

**Practice Guidance**

**Private Family Care Arrangements**

1. **Purpose**

It is vital in when working with families where alternative care arrangements are being considered that social workers understand and follow the guidance below and use the Trust agreement templates, otherwise an arrangement which was intended at the time to be a private arrangement is a high risk of being subsequently found to be S20 accommodation of the child.

In March 2007, the Court of Appeal gave judgment in a case called Southwark v D,

The case sets out that:

"If an authority wishes to play some role in making a private arrangement, it must make the nature of the arrangement plain to those involved. If the authority is facilitating a private arrangement, it must make it plain to the proposed foster parent (carer) that s/he must look to the parents … for financial support. The authority must explain that any financial assistance from public funds would be entirely a matter for the discretion of the local authority for the area in which the foster parent is living. Only on receipt of such information could the foster parent give informed consent to acceptance of a child under a private funding arrangement. **If such matters are left unclear, there is a danger that the foster parent (and subsequently the court) will conclude that the local authority was acting under its statutory powers and that the arrangement was not a private one at all."**

**The courts have gone on to consider this issue in a number of cases where there was a dispute about the status of the placement.**

**The cases have all stemmed from a lack of clarity and involve family carers challenging their status as private family carers and seeking a court ruling that the child was accommodated under Section 20 by the LA and that they are entitled to fostering payments often backdated for many years.**

1. **Considerations when making decisions about legal status**

It is vital that social workers, parents and (prospective) carers are clear about the legal status of the arrangements and the implications of this legal status at the outset, in particular about whether the child needs to be accommodated under section 20 of the Children Act (CA) 1989 or can be supported in the arrangements as a child in need under section 17 of the Children Act 1989.

The first thing to consider is whether the the arrangement ought to be S20 accommodation in any event where the duty to accommodate under Section 20 (1) of the CA has arisen. Section 20(1) is set out in full at Appendix One.

This includes the position as to whether the person who had been caring is prevented from providing a child with suitable accommodation or care for whatever reason.

This involves discussions with the parents who must not object to this and need to give fully informed consent. If they do object it cannot be Section 20 accommodation and a judgment needs to be made as to whether to make an application to court or rely on parental and carer co-operation in a family arrangement under Section 17 while further assessments take place.

1. **Relationship between child and carer**

If the proposal is for the arrangement to be a “private” one as opposed to an accommodation under S 20 then one of the first tasks for the workers involved is to establish the nature of the relationship between the child and the carer i.e. does the carer fall within the definition of a relative under the Children Act 1989?

If the carer is not a relative then this is a *private fostering arrangement* and must be dealt with in accordance with the relevant legislation and the procedures on Tri.x Children’s Services Procedures.

If the carer does fall within the definition of a relative under the Children Act 1989 then the following steps should be followed.

1. **Ensuring Parents and Carers understand the legal basis of the care arrangement**

As has been stated it is vital from the outset that all parties, including the parents and the carers, are clear about the legal status of the child and its implications.

Such information ***MUST*** be shared with and understood by the lay persons (particularly the potential carer involved). [An information sheet is available on Tri.x](https://proceduresonline.com/trixcms2/media/16585/private-family-care-arrangements-information-for-parents-v10-sept-2022.docx) for parents and carers.

It ***MUST*** be done at the time. If the child is not going to be looked after under s.20 CA 1989 and is to be a child in need under s.17 of the CA 1989, parents and carers must understand clearly the nature of the arrangement and it ***MUST*** be made plain to the proposed carer that she/he must look to the parent(s) for financial support.

It ***MUST*** be explained that any financial assistance from the local authority would be merely discretionary and that there is no right to this.

Where a case is not fully understood by an emergency duty worker it is ***VITAL*** that the worker clearly sets out that what is being put in place is an arrangement to deal only with the immediate crisis as an emergency measure and that on the next full working day, someone will be in touch to re-assess the situation. It is equally vital that there is such follow up and the worker then explains the position with the degree of clarity indicated above and takes the necessary steps to obtain written agreement as necessary.

All of this means that it is essential that all parties are given written information, reinforced verbally about their rights and responsibilities under the different legal statuses.

1. **Written Agreement**

There is a template written agreement on Tri.x Children’s Services Procedures for [carers](https://proceduresonline.com/trixcms2/media/16586/agreement-for-informal-care-carer-october-2021.docx) and [parents](https://proceduresonline.com/trixcms2/media/16583/agreement-for-informal-care-parent-october-2021.doc) where private arrangements are made between parents and carers and the children are therefore children in need. This should be used in every case where there is an arrangement with a family which is not to be Section 20.

These agreements need to be given to both parents and carers. It is acknowledged that a pro forma agreement will not always adequately cover all the situations which could arise. It is therefore recommended that workers compare their letter against the extract from Southwark above to ensure it meets the necessary requirements.

Copies of all agreements/letters sent and accurate case notes must be kept and uploaded to the child’s file in Eclipse.

Approved by Practice AD group December 2021

**APPENDIX ONE**

**CHILDREN ACT (A989)**

Section 20(1) Children Act 1989

**20 Provision of accommodation for children: general.**

(1) Every local authority shall 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 who has parental responsibility for him;

(b) his 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 him with suitable accommodation or care.