**Guidance for Derbyshire County Council Social Workers on directions made under Section 38(6)**

Section 38(6) of the Children Act 1989 provides that where the Court makes an Interim Care or Supervision Order “*it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child……”.* Case-law has established that the Court may order an assessment of the child under Section 38(6), Childrens Act 1989 to take place while the child is living with prospective carers, as an exception to the general rule that Local Authorities make placement decisions under Interim Care Orders. The placement is not a Local Authority placement but is “under the continuing control of the Court”.

Directions under Section 38(6) Childrens Act 1989 can result in a child living with a parent, relative or other connected person for the duration of the assessment.

Key points:

1. If a child is subject to a Section 38(6) direction and is in the care of a parent, the Local Authority are ***not*** required to obtain approval of Placement with Parents.

2. If a child is subject to Section 38(6) then Regulation 24 does ***not*** apply and the carer is not temporarily approved by the Local Authority as a foster carer.

3. The Interim Care Order is maintained and so the Local Authority maintains parental responsibility for the child. The child ***is*** a child in care and will require statutory visits, reviews, PEP etc.

4. The placement is regulated by the Court and only the Court can make the decision to end the placement/assessment however the police may still exercise their protective powers under S.46 Children Act 1989 if the police have reasonable cause to believe that a child/children would otherwise be likely to suffer significant harm;

The circumstances in which directions under Section 38(6) are made will vary but typically involve situations in which the Court wishes to enforce a placement that the Local Authority does not feel able to endorse via Regulation 24. There are difficulties with this arrangement as there is no guidance on the position of the Local Authority in terms of how it exercises its parental responsibility for the child (who remains a looked-after child) and how the placement might lawfully be maintained immediately after completion of the assessment.

**Financial support to parents (and others with parental responsibility)**

In some cases a direction under Section 38(6) can result in a child being placed with a parent or other person with parental responsibility. In such circumstances any financial support to the parental responsibility holder is at the discretion of the Team Manager. Dependant on circumstances it may be reasonable to provide a parent or person with parental responsibility with a grant e.g. to purchase beds, bedding, clothing etc. In addition it may be appropriate to provide the carer with financial support until such a time as they are in receipt of child benefit however:

* Any regular maintenance payments should not exceed the Child Benefit amount
* It is expected that the parent or other person with parental responsibility makes the appropriate benefit claims within 1 week of the Section 38(6) direction being made. This will be reviewed by the child’s social worker within 4 weeks of the direction.

**Providing Support to Section 38(6) carers**

Directions under Section 38(6) do not result in a connected person becoming a foster carer. Therefore they will not receive “fostering allowances”. In the absence of any direction by the Court, therefore, the only obligation on the Council will be that imposed by section 17 of the Childrens Act 1989 and that can require the Council to at least consider making a financial contribution in an appropriate case, under section 17(6). However caring for a child is a considerable expense for a connected person and as a Local Authority, Derbyshire County Council believes it is appropriate for the Local Authority to provide financial support and this will be equivalent to the Derbyshire County Council Child Arrangement Order Allowance rate.

Therefore:

1. In order for the Local Authority to record the status of the placement and make payment, the child’s social worker will ensure the Section 38(6) carer is linked to the child on mosaic with the correct placement code recorded. The child’s social worker will add a legal status of ‘S38.6 Carer’ to the carer’s mosaic front screen including a start date and will be responsible for inputting an end date.

2. The ‘financial assessment request’ workflow step on Mosaic is to be completed by the child’s social worker within one working day of the S38(6) Order being granted and forwarded to the Head of Service for authorisation. Following authorisation the children’s services placement finance team will progress payment.

3. Allowances will be based on the current Derbyshire County Council rates for Child Arrangement Orders.

4. Extended family or friends (“Connected Persons”) caring for a child under a Section 38(6) direction will receive the equivalent of the Derbyshire County Council Child Arrangement Order Allowance which will be means tested during the Section 38(6) period. Payments will only be made for the duration of the Section 38(6) Direction. The S38(6) carer will initially receive the full Child Arrangement Order Allowance whilst the financial assessment is undertaken. Any over payment that has been made, as determined by the assessment, will be recouped via future allowance payments.

5. It is of benefit that where there is potential for the final outcome to be a Child Arrangements or Special Guardianship Order, the process of financial assessment be started early during the Section 38(6) period so that the carers and the Court are fully aware of the financial support that will be available in the longer term.

6. The child’s social worker is to ensure the Section 38(6) carer understands that this payment is temporary, that any over payments will be recouped and that a financial assessment will be undertaken. Carers are also to be informed that in the event that a Child Arrangements Order or Special Guardianship Order being granted, future allowances will be means tested and allowances may reduce.

7. Payments will be made from the Children in Care budget and should not be made from petty cash apart from in an emergency in line with the petty cash procedure.

8. Social workers will need to liaise with the Childrens Services Placement Finance Team to ensure that regular payments to the required level can be made automatically via bank transfer. The Finance Team will need the details of the carer including bank details. Should the Section 38(6) direction be extended it is the responsibility of the child’s social worker to inform the children’s services placement finance team.

9. As an interim measure, where financial support is required prior to commencement of payments this is at the discretion of the Team Manager in line with Derbyshire County Councils Scheme of Delegation. All financial support provided must be essential, justifiable and in the best interests of the child.

10. Such payments may include “set up” costs such as provision of beds and bedding.

11. Where the allowance is requested in advance of regular payments, this is at the discretion of the Team Manager but will not exceed a maximum of £50 per child each week without the approval of the Head of Service.

12. Where the allowance is backdated any previous payments made under paragraph 11 above will be deducted from the backdated payment. The child’s social worker must inform the children’s services placement finance team of any such payments being made.

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