfortunately in practice, local authorities sometimes place children with a relative or friend but then claim at a later date that they were only helping to make a private arrangement and that they do not have any further financial or other responsibility or involvement with the child.

Recent case law has disapproved of this and confirmed that if the local authority is involved in making the placement of the child with the carer, then, unless they specify otherwise **at the time of the placement**, the child is to be treated as a 'looked after' child and is therefore placed with the relative or friend either as an approved foster carer or under Regulation 38 as an emergency placement. If you are in this situation you could refer to the recent Southwark ruling and ask to be paid the full fostering allowance to which you are entitled from when the child first comes to live with you.

*D-v- Southwark LBC
[2007] EWCA Civ 182*

If the authority agrees that the child is looked after, the checks and agreements relating to immediate placements listed above will then apply to you. If they disagree, you can make a complaint. You may also wish to consult a solicitor.

If you agreed with the local authority when they placed the child with you that it was to be a private arrangement, your options for support are as outlined in section 1, above.

This is a complicated area of law and practice is variable. If you would like further advice about it contact FRG's advice line.

*FRG advice line
details are at the end
of this advice sheet*

What happens if the local authority will not agree to place a child with a relative?

If the child is under 16 and is not subject to a care order but is being voluntarily accommodated by the local authority with foster carers outside the family, his or her parent can remove him/her from the care of the foster carer and place them with you. If the child is over 16 he/she can decide themselves, whether or not they wish to remain in accommodation.

s.20(8) CA

If the child is subject to a care order in favour of the local

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authority and you as a relative are unsuccessful in persuading the local authority to place the child with you immediately, you can apply to the court for leave to apply for a residence or special guardianship order (see section 2, above). You can either consult a solicitor experienced in child care law about this, or contact FRG for advice about how to apply without a solicitor.

What does research say?

The following information may be useful to relatives who want to persuade local authorities to make an immediate placement of a child with them.

Research suggests that there are well evidenced advantages¹ for children who cannot live with their parents to be raised by relatives or friends:

- Children living with relatives or friends appear to be as safe as children living with unrelated foster carers. Despite the placements having far less social work support, the outcomes for the children are just as good.
- Children in care tend to experience several placement moves which is detrimental to their well-being. However, children living with relatives or friends experience fewer moves than those placed with unrelated foster carers.
- When children are placed immediately within the family, their placement is likely to last longer, and even when they do have to move there is a good chance that it will be to another family member.
- Children feel loved and report high levels of satisfaction when living with relatives or friends.
- Children placed within their family can more easily maintain a sense of family and cultural identity.
- Contact with family members is more likely to be maintained, with clear benefits to the child, when children live with relatives or friends as compared to unrelated foster carers. However, relatives are less likely to be offered help with managing difficult contact, and are more likely to be left to manage contact on their own.

Farmer E and Moyers S (2008) 'Kinship Care: Fostering Effective Family and Friends Placements' (Jessica Kingsley); Doolan et al (2004) Growing up in the Care of Relatives and Friends (Family Rights Group); Hunt J (2003) Family and Friends Care; Scoping Paper for Dept of Health; Broad, B (ed) (2001) Kinship Care: the placement of choice for children and young people (Russell House; Hunt Waterhouse & Lutman (2008 forthcoming) Keeping them in the family (BAAF)

Tips for negotiating the immediate placement of a looked after child with you

Recent government guidance stresses the importance of local authorities considering placements of vulnerable children with family and friends when their parents are unable to continue to care for them, before they look for unrelated foster carers for them. In fact, before they can issue care proceedings, local authorities need to show, in all cases which are not emergencies, that they have considered placing children with their relatives.

PLO, Vol 1 Guidance

Family Group conferences are mentioned in government guidance as a useful mechanism for bringing the wider family together to make plans for children who are at risk of harm. They are now available in many Local Authorities. If a Family Group Conference has not already been arranged to make plans for the child you are concerned about you can ask the social worker to arrange this.

Vol 1 Guidance, chapter 3

What is a family group conference?

A Family Group Conference (FGC) is a decision-making process in which the whole family makes plans and decisions for children who, because of difficulties in the family, need a plan that will safeguard and promote their welfare. It offers parents and other family members a chance to get together, to discuss how to sort out any problems and find safe solutions, with professionals who are involved with the family only being involved in *part* of the meeting.

Whether or not you have a Family Group Conference, if you are trying to persuade the local authority to consider you as a carer for a particular child you are concerned about, you can gently remind them of the local authority's duties and powers as set out above.

You can also mention the research about the importance of minimising disruption to a child's life to back up arguments for the child being placed immediately within the family.

For further information see advice sheet 'What is a Family Group Conference?'

As soon as the local authority raise the possibility that the child may not be able to remain in the home, it is a good idea to

contact the social worker or team leader and ask for the child to be placed immediately within the family. You should do this initially by phone, as you are asking for an immediate placement, but back it up with an urgent letter, asking for you or another relative to be assessed as an immediate carer.

If they refuse to consider your request, you could make a complaint, or consider applying for a residence order, a special guardianship order or discuss with the parents removing the child from accommodation (if applicable).

For further information, contact Family Rights Group advice line

Where can I get further help?

- Contact FRG's freephone advice line for further advice, on 0808 801 0366 Monday-Friday 10am-3:30pm or visit www.frg.org.uk/advice where you can download other relevant advice sheets.
- Contact a solicitor who specialises in child care law. Ask your local Citizens Advice Bureau to recommend one 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 initially under the Legal Services Commission public funding scheme.

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