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Placement of children looked after by local authority

References

ACA: *Adoption & Children Act 2002*
APCR: *Arrangements for Placement of children (General) Regulations, 1991, in G & R Vol 3*
CA: *Children Act 1989.*
FSR: *Fostering Services Regulations 2000*
G & R: *The Children Act 1989, Guidance and Regulations, 1991, Department of Health, Vols 1-10. LAC 2003 (13) full ref needed*
NMSFSR: *Fostering Service—National Minimum Standards*
PCWPR: *The Placement of Children with Parents etc. Regulations, 1991, in G & R Vol 3.*
PFR: *Private Fostering Regulations 2003*
RCCR: *Review of Children's Cases Regulations, 1991, in G & R Vol. 3*
RCCAR: *Review of Children's Cases Amendment Regulations, 2004*

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, whether on a short term arrangement or long term basis. These arrangements may be made directly between parents and their relatives or friends or the local authority may be involved because the parents have asked them for help or because the local authority 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 sets out the range of possible placements the local authority could make if they were looking after your child. 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. Legal references are set out in the narrow column on the right.

Contact details for Family Rights Group advice line can be found at the end of 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;

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- **'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.
- **'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.

s.22 (1) CA

For further information, see advice sheet on parental responsibility.

The following people have parental responsibility (PR):

- 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 for 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

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What are the duties on the local authority regarding placement of a child?

The local authority is under a duty to safeguard and promote the welfare of each child they are looking after, whether they are in care (under a care or emergency protection order) or accommodated on a voluntary basis.

Section 22 (3) CA

When they make a placement they must also:

- place the child with a parent, other person with parental responsibility, a family member or other person connected with the child unless it is not reasonably practicable or consistent with the child's welfare; *Section 23 (6) CA*
- give due consideration to the child's religious persuasion, racial origin, cultural and linguistic background; *Section 22(5) CA*
- ensure that each child or young person placed in foster care is matched with a foster carer capable of meeting his/her assessed needs; *Standard 8, NMSFSR*
- wherever possible, make sure that a child is placed near his or her home; *Section 23(7) CA*
- place brothers and sisters together wherever possible if this is consistent with their welfare;
- where a child is disabled, make sure that the accommodation is not unsuitable for his or her particular needs; and *Section 23(8) CA*
- in most cases, arrange for the child or young person to undergo a medical examination by a qualified medical practitioner prior to the beginning of the placement, or as soon afterwards as possible. A young person of sufficient age and understanding can refuse a medical examination. *Para. 2.27 G&R Vol. 3*
Para. 2.32 G&R Vol. 3

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What are the duties on the local authority regarding consultation and planning for children?

When a child is looked after, whether in care or accommodation, the local authority must:

- “ascertain” and give “due consideration” to the wishes and feelings of:
 - a) the child
 - b) the child’s parents
 - c) any other person with parental responsibility
 - d) any other person whose wishes and feelings are considered by the local authority to be relevant before making any decision with regard to a child they are looking after, or propose to look after;
- draw up a written plan about placement arrangements. This includes details about contact arrangements and the plans (if any) for the child to return home to his or her family;
- hold regular reviews about the child’s care; and
- consult with the parents and other family members in this review process. If a “paper review” is held to meet review timescales, a full consultation including the child and family members should be held as soon afterwards as possible;
- appoint an independent reviewing officer whose job it is to arrange and chair review meetings, help the child and his her parents and wider family to express their views and monitor the implementation of the local authority’s plan.

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

*Regulations 3 & 5,
APCR*

*Regulation 2 RCCR
Regulation 7, RCCR
For further
information see
advice sheet on
making plans for
looked after children*

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

You should therefore be given clear information at all times about the local authority’s plans for your child, and copies of the minutes of review meetings. If the local authority fails to involve you in this review process and there is a fundamental change to the care plan as a result of the review, the local authority may be in breach of the Human Rights Act 1998. (Ask FRG for further details).

*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*

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Where can a child, who is looked after by the local authority, be placed?

The underlying principle in the Children Act 1989 is that the best place for most children to be brought up is in their own family, with the support from the State when the child is in need. This principle is reflected in the Regulations which provide for children to be placed with their families before being placed with foster carers whom the child does not know, unless this is not consistent with the child's welfare:

1. Placement with parents or others with parental responsibility:

- The local authority may place children in care, whether under full or interim care orders, with their parents or others with parental responsibility provided certain checks are made.
- Children who are accommodated voluntarily can be placed with their parents without such checks being made.
- The local authority must keep children within their families whenever possible by providing a range of services. If the local authority have concerns about a parent's care of their child, one way in which they can keep the family together whilst making sure the child remains safe is to arrange for the family to live in a short term **residential setting** where the parent's ability to care for their child can be assessed without the need for the family to be separated.
- Where care proceedings are pending, a residential assessment can be directed by the Court, although this will have to be paid for by the local authority. Some local authorities have their own centres while others are run by charities and other independent organisations;
- Where the local authority considers that the child should be placed with their parents but the parents are homeless, in exceptional circumstances the local authority has the power to assist the parents with finding housing so that the child and the family are able to live together, if this is the best way of meeting the child's needs. For further advice on this contact Family Rights group advice line or speak to your solicitor.

PCWPR, Regulation 3 and Schedule 1

For further information see advice sheet on immediate placements

s.17(6) as amended by s.122 s.22 ACA

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2. Placement with relatives and friends

- Regulations allow for the immediate placement of any child who is looked after by the local authority (whether voluntarily or on a court order) with relatives or friends. The relative or friend must sign a written agreement to undertake certain duties in relation to the placement, and a minimum of checks will be made, pending a full fostering assessment.
- Furthermore, there is a duty on the local authority to place a looked after child with a relative or friend unless it is not consistent with the child's welfare (see above).
- That person will need to be assessed as a foster carer for the child concerned.
- Fostering allowances should be paid to a relative or friend who is caring for a looked after child at the same rate as those paid to local authority foster carers.

*Regulation 38, FSR
For further
information see
advice sheet on
immediate
placements.*

s.23(6)

*s.23(2) The Queen on
the Application of L
and others v
Manchester City
Council IFLR 43*

So if there is someone in your family or a close friend who is willing to care for your child whilst s/he is looked after by the local authority you should ask him/her to get in touch with the social worker and ask if your child can be placed with him/her under Regulation 38 in the first instance, during which time the fostering assessment will be carried out.

*For further
information see
advice sheet on
return home.*

3. Placement in Foster and Residential care

- If the local authority does not place your child within the family or with friends, your child will either be placed with foster carers or in residential care, normally a 'community home' with other children. Whatever placement decision is made, you should **always** be consulted.
- There are regulations governing foster care placements and children's homes.
- The fostering service is under a duty to do the following:
 - make available foster carers who provide a safe, healthy and nurturing environment;
 - ensure fostering services value diversity and promote equality; and
 - ensure children's opinions, and those of their families and other significant people are sought over all issues which are likely to affect their daily life and their futures.
- The local authority is also under a duty to promote contact between parents, other relatives and significant people

*Section 23 (2) CA
See advice sheet on
making plans for
looked after children*

*NMSFSR, Standard
6,*

Standard 7

Standard 11

*s.34 and sched 2
para 15 CA; See
advice sheets on*

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with a child who is looked after, so long as this is consistent with the child's welfare. The fostering service has the same duty.

contact

*Standard
10/Regulation 14,
NMSFSR*

4. Placement in an independent setting

A child who is looked after may move into an independent setting as part of a plan developed for them when they leave the care system. In these circumstances they will still be treated as looked after until they reach 18 or they cease to be looked after for some other reason which means the local authority still has responsibility for them, but they may move to live in a flat or other supported independent environment.

*For further
information see
advice sheet on
advice and
assistance and
support on leaving
care.*

The local authority may also provide older children who need to be away from the family home with accommodation under section 17 Children Act, for example in bed and breakfast. In these circumstances, the young person is not considered looked after. However, the local authority should only do this if has made a clear decision that this is the best way of meeting the particular child's needs, following a detailed assessment of their circumstances and that a duty to accommodate the child under s.20 does not exist.

*LAC 2003 (13); R (H)
v Wandsworth LBC;
R (B) v Hackney LBC;
R(B) v Islington LBC
[2007] EWHC 1082
(Admin). For further
information see
advice sheet on
family support*

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Note: Private Fostering

- Where a child is placed for a period which is, or is intended to be, for more than 28 days, with someone who is not a local authority foster carer and is not a relative (i.e. a grandparent, aunt, uncle siblings or stepparent) it is a private fostering arrangement. *s.105 CA*
- Parents have a right to arrange this as an exercise of their PR and the carer can exercise day to day PR by arrangement with the parent. *s2 CA*
- Private fostering arrangements must be monitored by the local authority under the Private Fostering Regulations, but the child is not considered looked after by the local authority. *PFR, s.17(6) CA*
- Financial support for a private fostering arrangement will be provided either by the parents or if the child is in need it can be provided by the local authority in exceptional circumstances out of the s.17 family support budget. *s.17 CA*

Tips for negotiation

- If you or the local authority are suggesting that your child would be better off staying away from the family home, give as much information as possible about family members and friends who may be able to offer help with caring for your child
- Although the social worker should ask you, make sure that s/he is aware of your views on what type of home you would like to see your child live in, including your views on your child's racial, cultural, language and religious needs.
- If your child is going to be placed away from the family, it is a good idea to meet up with people who are going to care for your child beforehand, to be able to share information about your child and the placement.
- You can give your child help to settle in by keeping in touch with family news through cards, and phone calls and visits that have been arranged. It is important that your child feels loved by you even if she or he can't be with you at the moment.
- Make sure that the details of when you will see your child are agreed before the placement and recorded in the plan.
- If you need to, remind the social worker politely about their legal responsibilities.
- If you are at all unhappy about the type of placement your child is in, you can make a complaint.

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- If the local authority insists on doing something you are unhappy about, contact a solicitor who specialises in child care law, or Family Rights Group advice line.

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 10.00 – 3.30 every weekday. You can also write to us at: The Print House, 18 Ashwin Street, London, E8 3DL or Email to 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 <http://www.lawsociety.org.uk>. 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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