



Fostering – long-term, emergency, temporary and private placements; and care orders

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A fostering arrangement is different to adoption. When a child is adopted, legal responsibility sits entirely with the new parents, as if the child had been born to them. Fostering is not such a dramatic step: a fostered child, even one who is in the care of a local authority, can return to their birth parents if the circumstances are appropriate. Alternatively, fostering can be a staging post to adoption (for example, until suitable adoptees are matched).

If a child is taken into the care of a local authority, then the local authority might place the child with foster carers. Such foster carers have to be approved by the local authority or a fostering agency, unless it is a temporary placement. Approval is a detailed process, culminating in a fostering panel considering a person's suitability to foster, and making a recommendation to the fostering service.

For children not in the care of a local authority, a private fostering arrangement can be made. This is an arrangement lasting at least 28 days where the foster carer is someone other than a parent, relative, or someone who has parental responsibility for the child.

The local authority must be notified of such an arrangement; notification must include details of the child and the foster carer and a local authority officer must regularly visit the child. The local authority has the power to prevent or stop a private fostering arrangement.

However, there is no need to notify the local authority of a private fostering arrangement if it is intended to be less than 28 days in duration, or if the arrangement is with a parent, relative (grandparent, brother, sister, uncle or aunt) or person with parental responsibility for them.

In addition to a private fostering arrangement, a relative such as a grandparent, can seek to foster their grandchild if the child is in care. They can become a local authority foster carer if they gain approval, or offer a temporary placement for 16 weeks without needing approval.

The Library Standard Note [Support for family and friends carers looking after children](#) (SN/SP/2967) might also be of interest, which also includes details of support available to local authority foster carers.

This note applies to England only.

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1 Looked after children

1.1 The decision to take a child into the care of a local authority

Care orders

Under section 31(8), a care order may only be made in favour of a local authority i.e. only a local authority can take a child into care.

Long-standing statutory procedures set out in the *Children Act 1989* have to be followed before undertaking the significant step of removing a child from their family and placing them into the care of a local authority.

Section 31(2) of the *Children Act 1989* prescribes the limited circumstances in which a care order may be made by a court, namely that the court may only make such an order if it satisfied:

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to—
 - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
 - (ii) the child being beyond parental control.

Harm is defined in section 31(9) as “ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another”. In this statement: “development” means “physical, intellectual, emotional, social or behavioural development”; “health” means “physical or mental health”; and “ill-treatment” includes “sexual abuse and forms of ill-treatment which are not physical”.

Importantly, the test set out in the 1989 Act is whether that harm is “significant”. As Hershman and McFarlane explain:

In order for the statutory threshold criteria to be satisfied, the harm which is either being suffered, or is likely to be suffered, must be ‘significant harm’. It will be a matter for the court to determine, on the balance of probabilities, whether the harm in a particular case is significant. However, when the harm suffered turns upon the child’s health or development, the court must compare the child’s health or development with that which could reasonably be expected of a similar child.

It is the harm which must be significant, rather than any act or omission which leads to the harm occurring or being likely to occur. However, harm which may not itself be significant may give rise to the finding that the child is likely to suffer significant harm in the future.

It is difficult for a qualitative term such as ‘significant’ to be accurately defined. The 1991 guidance relied upon a dictionary definition of ‘significant’, meaning ‘considerable, noteworthy or important’; this definition has received judicial endorsement. The 2008 guidance simply says that whether harm is ‘significant’ is for the court to determine on the facts of the case. ‘Significant harm’ is harm which the court should take into account when considering a child’s future.

The assessment of whether harm in a particular case is significant may involve the court considering whether, on an objective general view, the harm would be significant

if it occurred to any child. Equally, it seems that the court must also consider the particular characteristics of the child concerned to determine whether harm, which may not be significant in the general context, is nevertheless significant in the case of the particular child. Some children may be more vulnerable to harm than others, hence the importance of concentrating upon the effect of the harm, which is the effect on the child concerned, rather than the particular actions which may have caused it.¹

If, in a particular case, a court judges that the threshold criteria set out in section 31(2) are met, then, as the legal text *Children Law and Practice* explains, “the court must then consider whether an [section 31] order should be granted, and if so what type of order [i.e. a care order or a supervision order²], using the principle that the child’s welfare is the paramount consideration, having particular regard to the matters set out in the statutory welfare check-list”.³

Section 1 of the *Children Act 1989*, entitled “Welfare of the child”, states the statutory principle that when a court is determining a matter such as a care order, the court’s “paramount consideration” shall be the child’s welfare:

When a court determines any question with respect to—

- (a) the upbringing of a child; or
- (b) the administration of a child’s property or the application of any income arising from it,

the child’s welfare shall be the court’s paramount consideration.

When considering whether to make a care order, section 1(3) of the Act states what is commonly referred to as the statutory “welfare check-list” as stated below (although the court may also consider other matters not included in the list):

a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

¹ Hershman and McFarlane, *Children Law and Practice*, paras C–952 – C–953

² A supervision order under section 31 of the *Children Act 1989* is an order that places a child under the supervision of a designated local authority, the effect of which is that a supervisor is required, by law, to become directly involved in the life of the child, including to advise, assist and befriend the child.

³ Hershman and McFarlane, *Children Law and Practice*, para C–926

In addition, section 1(5) states that “where a court is considering whether or not to make one or more orders under this Act with respect to a child [including a care order], it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all”.

Before making a care order the court would consider the proposed arrangements for contact with the child by their parents or guardian,⁴ and invite comments on them (section 34(11)). The court would also have to consider the statutory care plan drawn up under section 31A(3A) of the *Children Act 1989*.

Only once the court has undertaken the steps stated above may it, if it so determines, make a care order. Any care order continues in force until the child reaches the age of eighteen, unless it is brought to an end earlier.⁵

Interim care orders

An interim care order may be made in the following circumstances, under section 38 of the *Children Act 1989*:

- proceedings relating to a care order (or supervision order) are adjourned; or
- family proceedings where a question arises to the welfare of any child and the court directs the local authority to investigate the child’s circumstances (because a care or supervision order might be appropriate).

Whereas a court needs to be “satisfied” that a child is suffering or likely to suffer significant harm in order to make a care order, to make an interim care order the court only has to be “satisfied that there are reasonable grounds for believing” that the child is suffering or likely to suffer significant harm (i.e. a relatively weaker test). Hershman and McFarlane note, however, that:

It is a mistake to confuse the threshold for an interim order (‘reasonable grounds for believing’ that s 31 threshold is satisfied) with the question of what interim order, if any, should be made.

Even where the interim threshold criteria are met and there is a need for an interim order, the court must be careful to give separate consideration to the question of whether removing a child from parental care is justified at an interim stage; the interim decision must necessarily be limited to issues that cannot await the final hearing and must not extend to issues that are being prepared for determination at that hearing.⁶

An interim care order has the same effect as a care order under section 31(11) of the *Children Act 1989*.

1.2 Statutory fostering arrangements

Under section 23(2) of the *Children Act 1989*, a child looked after by a local authority (including a child in care) can be placed with “a family”, “a relative”, or “any other suitable

⁴ The full list as stated under section 34(1) is (a) parents, (b) any guardian or special guardian; (ba) any step-parent who by virtue of section 4A has parental responsibility for him; (c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and (d) where, immediately before the care order was made a person had care of the child by virtue of an order made in the exercise of the High Court’s inherent jurisdiction with respect to children, that person.

⁵ *Children Act 1989*, section 91(12)

⁶ Hershman and McFarlane, *Children Law and Practice*, para C–1416

person". The term "relative" includes "grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent".⁷

In order to become a local authority foster carer, there are a number of steps that need to be undertaken to ensure the welfare of the child is protected – the Department for Education states that "no one has a right to be a foster carer, and fostering decisions must focus on the interests of the child".⁸

The Fostering Network provides a helpful summary of the steps that someone wishing to become a local authority foster carer has to undertake – this includes "thorough background checks from the Criminal Records Bureau, local authority and personal and professional referees", submission of a report by the local fostering service, and consideration and recommendation by an independent fostering panel:

Becoming a foster carer

Contact your local fostering service – they will send you further information about fostering for them and ask you some questions about your suitability to foster.

You will either be invited to attend an information session or the fostering service will offer for a member of their team to come out and visit you.

Once you have gathered more information you should decide whether or not to make a formal application to foster to the fostering service of your choice.

The fostering service will now start your application, they will assign you with a social worker who will support you throughout the process and also carry out a thorough assessment on you and your household.

Crucial to the process of becoming a foster carer is attending the pre-approval training. All foster carers complete a thorough training course, usually The Skills to Foster, which will prepare you and the other members of your household for a career in fostering.

Your assessment continues including thorough background checks from the Criminal Records Bureau, local authority and personal and professional referees.

Once your assessment is complete your social worker will submit a full report to the fostering panel who will consider your suitability to foster. The fostering panel will make a recommendation about your approval to the fostering service.

The fostering service will make a final decision about your approval to foster and inform you in writing if you have been successful along with your terms of approval.

[...]

The fostering service will review your approval to foster annually.⁹

The approval process for voluntary organisation foster carers is the same as that for local authority foster carers.¹⁰

⁷ *Children Act 1989*, section 105(1)

⁸ Department for Education, *The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services*, 2011, p44, para 5.29

⁹ The Fostering Network, *Applying to Foster*, website [taken on 30 April 2012]

¹⁰ Hershman and McFarlane, *Children Law and Practice*, para H-432

1.3 Number of children that a foster carer can care for

Schedule 7 of the *Children Act 1989* is entitled “Foster Parents: Limits on Number of Foster Children” and applies to statutory private foster carers, local authority foster carers, voluntary organisation foster carers, and those foster carers which whom a child has been placed by a voluntary organisation.

Paragraph 2 states that the “usual fostering limit” is that “a person may not foster more than three children”.

However, exception may be made if the children are all siblings with respect to each other: “a person may exceed the usual fostering limit if the children concerned are all siblings with respect to each other”, although this is a discretionary exception.

Alternatively, the local authority can exempt a foster carer from the usual fostering limit, but in doing so it shall regard to:

- (a) the number of children whom the person proposes to foster;
- (b) the arrangements which the person proposes for the care and accommodation of the fostered children;
- (c) the intended and likely relationship between the person and the fostered children;
- (d) the period of time for which he proposes to foster the children; and
- (e) whether the welfare of the fostered children (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted.¹¹

Even if an exemption from the usual fostering limit is made, a local authority has the power to vary or cancel an exemption at any time.¹²

The same provisions apply to voluntary organisation foster carers: “it is the local authority for the area in which the foster carer lives which will make the decision whether to grant an exemption allowing a foster carer to foster more than three children”.¹³

In all cases, the local authority’s decision will be influenced by the fostering panel’s recommendations, as the panel’s duties include “making recommendations about the number, age range and backgrounds of the children or young people” that should be placed with an applicant foster carer.¹⁴

¹¹ *Children Act 1989*, Schedule 7, para 4(2)

¹² *Children Act 1989*, Schedule 7, para 4(4)

¹³ Hershman and McFarlane, *Children Law and Practice*, para H-412

¹⁴ Foster Care Associates, *Fostering Panel*, website [taken on 30 April 2012]

2 Short-term fostering arrangements

2.1 Emergency placement (with a local authority foster carer) up to 6 working days

It is possible for a local authority to provide emergency fostering care to a child, under the *Care Planning, Placement and Case Review (England) Regulations 2010* (SI 2010/959) which came into force on 1 April 2011.

The Department for Education explained that while a child must only be placed with a foster carer whose terms of approval match the child's circumstances, "in an emergency a child may be placed for up to 6 working days with any foster carer who has been approved under the 2011 Regulations".¹⁵

Hershman and McFarlane's *Children Law and Practice* explains that under regulation 23 of the 2010 regulations:

In an emergency, the responsible authority may place the child with any local authority approved foster-parent, even if the terms of the approval are not consistent with the placement, provided that the placement is for no longer than six working days. At the end of this period, the local authority must terminate the placement unless the terms of the approval have been amended to be consistent with the placement.¹⁶

Exceptions are also made to other rules, such as in regard to providing information beforehand about the fostering service's policy on managing behaviour, informing the child about the placement, and being consistent with the child's care planning process. When an emergency placement does occur, the fostering service must inform the responsible authority within one working day.¹⁷

2.2 Temporary placement (with a relative, friend, or other person connected to the child) up to 16 weeks

Alternatively, a temporary placement can be sought with a relative, friend or other person connected the child. Under regulation 24 of the *Care Planning, Placement and Case Review (England) Regulations 2010* (SI 2010/959), such a placement based on "temporary approval" can last up to 16 weeks, and the foster carer concerned does not have to be approved as a local authority foster carer during that time.

However, their suitability will be assessed, and if they wish to continue fostering the child beyond 16 weeks they will be subject to a full assessment accordance with the *Fostering Services (England) Regulations 2011* (SI 2011/581) in order to become a local authority foster carer.

Hershman and McFarlane's *Children Law and Practice* explains:

Where the local authority is satisfied that the most appropriate placement for a child is with a relative, friend or other person connected with him, even though that person is not an approved local authority foster-parent, it may approve that person as a foster-parent for a temporary period of up to 16 weeks.

Prior to placing the child the local authority must:

¹⁵ Department for Education, *The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services*, 2011, p14, para 3.3

¹⁶ Hershman and McFarlane, *Children Law and Practice*, para H326

¹⁷ Department for Education, *Fostering Services: National Minimum Standards*, 2011, p13, para 3.8, p23, para 11.3 and p32, para 15.3

- Assess the suitability of the proposed carer, the accommodation and all persons aged 18 or over living in the placement;
- Consider whether the proposed placement will safeguard and promote the child's welfare and meet his needs as set out in the care plan;
- Make immediate arrangements for the carer to undergo a full assessment as a local authority foster-parent before the 16-week period expires.

The matters which the local authority must consider when assessing a person's suitability to provide a temporary foster placement are set out in CPPCR(E)R 2010 [*Care Planning, Placement and Case Review (England) Regulations 2010*], Sch 4.

In summary, Schedule 4 states that such an assessment should take into account the following factors regarding the temporary foster carer:

- the nature and quality of any existing relationship with the child;
- their capacity to care for children with particular regard to issues relating to the child;
- their state of health including their physical, emotional and mental health and medical history including any current or past issues of domestic violence, substance misuse or mental health problems;
- their family relationships and the composition of their household;
- their family history;
- particulars of any criminal offences of which they have been convicted or in respect of which they have been cautioned;
- their past and present employment and other sources of income; and
- the nature of the neighbourhood in which their home is situated and resources available in the community to support the child and the connected person.

The 16 week time limit can be extended in certain circumstances. If the person temporarily looking after the child has yet to be notified of the outcome of the application to become a local authority foster carer, it can be extended by a further 8 weeks.

3 Private fostering

3.1 Private fostering, and kinship/friends and family fostering

Private fostering arrangements are covered by section 66 of the *Children Act 1989*. A child in care could not be looked after under such an arrangement.

The Act states that a “privately fostered child” means “a child who is under the age of sixteen [18 for disabled children] and who is cared for, and provided with accommodation in their own home” by someone other than:

- their parent;
- person with parental responsibility for them; or
- relative. Section 105(1) of the Act defines the term “relative” as including “grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent”.

As such, where the private foster carer is a parent, relative, or a person not a parent but with parental responsibility, the arrangement is not covered by section 66 and the fostering arrangement could be described as being provided by a “non-statutory private foster carer”.

The British Association for Adoption and Fostering (BAAF) explains: “if [children] are not looked after by the local authority, children can live with their aunts, uncles, brothers, sisters or grandparents without outside involvement”¹⁸ – for example, there is no need to inform the local authority (as there would with a statutory private fostering arrangement, see section 3.2).

In addition, section 66 only applies if the private fostering arrangement is intended to last for a period of more than 28 days.

3.2 Involvement of the local authority

For statutory private fostering arrangements under section 66, the *Children Act 1989* states that “it shall be the duty of every local authority to satisfy themselves that the welfare of children who are or are proposed to be privately fostered within their area is being or will be satisfactorily safeguarded and promoted and to secure that such advice is given to those concerned with them as appears to the authority to be needed”.

Under regulation 3 of the *Children (Private Arrangements for Fostering) Regulations 2005* (SI 2005/1533), a person who proposes to foster a child privately must notify the appropriate local authority of the proposal either six weeks in advance of the start of the arrangement, or immediately if the arrangement is due to start in less than six weeks. Similarly, any person who is involved (whether or not directly) in arranging for a child to be fostered privately must notify the appropriate local authority of the arrangement as soon as possible after the arrangement has been made. In addition, a parent or person with parental responsibility for a child who knows that it is proposed that the child should be fostered privately must notify the appropriate local authority of the proposal as soon as possible after he becomes aware of the arrangement, even if they are not involved (whether directly or not) in the arrangements. The regulations have created a “notification scheme” for private fostering.

¹⁸ British Association of Adoption and Fostering, [All about Fostering – Are there different types of fostering?](#), website [taken on 16 December 2011]

The details of what the notification should include are set out in Schedule 1 of the regulations and include:

- (a) the name, sex, date and place of birth, religious persuasion, racial origin and cultural and linguistic background of the child;
- (b) the name and current address of the person giving the notice and his addresses within the previous five years;
- (c) the name and current address of the proposed or current private foster carer and his addresses within the previous five years;
- (d) the name and current address of the parents of the child and of any other person who has parental responsibility for the child and (if different) of any person from whom the child is to be, or was, received;
- (e) the name and current address of the minor siblings of the child, and details of the arrangements for their care;
- (f) the name and current address of any person, other than a person specified in sub-paragraph (d), who is or was involved (whether or not directly) in arranging for the child to be fostered privately;
- (g) the date on which it is intended that the private fostering arrangement will start, or on which it did start; and
- (h) the intended duration of the private fostering arrangement.

For the proposed private foster carer, they are required to submit to the local authority the following information:

- (a) any offence of which he has been convicted;
- (b) any disqualification or prohibition imposed on him under section 68 or 69 of the Act or under any previous enactment of either of those sections;
- (c) any such conviction, disqualification or prohibition imposed on any other person living in or employed at the same household;
- (d) any order of a kind specified in regulations under section 68 of the Act made at any time with respect to him;
- (e) any order of a kind specified in regulations under section 68 of the Act made at any time with respect to a child who has been in his care; and
- (f) any rights or power with respect to a child that have been at any time vested in an authority specified in regulations under section 68 of the Act under an enactment specified in those regulations.

Under section 68 of the *Children Act 1989*, the *Disqualification from Caring for Children (England) Regulations 2002* (SI 2002/635) bars certain people from acting as private foster carers. It also prevents a person who would not otherwise be disqualified from being a private foster carer if they live in the same household as a person who is disqualified, or lives in a household at which a disqualified person is employed.

Once a local authority has received notification of an intention to privately foster a child, within seven working days an officer of the local authority must:

- (a) visit the premises where it is proposed that the child will be cared for and accommodated;
- (b) visit and speak to the proposed private foster carer and to all members of his household;
- (c) visit and speak to the child, alone unless the officer considers it inappropriate;
- (d) speak to and, if it is practicable to do so, visit every parent of or person with parental responsibility for the child; and
- (e) establish such matters listed in Schedule 2 as appear to the officer to be relevant.¹⁹

The officer must then make a written report to the local authority. The process is repeated through a further visit which is undertaken once the local authority has been notified that the private fostering arrangement has commenced; such notification must be given by the foster carer and the parent (and person with parental responsibility) within 48 hours of the commencement. Schedule 3, rather than Schedule 2, of the regulations apply in respect of point e on the list above.

Once the private fostering arrangement has commenced, an officer of the local authority must visit the child at intervals no greater than 6 weeks during the first year of the arrangement, and intervals of no greater than 12 weeks in subsequent years. The child, their foster carers, parents or any person with parental responsibility for the child can also request a visit. After each visit, the officer must make a written report.

Under section 67 of the *Children Act 1989*, a local authority has the power to prevent or stop a private fostering arrangement, based on their assessment of safeguarding or promoting the welfare of the child. Section 67(5) states:

Where a local authority are not satisfied that the welfare of any child who is [or is proposed to be] privately fostered within their area is being [or will be] satisfactorily safeguarded or promoted they shall—

- (a) unless they consider that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by—
 - (i) a parent of his;
 - (ii) any person who is not a parent of his but who has parental responsibility for him; or
 - (iii) a relative of his; and
- (b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

In addition, while the Department for Education's *National Minimum Standards for Private Fostering* do not have the full force of statute, they should be complied with unless local

¹⁹ *Children (Private Arrangements for Fostering) Regulations 2005* (SI 2005/1533), regulation 4

circumstances indicate exceptional reasons which justify a variation. It was intended that the National Minimum Standards:

specify a minimum standard for local authority practice in the fulfilment of Children Act duties and functions in relation to private fostering. They, along with the new measures in section 44 of the Children Act 2004 and the 2005 regulations, are intended to better focus local authorities' attention on private fostering, in part by requiring them to take a more proactive approach to identifying arrangements in their area.²⁰

3.3 Lapsed provision for a registration scheme

The death of Victoria Climbié, for which her private foster carers (her great-aunt and her partner) were found guilty of murder, prompted Lord Laming's January 2003 report into the circumstances surrounding her murder, which noted that "there is no duty ... to approve or register private foster parents".²¹

While the *Children Act 2004* which together with the *Children (Private Arrangements for Fostering) Regulations 2005* (SI 2005/1533) amended the notification scheme for private foster carers, the 2004 Act also included provision to allow a registration scheme for private foster carers to be established. The then Government stated that it would take such a step "if the enhanced and strengthened notification scheme is found not adequately to be safeguarding and promoting the welfare of privately fostered children".²²

The introduction of a registration scheme was time-limited by a sunset clause to only four years after the *Children Act 2004* was passed. The time limit was subsequently extended to seven years, but lapsed in November 2011.

²⁰ Department for Education, *National Minimum Standards for Private Fostering*, 2005, p3

²¹ Report of an Inquiry by Lord Laming, *The Victoria Climbié Inquiry*, Cm 5730, January 2003, p350, para 17.12

²² *Children (Private Arrangements for Fostering) Regulations 2005* (SI 2005/1533) – *Explanatory Memorandum*, p3, para 7.4

4 Fostering organisations

There are several organisations that can provide further information and advice on fostering; some links are provided below:

- The Fostering Network
<http://www.fostering.net/>
- The British Association for Adoption and Fostering
<http://www.baaf.org.uk/>
- Be My Parent (BAAF)
<http://www.bemyparent.org.uk/>
- Fostering Information Line
<http://www.fostering.org.uk/>

5 Key legislation

- *Children Act 1989*
- *Disqualification from Caring for Children (England) Regulations 2002 (SI 2002/635)*
- *Children (Private Arrangements for Fostering) Regulations 2005 (SI 2005/1533)*
- *Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959)*
- *Fostering Services (England) Regulations 2011 (SI 2011/581)*