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## Support for relatives and friends who are caring for children

### References

**ACA:** Adoption and Children Act 2002

**CA:** Children Act 1989

**Framework:** *Framework for Assessment of Children in Need and their Families*, Department of Health, 2000, [www.dh.gov.uk](http://www.dh.gov.uk)

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

**FSR:** *The Foster Services Regulations*, 2002

**SSCBA:** *Social Security Contributions and Benefits Act 1992*

**CBA:** *Child Benefit Act 2005*

### Introduction

When a relative or friend takes on the care of a child because s/he cannot remain living at home with his/her parents, that person often needs financial and other help to care for him/her. If you are a carer in this position you may wonder where to go to ask for support.

This advice sheet outlines the range of possible sources of support and steps you can take to access this support. It will also refer you to other advice sheets for more detailed information, depending on your circumstances. If you need further advice about this you can contact Family Rights Group advice line.

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

Important terms used in this advice sheet include:

- ❑ **'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.

*For more information on who has parental responsibility see FRG advice sheet on 'Parental Responsibility'*

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# Does the local authority have to provide support to family and friends carers?

Whether or not the local authority has to provide you with support to care for the child will depend on the circumstances in which the child came to live with you and the subsequent legal status of the child whilst s/he is living with you. So you will need to try to identify which of the following categories your arrangement falls into in order to understand what support you may get and how you can access it:

1. Private arrangements in which you and the child's parents or others with parental responsibility made an agreement that you would care for the child without the local authority being involved;
2. Local authority placed the child with you because they had concerns about the child's safety and/or well-being when s/he was at home;
3. Residence order where you have been granted a residence order in respect of the child;
4. Special Guardianship order where you have been granted a special guardianship order in respect of the child.

The powers and duties of the local authority and other agencies to provide support in these circumstances are outlined below. If you are unclear about which category your arrangement falls into and you would like further advice, contact Family Rights Group's advice line.

*See end of advice sheet for details of Family Rights Group's advice line*

## 1. Private arrangements:

If the child came to live with you as a result of an agreement made between you and the child's parents, or others with parental responsibility for him/her, and the local authority were not involved, then you have the following possibilities for trying to get some support to care for him/her:

*See FRG's advice sheet on parental responsibility*

**1.1 Parents:** The child's parents are liable for maintaining their child so they are the first people you should ask for financial support. It may be that they have no income to speak of and therefore this is unrealistic, but if they have the means to pay but refuse to do so you can contact the Child Support Agency and ask them to help you.

*s.1 CSA 1991*

*CSA no is: 08457 133 133*

**1.2 Child benefit:** Parents lose their entitlement to claim child benefit if their child lives away from them for 56 days over a 16 week period (unless they are in hospital or at boarding school). Once they are no longer entitled to receive child benefit, you will be entitled to receive it in their place. Whilst you are waiting to receive the child benefit in your own name the parents will carry on receiving it but you can ask them to pass it on to you.

**1.3 Tax credits and benefits:** You may be entitled to child tax credit, working tax credit, income support and/or other benefits depending on your income and capital. For further information about this see Family Rights group advice sheet entitled: 'Financial implications of having a child come to live with you'. You can also look at the 'money, tax and benefits' section of [www.direct.gov.uk](http://www.direct.gov.uk)

**1.4 Specialist services from other agencies:** You may feel that the child you are caring for needs specialist services for example speech therapy or support with behaviour problems. If this is the case you can ask any agency which is already involved with the child to assess his/her need for such services. This assessment will be carried out using the Common Assessment Framework (CAF).

The CAF can be carried out by professionals who work with children, e.g. in health care, education as well as social work. The assessment considers three aspects of a child's life:

- the child's development;
- parents and carers; and
- environment.

This framework was introduced by the government to measure the level of extra support a child might require, in order to meet the government's five aims for all children of being healthy, staying safe, enjoying and achieving, making a positive contribution, and economic wellbeing.

The assessment should result in an agreement about actions that agencies, practitioners and/or the family can deliver and should consider what additional support may be needed from other services.

**1.5 Local authority support:** The local authority is under a general duty to provide support to 'children in need' and their families. Children 'in need' are defined in law but each local authority will have their own criteria for prioritising which children

they support. This should never be dependent on the local authority having concerns about the child's safety and well-being.

s.17(10) CA

Whether or not the local authority will provide additional support may depend on them carrying out an assessment of the child's needs and your ability to meet those needs. This assessment will be carried out using the Framework for the Assessment of Children in Need and their Families.

Framework for  
Assessment

So you will need to ask for an assessment of the child's support needs. The local authority may refuse to carry out such an assessment, arguing the child isn't sufficiently 'in need'. If the child hasn't had a CAF, then you could ask that this is carried out as a minimum and you can also challenge the local authority's refusal to carry out an 'in need' assessment through the local authority's complaints policy.

If an assessment of the child's needs is carried out by the local authority, they will then draw up a plan of services they will provide to meet the child's identified needs whilst living with you.

The kind of services they provide can include:

- ❑ **Day Care** – which could include day nurseries, playgroups, sponsored childminding, and out of school clubs;
- ❑ **Help provided in the family home** – this might involve someone from a befriending schemes or a family aide worker coming to provide practical help and support in your home.
- ❑ **Counselling** for children and adults;
- ❑ **Advice and guidance** for example about benefits, work, childcare;
- ❑ **Help with contact** arrangements to enable the child to stay in touch with members of the family whilst s/he is living with you;
- ❑ **Practical assistance, including accommodation and even cash help**: Local authorities may provide help to buy essential equipment for children, or for food and other necessities, and even help with housing costs or some other form of accommodation. In exceptional circumstances they may also provide cash help, and accommodation for a child and family;
- ❑ **Respite accommodation**: if you need a break from caring responsibilities, the local authority can arrange for the child to stay with a foster carer temporarily if they considered this would meet the child's needs but this would need the agreement of the parents or others with parental responsibility. This service is most frequently available to disabled children, but local authorities can provide respite

s.17(6) CA

accommodation for any children in need who would benefit from this.

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

***If you would like further information about how to access this support see Family Rights group advice sheet on family support services or contact our advice line***

**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 which will then monitor the arrangement and inspect your premises. For further information on this contact FRG advice line.

## **2. Local authority placed the child with you**

Children often go to live with relatives or friends as a result of there being concerns about the child's safety and well-being when they are living with their parents. Sometimes families are alert to this and make the arrangements directly themselves for the child to move to live with a relative in the short or long term, but sometimes the local authority is involved because they have been informed that the child is suspected of suffering significant harm.

When the local authority receives such information, they are under a duty to make enquiries about the child and, where they have ongoing concerns about his/her safety and well-being, they are required to make plans to ensure that s/he is safe and well-cared for. This can involve removal from the parents' home if the parents agree or they obtain a court order to authorise them to remove the child.

*s.47 CA; Working Together (chapter 5);*

*s.20, s31, s44 CA.*

*For more information about this see FRG advice sheet on 'child protection procedures' and 'care and related proceedings'.*

If the local authority asks you to look after the child because they have concerns about the child's safety and well-being, ***it is really important that you ask them the legal basis on which they are placing the child with you*** as this will affect your access to support and help.

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### ***What support should I receive from the local authority?***

When the local authority places a child with a relative or friend, the normal practice is that, provided the parents are in agreement or they have the necessary court order, the child is 'looked after' by the local authority which means they have formal responsibility to promote his/her welfare. Consequently when they will place the child with you either:

- because you are an approved foster carer (which means you will have already gone through a foster carer assessment which can take a number of weeks) or
- as an emergency placement under 'Regulation 38' which allows the local authority to place a child with a relative or friend for up to 6 weeks with only minimal checks, during which time they should carry out a full fostering assessment of you.

In either situation you are entitled to be paid as a local authority foster carer and you should not be paid less than the government's recommended fostering allowance simply because you are related to or known by the child. You should be paid this allowance from the moment you take on the care of the child and you will be entitled to other support to meet the child's needs.

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

s.23(2) CA

Reg 38 FSR

For further info on this see FRG advice sheet 'Becoming a foster carer'

s.23(2) CA; The Queen on the Application of L and others v Manchester City Council IFLR 43; Ombudsman's Report: complaint against Dudley Council ref no 06/B/09795 2007

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

**Note:** If you did agree with the local authority when they placed the child with you that it was to be a private arrangement then it is likely to be treated as such in which case your options for support are as outlined on p.2-5 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*

### **3. Residence orders:**

Whatever the circumstances in which the child came to live with you, if you have been granted a residence order on him/her your possible sources of support are as follows:

**3.1 Parents:** as outlined under private arrangements on p.2 above

**3.2 Child benefit:** as outlined under private arrangements on p.3 above

**3.3 Tax credits and benefits:** as outlined under private arrangements on p.3 above

**3.4 Specialist services from other agencies:** as outlined under private arrangements on p.3 above

**3.5 Local Authority:** The local authority support can be provided if the child is assessed as being 'in need' as outlined on p.3-5 under private arrangements above.

However in addition the local authority have the power to provide a **residence order allowance**. There is no statutory guidance on how the local authority should decide whether or not to provide such an allowance but it is usually means tested. The local authority should have information available on how you can apply for this allowance and the criteria they use when they make decisions about whether or not to pay it and how much to pay.

You can apply for a residence order allowance at the time the

*Sched 1 para 15, CA*

*R (H) v Essex CC (2009) 2 FLR 91*

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residence order is made, or at any time after the order is made.

## **4. Special Guardianship Orders:**

Whatever the circumstances in which the child came to live with you, if you have been granted a special guardianship order on him/her your possible sources of support are as follows:

**4.1 Parents:** as outlined under private arrangements on p.2 above

**4.2 Child benefit:** as outlined under private arrangements on p.3 above

**4.3 Tax credits and benefits:** as outlined under private arrangements on p.3 above

**4.4 Specialist services from other agencies:** as outlined under private arrangements on p.3 above

**4.5 Local Authority:** The local authority support can be provided if the child is assessed as being 'in need' as outlined on p.3-5 under private arrangements above.

However, in addition the local authority has a duty to establish **special guardianship support services**. Although this does not mean that they have a duty to provide support services to every child under a special guardianship order, it requires the local authority to set up a framework for responding to requests for an assessment of a child's needs for special guardianship support services, and for providing support services to meet the child's identified needs following the assessment.

**For further information about this see advice sheet on 'Special guardianship: what's in it for carers'? or contact FRG's advice line.**

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

## What if the local authority refuses to provide me with support?

Unless you are an approved local authority foster carer or you are caring for 'looked after' child in an emergency, you do not have the right to insist on a particular service being provided by the local authority. However, it is good practice for Children's Services to work with families towards an agreed plan.

If they refuse to carry out an assessment of your child's needs, or you cannot reach agreement about the services they propose to provide, you can make a complaint to the local authority.

*For further information see FRG advice sheet on complaints*

If you are in the process of applying for a special guardianship order or residence order, it is advisable to try to reach an agreement with the local authority about the support services including finance that they are going to provide **before** the order has been made, as you may find it harder to access additional services from the local authority after the order has been made. It is a good idea to try to get any agreement about support noted in the preamble to the special guardianship order.

## Where can I get further help?

- ❑ Contact FRG's freephone advice line for further advice, on 0808 801 0366 Monday to Friday 10am-3:30pm or visit [www.frg.org.uk/advice\\_sheets.html](http://www.frg.org.uk/advice_sheets.html) 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 or search on [www.lawsociety.org.uk](http://www.lawsociety.org.uk). If you are on a low wage, or on income support or job seeker's allowance, you may be able to get free advice initially under the Legal Services Commission public funding scheme.

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