

## **Appendix 2: Guidance on when an arrangement can be considered an informal family arrangement and when a child should become looked after**

**Statutory Guidance produced for England and Wales states the following:**

### **The provision of accommodation under section 20(1) (IOM Section 25(1))**

- 3.8 Section 20(1) of the 1989 Act provides that every local authority must provide accommodation for any child in need within their area who appears to them to require accommodation as a result of: (a) there being no person with parental responsibility for the child; (b) their being lost or having been abandoned; or (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care. When a local authority is considering whether a child cared for by family and friends “requires accommodation”, the question at (c) will be particularly relevant: does the child appear to the authority to require accommodation because the person who has been caring for the child is prevented from providing the child with suitable accommodation or care? If it appears to the authority that the child does require accommodation, then it must provide that accommodation. Under section 20(4) the local authority may also provide accommodation for any child in their area (even though a person who has parental responsibility for the child is able to provide them with accommodation) if they consider that to do so would safeguard or promote the child's welfare. Short breaks are frequently provided under this provision.
- 3.9 Before providing accommodation under section 20, the local authority must, so far as is reasonably practicable and consistent with the child's welfare, ascertain and give due consideration to the child's wishes and feelings regarding the provision of accommodation. If a person with parental responsibility for the child, who is willing and able to provide accommodation or arrange for accommodation to be provided to them, objects to the local authority providing accommodation, the authority should consider whether the child is suffering or is likely to suffer significant harm unless he or she becomes looked after by the authority, and if so seek a care order under Part 4 of the 1989 Act (section 20 (7)). Further information on this can be found in Children Act 1989 Guidance and Regulations Volume 1: Court Orders.<sup>5</sup>
- 3.10 Where a child is provided with accommodation under section 20, or is subject to a care order, the child is looked after and the duties in Part 3 of the 1989 Act, particularly sections 22 to 22D, and the 2010 Regulations will apply.
- 3.15 A child who is looked after and is placed with a relative, friend or other person connected with the child in accordance with section 22C(5) continues to be looked after. In the case of a child who is provided with accommodation under section 20, the child's looked after status will end when the local authority considers that the child no longer requires accommodation under section 20(1) of the 1989 Act. In the case of a child subject to a care order, the child will continue to be looked after until the order is discharged or the foster carer is granted an order which gives them parental responsibility for the child.
- 3.16 Whether or not a child who is cared for by a family and friends carer should be looked after by the local authority will be a matter to be decided by the

local authority on a case by case basis. In the context of family and friends care, the key question will be whether the child appears to the local authority to require accommodation for one of the reasons in section 20(1) of the 1989 Act. It may not always be easy to determine whether a child who is cared for by family or friends requires accommodation for the purposes of section 20(1) or whether that child's needs should be met by providing support under section 17 of the 1989 Act.<sup>6</sup> In any event, where the local authority has instigated the arrangement for a child to live with a friend or relative, the local authority should provide an appropriate range and level of support for those arrangements.

### **Case Law:**

Court of Appeal judgment given on 10 November 2011 (R (SA) v Kent County Council)

The local authority had appealed against a decision that a child living with a grandparent in an arrangement initiated by the authority, was a 'looked after' child and thus that the grandparent was entitled to financial provision from the authority in the form of a full fostering allowance.

The Court of Appeal dismissed the appeal, upholding the finding that the child was 'looked after' and that the grandmother was entitled to the full fostering allowance, rather than just discretionary payments under Section 17 of the, Children Act 1989. The Court of Appeal judgment was largely concerned with legal arguments on the interpretation of Section 23 of the Children Act 1989 in the light of previous case law. The Court, however, broadly agreed with the reasons given by the court of first instance for finding in the grandmother's favour.

The local authority's argument, that the arrangement was a private arrangement between the mother and grandmother, was not accepted by the Court. The child was living with the grandmother by virtue of a placement as a looked after child. The decision highlighted the following issues:

- before the child came to live with the grandmother, all discussions were initiated by the local authority
- the arrangement for the child to live with the grandmother resulted from the grandmother's discussions with the social worker rather than any discussions between her and the child's mother
- the social worker was centrally involved in sorting out what arrangements should be made for the child
- the social worker's significant involvement in day to day arrangements for the child appeared clearly from the records
- neither the nature of the placement nor the question of financial support were ever addressed explicitly with the grandmother by the local authority.

Although the local authority sought to regulate the living arrangements that should be in place for the child, no one from the local authority ever set out for the grandmother, at that time, the ambit of any financial help that might be available for her and certainly no one told her that she would, essentially, be on her own with regard to financing the child's stay except in so far as discretionary payments might be made under Section 17.

## **Short term arrangements to safeguard**

There will be circumstances when the Department will facilitate arrangements for parents to arrange for relatives or friends to care for a child in order to prevent the child from becoming looked after. This may be in response to a crisis in the parental home or allegation against a parent which makes it unsafe for the child to remain with his/her parent/s in the short term e.g. in the initial phase of a Section 46 enquiry when the facts are being established. In these circumstances the Team Manager or Out of Hours Manager on call may approve this family arrangement without the need for the child to become looked after for a period of up to 48 hours following assessment appropriate to the circumstances – some of the factors below still need to be weighed to determine whether this is a safe arrangement even in the very short term (e.g. parent/s agreement and assessment of the likelihood they will keep to the arrangements made). Professional judgement is required to assess a child's safeguarding needs in each situation. After the 48 hours, if it has not been agreed that the child should return to the care of his/her parent/s a decision will need to be made by the relevant Service Manager as to whether the child should become looked after or whether the informal family arrangement can continue.

### **When a 'non abusing' parent who may offer care and accommodation does not have PR**

If the parent with PR is prevented from providing suitable care and accommodation but wishes the parent without PR to provide this care this may be considered a private family arrangement which would prevent the child from becoming looked after - if that parent appears to be able to offer suitable care and accommodation. The parent without PR should be advised to seek legal advice regarding obtaining PR and potentially a Residence Order.

If a parent who does not have PR wishes to provide care for a child and does not have the agreement of the parent with PR they must apply for an interim Residence Order with the support of the Department if assessment suggests that this is the best place for the child to live. Until that Order is in place, if the parent with PR has agreed for the child to be accommodated under S25 the Department must work with them to identify a family and friends carer that is acceptable to the parent or if one cannot be identified, place in foster/residential care. If the Department obtains an order (i.e. EPO or ICO) and assessment has identified that the most appropriate placement is with the parent who does not have PR, the placement can be made using the family and friends care emergency placement process which gives temporary approval (for up to 6 weeks). During this time, with the Department's support, a Residence Order (or Interim) should be sought, which would then end the 'looked after' status of the child. In this scenario, as long as the application for Residence Order is made in a timely manner, the involvement of Fostering First would not be necessary.

**NB:** the law regarding obtaining PR for unmarried fathers changed on 1 November 2013 – for babies registered from that date forward if the father is named on the birth certificate he has PR.

### **When the child is the subject of a PPO**

Until it is deemed appropriate to return the child who has been the subject of a PPO to a person with parental responsibility the child must become looked after.

## **The key issues when making the decision:**

The child may need to be looked after if some or all of the following circumstances apply. This list is not exhaustive and other factors may be relevant as each case must be assessed on its own facts:

- Birth parents may not agree, or may be inconsistent as to their agreement for child being cared for by family and friends carers;
- There is concern that the child's placement with family or friends carers may be seriously disrupted by a birth parent whose behaviour may have been assessed as being potentially dangerous, or as posing a significant risk;
- Court orders are in place which makes managing contact difficult;
- A birth parent may be untraceable or incapable of giving agreement to the child being cared for by family/friends carers;
- If the Department assesses that it needs to share Parental Responsibility with the birth parent/s in order to promote and safeguard the child's welfare and secure the placement;
- Has the Department initiated the arrangement for the child to live with the family or friend or was it the parent?;
- What would be our response if the parent refused to give or withdrew permission for an informal arrangement for the child to live with the relative or friend – if we would want to seek to prevent a parent resuming care of a child it would suggest that the child must be looked after so the Department has a standing in the arrangement;
- Does the child appear to need accommodation under the duties of Section 25 (1) i.e. no person has PR: he is lost or has been abandoned; the person who has been caring for him prevented from providing him with suitable accommodation or care?;
- Is the Department providing accommodation to safeguard or promote their welfare under the powers of Section 25 (2)?;
- Is the child in need of an alternative living arrangement because they are or are likely to suffer significant harm and that harm is attributable to the care given (or not given) by the parent or they are beyond parental control (Section 31)?;
- What are the wishes and feelings of the child; the parent and prospective caregiver regarding the status of the arrangement being discussed?;
- What is the proposed length of the placement – short term (e.g. to safely facilitate enquiries into an allegation or crisis that has arisen, beyond the initial 48 hours described above), or an ongoing situation?

The assessment upon which decision making is based must document clearly the factors above as relevant to the case rather than it being verbally reported for instance that the parent made the arrangement directly with their family member with social work support rather than the social worker initiating the arrangement with the family member. This will be required to defend any challenge to the decision further down the line and for audit purposes.

If the judgement is that the child needs to become looked after, legal advice may be appropriate to assist with the decision, including whether it should be a voluntary arrangement under Section 25 or whether the grounds for legal proceedings exist.

**Whatever the decision, the prospective carer and parent need to be clear what the nature of the 'placement' is in terms of its status (i.e. looked**

**after or not, accommodated under S25 or on an Order under S31); the financial support arrangements (from parent, from Department or neither) and the responsibilities of the parent, the caregiver and the Department relevant to the status.**