

**Private Family Arrangements, Viability reports and Regulation 24 Temporary Approval of Foster Carers**

The basics

This guide sets out the issues around placing children with connected persons. The first part of this guide gives a summary of what you need to know. The short guide to Regulation 24 and the full explanation/references to the law around Regulation 24 and Private Family Care Arrangements is in the second part of this guide (which was approved by the Practice AD group in December 2021).

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# Private Family Arrangement vs Private Fostering vs Child in Care – which is which?

If a child isn’t living with their parents but are living with a friend or relative (a “connected person”), this can happen in 3 main ways.

Private family arrangement – The parent(s) have arranged for the child to live with a “close relative”. Close relatives are defined as step-parents (by marriage), grandparents, siblings or aunts/uncles.

For this to be a private family arrangement, it has to be clear the parents and not BCT have the parental role. For example, the parents have decided where the child should live and who they should see or under what conditions (e.g. who should be supervised with the child) and are regularly financially supporting the connected person to care for the child. For example, BCT will not have asked parents to sign working agreements about where a child lives or who they see. BCT may be delivering services or support on a CP or CIN Plan at the same time, but that can’t include dictating or deciding where the child lives. BCT can support the parents to think through their options (e.g. via a FGC) however. If BCT is dictating where a child can live or who they can see, it’s not a private family arrangement. If BCT has any role at all, we must be clear (in writing) what our role is, including that the connected person has to ask the parents for financial support. It MUST be explained that any financial assistance from BCT would be merely discretionary and that there is no right to this.

You must do this by asking both the connected person and the parent to complete the “Agreement for Informal Care” forms (there are two versions, one for carers and one for parents in Practice Guidance). You should also give the parents the information sheet, “Private Family Care Arrangements - Information for Parents”. You should do this as soon as the child moves to live with the connected person (or we become aware of it). You should the upload these agreements to Eclipse.

If the matter is being dealt with by an emergency duty worker they must be clear 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.

Private Fostering – The parent(s) have arranged for the child to live with someone who isn’t a “close relative” for 28 days or more. In these circumstances BCT have to complete a Private Fostering assessment (see that form and process on Eclipse), but as above BCT can’t dictate where the child lives/who they see.

Child in Care living with a Connected Person – The child is a child in the care of BCT (usually either via section 20 or a care order) but living with a connected person who is approved by BCT as a foster carer. It will usually be the case that BCT has an ICO or parents have agreed s20 and BCT have decided to place the child with the connected person.

A child can also become a child in care with a connected person if BCT steps into the parent role in a private arrangement – see that section above. This is obviously to be avoided – if such a situation comes up, seek urgent advice.

# Child in care living with a connected person: what you need to know & do:

If a child can’t live with parents, you must give priority to them living with relatives, friends or other people connected to children (we will call them “connected persons” in the rest of this guide) if it’s the best option. It will often be the case that a FGC will be used to identify the most suitable options.

You can only place a child in care with someone who is a foster parent. Therefore, if a child is a child in care, you have to make the connected person a foster parent before you can place the child with them.

## Full assessment

Generally, this should be done by doing a full assessment of the connected person(s) first, then approving them via the normal fostering route as foster carers. This usually takes around 3-4 months. Firstly, a quick viability assessment is completed on Eclipse (within 2 weeks) to screen the carer to see if it’s possible they may pass a full assessment. If the viability assessment is agreed as positive by your team manager, a full assessment is then carried out. Only after the full assessment is completed and agreed can a child in care be placed with the connected person. The viability assessment is on Eclipse.

## Regulation 24/temporary approval

However, if we need to approve the connected person more quickly, this can be done under “Regulation 24” by completing the viability form but selecting the “Regulation 24” option within it. This allows BCT to temporarily approve a connected person as a foster parent for 16 weeks.

If this is something you need to do, you must do a joint first visit with the Kinship/Family and Friend social worker. You must agree your recommendation with them and your team manager. This will then be sent to your Assistant Director to consider agreeing. More details about how to approach this process can be found on the Eclipse form. Read this before arranging any visit to the family.

The 16 weeks gives us time to complete the paperwork and process to approve the connected person as proper foster carer. This 16 weeks can be extended by another 8 weeks if the full process is taking too long or can be extended longer than that if the connected person is challenging the outcome of their full assessment – see the full legal advice for more information. You will need to fill the “Regulation 25 (Care Planning, Placement & Case Review Regulations 2010) Extension Request Form” (in Practice Guidane) to request a time extension.

We can only follow this Regulation 24 route if we need to place the child before we can do the full assessment and full process (the important thing is that we don’t have time to do the full assessment – it doesn’t have to be used just in an emergency or if we need to place immediately). If there’s time to do the full assessment first, that’s what you must do instead.

Before the child is placed with the connected person, if the connected person says they are not willing to do the full fostering assessment, then we can’t use Regulation 24 to place the child/ren with them.

In the same way, if the connected person(s) withdraw from the full assessment during the period of temporary approval for 16 weeks, BCT has to urgently reconsider the child’s placement as the child will not be able to remain a child in care and living with the connected persons. This may mean the child moves to another foster placement or we look at another way for the child to remain with the connected person (e.g. a child arrangements order or special guardianship order). Seek legal advice if this happens.

## When a child is not in care but living with a connected person and then becomes a child in care

A child *not* in care and living with a connected person may then become a child in care. This could be because the court then makes an ICO, or because of something BCT has done which has made the child looked after under section 20. See the guidance to section 20 in Practice Guidance.

If an ICO has been granted and the child is living with a connected person, BCT have to make a decision about whether or not to approve the connected person(s) as soon as possible under Regulation 24. (If Section 38(6) assessments are mentioned at this point, see the full legal guidance about this at the end of this document).

If Regulation 24 approval is not agreed, BCT needs to return the matter to court. The Court may at that point make a Section 38(6) order to make the placement legal.

If the child becomes section 20 while living with the connected persons, then again Regulation 24 approval must be sought as soon as possible (or the child would be in care but not living with foster carers, and then is in an illegal placement).

If a child becomes section 20 while living with connected persons you need to explain to the parents and carers what the situation is. If the parents object to the child becoming a child in care, another arrangement for their care will need to be made or BCT will need to apply to the court for a care order. This is because we can’t have a child looked after under section 20 if a parent objects to this.

# Regulation 24 short legal guide (temporary approval of foster carers)

1. **Introduction**

Regulation 24 (R24) of the [Care Planning, Placement and Case Review (England) Regulations 2010](https://www.legislation.gov.uk/uksi/2010/959/regulation/24/made) enables local authorities to approve a connected person (a relative, friend or other person connected with a child) as a local authority foster parent for a temporary period of 16 weeks (extendable to 24 weeks) where a local authority considers this to be appropriate and necessary while they are going through the full foster carer assessment process.

This enables us to place a child with family or friends following a suitability assessment taking into account things set out in Schedule 4 of the regulations, promoting positive outcomes by enabling them to live with people they know.

This briefing provides clarification regarding particular situations when children are placed with connected carers who are not already approved as foster carers. The situations are:

1. Where a child has been living with connected carers before the decision is made by the Trust to accommodate and place them
2. Where carers inform us before we place the child with them that they do not wish to have a full fostering assessment
3. Where the carers withdraw from a full fostering assessment during the temporary approval period

***The briefing only applies to circumstances where children become accommodated/looked after by the Trust, not where children’s parents make their own private arrangements for them to live with connected persons.***

It is important to note that the regulations and guidance make no mention of the words **emergency** or **immediate.** It is about being satisfied that a placement is necessary and suitable at the point the local authority makes the arrangements for the child’s placement under Section 22 C (6).

The guidance states that the powers are expected to be used exceptionally (although this is not stated in the regulations) and where there are clearly identified reasons why the full assessment process can’t be undertaken before the placement. The main reason cited for this is the risk that the person may not be approved at the end of the assessment process and the child may need to be moved. The Trust is however committed to ensuring the children can live with their families where this is appropriate and necessary during the assessment process.

More detailed guidance can be found in:

* Tri.x Chapter 5.1.12 [*Placements with Connected Persons*](https://birminghamcs.proceduresonline.com/p_place_conn_pers.html)
* *[Practice Hub Quick Guide - Approving Family and Friends as Temporary](https://proceduresonline.com/trixcms2/media/13676/regulation-24-approval-practice-hub-quick-guide-02122019.pdf)*

*[Foster Carers (Regulation 24)](https://proceduresonline.com/trixcms2/media/13676/regulation-24-approval-practice-hub-quick-guide-02122019.pdf)*

* [*Extended Legal Briefing Note - R24 Temporary Approval of Foster Carers*](https://proceduresonline.com/trixcms2/media/18043/11484743-regulation-reg-24-legal-briefing-full-version-v10-311222.docx)

1. **Can Regulation 24 temporary approval be given where a child has lived with a carer for a period before a formal placement decision is made?**

The simple answer to this is yes - There is nothing in the statutory provisions and regulations that prevents temporary approval where a child has lived with a family member before the formal “placement”.

Difficulties in interpretation can arise when the child has lived with a relative who is not an approved foster carer for some time before the child becomes looked after, either through the making of an Interim Care Order or through or a decision that the actions of the Trust mean that the child is in fact a looked after child under Section 20 and not in a family placement. There are two potential areas of contention:

1. ***Care proceedings/ Interim Care Order (ICO)***

The making of an ICO removes any doubt about a child’s looked after status. A child in care must be provided with accommodation (S22A CA). At that point the Trust must reach a decision on the **placement** of the child in accordance with the Act and Regulations. If the child is to remain with the connected carer then temporary approval under Regulation 24 is the appropriate means of ensuring the placement is lawful while a full assessment is carried out within the statutory period. The assessment of suitability and temporary approval should be completed without delay so that the approval will be effective when the ICO is made.

In care proceedings where a child has been living with a carer it is sometimes suggested that a Children Act Section 38(6) order for assessment from the Court should be sought rather than using R24 so that the court is effectively regulating the placement. This appears to arise from the misunderstanding that temporary approval cannot be given where a child has already been living with the carer. Section 38(6) is appropriate only in specific and exceptional circumstances and it would not proportionate or appropriate for the Court to authorise the placement for a longer period than necessary under S38(6), when there is a statutory mechanism for the Trust to consider the temporary approval of the placement (R24).

*Where a child is subject to an ICO, R24 approval has been given but the statutory period of 24 weeks has come to an end then the status of the placement must change or the child must move otherwise the child will be living in an unlawful placement.*

1. ***S20 status accepted after a child has lived with carer for some time.***

The second area of contention is where a child has been placed and has become looked after although the status has not been recognised or acted on appropriately. The placement was seen as an informal family placement but in law through the actions taken a statutory placement has been created. There comes a point where the status of the arrangement as accommodation is realised and that it is a **placement** but no approval has ever been given. Effectively the arrangement has been unlawful.

In these circumstances then the legal position should be explained to the child’s parents and the carers. If the parents decide that they object to the child being accommodated then at that point another arrangement will need to be made or an application made for a care order.

Where the Trust accepts that it has created a **placement**, without undertaking the appropriate process, a R24 process needs to be undertaken as quickly as possible to either regulate the placement or make the decision that the placement should not be authorised.  By not remedying the error, the Trust would be placing itself at risk of liability either in negligence (statutory breach) or in breach of Human Rights Act (1998) provisions.

1. **Can the Trust place under Regulation 24 when carers do not wish to undertake a full fostering assessment?**

The short answer to this is no - the purpose of R24 is to authorise the temporary approval of a proposed carer *pending* *a full fostering assessment*.

If it is known *before placement* that the proposed carer does not wish to undertake a full fostering assessment, then the Trust cannot make arrangements for a full fostering assessment and so cannot comply with regulation 24(2)(c).

The Trust could not be compliant with R24 if it were to be relied upon to authorise a placement in circumstances where it was known that there would be no full fostering assessment.

In these circumstances the status of the placement will need to be further negotiated with family members and an application to Court may be necessary.

1. **If during the course of a full fostering assessment (during the temporary approval period of 16 weeks) the carers withdraw from the assessment, can the Trust leave the child with the carers until the 16 week period expires, or should an alternative placement be found?**

The short answer to this is again no - the purpose of regulation 24 is to authorise the temporary approval of a proposed carer *pending* *a full fostering assessment*.

In order to give effect to the clear purpose of regulation 24, and to satisfy the Trust’s statutory duties and responsibilities, if a carer states that they no longer wish to be part of a full fostering assessment there must be an urgent reconsideration of the child’s placement.

In making decisions about other arrangements, the Trust would have to consider the range of options available, which may include:

* A move to a different foster placement;
* The child ceasing to be ‘looked after’ and continuing to live with their carers through agreement with parents, ultimately through a Child Arrangements Order or Special Guardianship Order.

# Full legal guide to Regulation 24

1. **Introduction**

This note sets out the law and answers key questions including:

* Can Reg 24 temporary approval be given where a child has lived with a carer for a period before a formal placement decision is made.
* Can the Trust place under regulation 24 when carers do not wish to undertake a full fostering assessment?
* If during the course of a full fostering assessment (during the temporary approval period of 16 weeks) the carers withdraw from the assessment, can the Trust leave the child with the carers until the 16 week period expires, or should an alternative placement be found?

1. **The Law**

Section 22A of CA 1989 provides that where a child is in the care of a Local Authority it is the duty of the Local Authority to provide the child with accommodation.

Section 22C sets out ways in which looked after children must be accommodated. Section 22C (6) and (7) give priority to arrangements to live with parents but where this is not safe, the next priority is to place with an individual who is a relative, friend or other person connected with the child and **who is also a local authority foster parent;**

The relevant Regulations cover the issue that there will be occasions when it is in the best interests of a child to be placed with a connected carer where they are not yet fully approved as foster carers.

This is set out in the Care Planning, Placement and Case Review (England) Regulations 2010.

Regulation 2 provides – “**placement”** means—

(ii) arrangements made by the responsible authority to provide for a child’s accommodation and maintenance by any of the means specified in section 22C(6);

Regulation 24 provides:

1. *Where the responsible authority is satisfied that –*
2. *the most appropriate* ***placement*** *for a child is with a connected person, notwithstanding that the connected person is not approved as a local authority foster parent, and*
3. ***it is necessary for a child to be placed with the connected person******before the connected person’s suitability to be a local authority foster parent has been assessed in accordance with [the Fostering Services Regulations],***
4. *they may approve that person as a local authority foster parent for a temporary period not exceeding 16 weeks (‘temporary approval’) provided that they first comply with the requirements of paragraph (2).*
5. *Before making a* ***placement*** *under paragraph (1), the responsible authority must –*
6. *assess the suitability of the connected person to care for the child, including the suitability of*
7. *the proposed accommodation, and*
8. *all other persons aged 18 and over who are members of the household in which it is proposed that the child will live,*

*taking into account all the matters set out in* ***Schedule 4. (appendix 1 below)***

1. *consider whether, in all the circumstances and taking into account the services to be provided by the responsible authority,* ***the proposed arrangements will safeguard and promote the Child’s welfare and meet the child’s needs set out in the care plan****, and*
2. *make immediate arrangements for the suitability of the connected person to be a local authority foster parent to be assessed in accordance with [the Fostering Services Regulations] (‘the full assessment process’) before the temporary approval expires.*
3. *In this regulation ‘connected person’ means a relative, friend or other person connected with the Child.*

Regulation 25 provides:

1. *Subject to paragraph (4), the responsible authority may extend the temporary approval of a connected person if –*
2. *it is likely to expire before the full assessment process is completed, or*
3. *the connected person, having undergone the full assessment process, is not approved and seeks a review of the decision in accordance with Regulations made under paragraph 12F(1)(b) of Schedule 2 to the 1989 Act.*
4. *In a case falling within paragraph (1)(a), the responsible authority may extend the temporary approval once for a further period of up to eight weeks.*
5. *In a case falling within paragraph (1)(b), the responsible authority may extend the temporary approval until the outcome of the review is known.*
6. *Before deciding whether to extend the temporary approval in the circumstances set out in paragraph (1), the responsible authority must first –*
7. *consider whether placement with the connected person is still the most appropriate placement available;*
8. *seek the views of the fostering panel established by the fostering service provider in accordance with [the Fostering Services Regulations], and*
9. *inform the IRO.*
10. *A decision to extend temporary approval must be approved by a nominated officer.*
11. *If the period of temporary approval and of any extension to that period expires and the connected person has not been approved as a local authority foster parent in accordance with [the Fostering Service Regulations], the responsible authority must terminate the placement after first making other arrangements for C’s accommodation.*

It is important to note that the regulations and guidance make no mention of the words **emergency** or **immediate.** It is about being satisfied that a placement is necessary and suitable at the point the Local Authority makes the arrangements for the child’s accommodation under Section 22 C (6).

1. **Children Act Guidance**

If the need for a placement with a connected person is such that it is not possible to fulfil all the requirements of the 2002 Regulations in approving the connected person as a local authority foster carer before placing the child, the 2010 Regulations set out the arrangements for the temporary approval of a connected person [regulations 24 and 25]. As with any other placement the responsible authority must be satisfied that the placement is the most suitable means to safeguard and promote the child’s welfare [section 22].

The guidance also provides that the powers are expected to be used exceptionally and where there are clearly identified reasons why the full assessment process can’t be undertaken before the placement. The main reason cited for this is the risk that the person may not be approved at the end of the assessment process and the child may need to be moved.

1. **Trust Guidance**

Temporary approval regulations should be used so that children should where possible be placed with suitable family members if this can be done safely and promotes the child’s interests.

1. **Temporary approval where children have lived with the carer for a period before approval is sought**

Difficulties in interpretation can arise when the child has lived with a relative who is not an approved foster carer for some time before the child becomes looked after either through the making of an Interim Care Order or through or a decision that the actions of the Trust mean that the child is in fact a looked after child under Section 20 and not in a family placement.

This difficulty appears to arise from the fact that the Regulations provide that decisions about appropriate placement, necessity and suitability are expressed in the regulations as needing to be made before the **placement** is made.

For the purposes of the Regulations placement is a technical term and means the point at which the Local Authority must meet its statutory obligation to provide a child with accommodation under Section 22 C (6).

1. **Care Proceedings and ICO**

The making of an ICO removes any doubt about a child’s looked after status. A child in care must be provided with accommodation (S22A CA). At that point the Trust must reach a decision on the **placement** of the child in accordance with the Act and Regulations. If the child is to remain with the connected carer then temporary approval under Regulation 24 is the appropriate means of ensuring the placement is lawful while a full assessment is carried out within the statutory period. The assessment of suitability and temporary approval should be in place so that the approval will be effective when the ICO is made.

This protects the Trust because it will have satisfied itself as to the regulatory provisions under R24 and in Schedule 4.

There is nothing in the statutory provisions and regulations that prevents temporary approval where a child has lived with a family member before the formal “placement”.

The only way to regulate promptly and to avoid liability and in the interests of the child would be to carry out the necessary assessment as to necessity and suitability urgently. Not to do this would be an on-going breach of duty under the Regulations.

In care proceedings where a child has been living with a carer it is sometimes suggested that a Section 38(6) order for assessment from the court should be sought rather than using R24 so that the court is effectively regulating the placement. Again this appears to arise from the misunderstanding that temporary approval cannot be given where a child has already been living with the carer.

This suggestion is usually made relying on the case of Re A. in that case despite opposition from the LA that the section was not an appropriate regulatory process the court decided to use section 38(6) to allow the court to regulate an assessment of a grandparent when a view had already been reached by the LA that this was not deemed suitable.

Section 38(6) is to allow an assessment to be undertaken of the child.  The question is what is the assessment to be undertaken in these cases?

The correct approach to the circumstances of a case where a child has living with a connected person but approval has not been sought and the Trust accepts that it is a placement would be:

The Court decides whether an ICO is necessary and proportionate, notwithstanding the unregulated placement;

If so, then the Court should order a placement pursuant to section 38(6) to allow for a viability assessment to be undertaken under Reg 24.

The matter returns to Court on the Trust confirming either temporary approval or not – which the Court will then have to consider.

The gap is remedied by a R24 assessment and decision, which then regularises the position for the Trust and the carer.

It is questionable whether that it is an appropriate use for section 38 (6) to be used to regulate a placement until a 16 week assessment and fostering decision is undertaken, because that would not be a proportionate or necessary decision on the basis that R24 would allow regulation of the placement to take place thoroughly and in accordance with regulations and is the appropriate process to follow and also ensures that appropriate support is in place.

There are sometimes situations where R24 approval is not given but the Court determines that the child’s welfare is best met in the current placement whilst the full assessment is undertaken, and therefore authorises the placement pursuant to section 38(6).  This is the Re A scenario and is at the subsequent stage of decision making and involves different considerations.

It is not proportionate or appropriate for the Court to authorise the placement for a longer period than necessary under S38(6), when there is a statutory mechanism for the Trust to consider the temporary approval of the placement (Reg 24).  This would interfere with Local Authority powers and duties as to care, which are for the LA and not the Court.

Where a child is subject to an ICO, R24 approval has been given but the statutory period of 24 weeks has come to an end then the status of the placement must change or the child must move otherwise the child will be living in an unlawful placement.

S20 status accepted after a child has lived with carer for some time.

The second area of contention is where a child has been placed and has become looked after although the status has not been recognised or acted on appropriately. The placement was seen as an informal family placement but in law through the actions taken a statutory placement has been created.

There comes a point where the status of the arrangement as accommodation is realised and that it is a **placement** but no approval has ever been given. Effectively the arrangement has been unlawful.

The question is whether the Trust is prevented from considering R24 approval in those circumstances. Can the Trust “remedy” the situation by giving temporary approval at that point.

The duties under Section 22 CA and under the regulations are continuing duties. If a child is accepted as accommodated or is in care then the child must be accommodated and maintained in a way set out by the Statute and Regulations. To remain with a connected carer in those circumstances the carer must be approved or the placement will be unlawful

When presented with a position where a **placement** has been created when the intention had been that the arrangement was a “family arrangement” then the practical steps would be to explain to all what the position is. That is the parents and the carers. If the parents decide that they object to the child being accommodated then at that point another arrangement will need to be made or an application made for a care order.

Where the Trust accepts that it has created a **placemen**t, without undertaking the appropriate process, because the duties are continuing to a looked after child, it is duty bound to rectify its error and this would require a Reg 24 process to be undertaken as quickly as possible to either regulate the placement or make the decision that the placement should not be authorised.

By not remedying the error, the Trust would be placing itself at risk of liability either in negligence (statutory breach) or in breach of HRA provisions  The most appropriate way to resolve the risk is to undertake the Reg 24 temporary approval process, as it may reveal a risk/negative outcome at an earlier stage which will ensure the child’s welfare is safeguarded.

1. **Can the Trust give R24 approval when carers do not wish to undertake a full fostering assessment?**

If it is known *before placement* that the proposed carer does not wish to undertake a full fostering assessment, then the Trust cannot make arrangements for a full fostering assessment and so cannot comply with regulation 24(2)(c). Since compliance with regulation 24(2)(c) is required for placement under regulation 24(1), it follows that the LA cannot then lawfully place under that regulation.

This approach fits with the purpose of regulation 24 which is to authorise the temporary approval of a proposed carer *pending* *a full fostering assessment*. The Trust could not be compliant with R24 if it were to be relied upon to authorise a placement in circumstances where it was known that there would be no full fostering assessment.

In these circumstances the status of the placement will need to be further negotiated with family members and an application to Court may be necessary.

1. **If during the course of a full fostering assessment (during the temporary approval period of 16 weeks) the carers withdraw from the assessment, can the Trust leave the child with the carers until the 16 week period expires, or should an alternative placement be found?**

**Key points**

The clear purpose of regulation 24

Regulation 24 *permits* temporary approval for a period *“not exceeding 16 weeks”* (and regulation 25 *permits* an extension for a period *“up to 8 weeks”* / *“until the outcome of the review is known”*); the regulations do not stipulate that approval *must* extend for the full duration of the relevant temporary period;

The regulations do not (and could not) absolve the LA of its general duties towards looked after children (Children Act 1989, s.22);

Nor do the regulations stipulate (or imply) that, once temporary approval is granted, the LA is absolved of its responsibility to keep arrangements under review (see in this regard regulations 6(1), 32, 33, 35 and schedule 7, Para 5).

In order to give effect to the clear purpose of regulation 24, and to satisfy the Trust’s statutory duties and responsibilities, a carer stating that they no longer wish to be part of a full fostering assessment must trigger an urgent reconsideration of the child’s placement.

In making decisions about other arrangements, the Trust would have to consider the range of options available, which may include:

* A move to a different foster placement;
* The child ceasing to be ‘looked after’ and continuing to live with his carers through agreement with parents ultimately through a child arrangements order or special guardianship order.

Trust Legal Team

31.12.22

**Appendix 1**

SCHEDULE 4 Matters to be taken into account when assessing the suitability of a connected person to care for C

**1.**  **In respect of the connected person—**

(a) The nature and quality of any existing relationship with C,

(b) Their capacity to care for children and in particular in relation to C to—

* 1. Provide for C’s physical needs and appropriate medical and dental care,
  2. Protect C adequately from harm or danger including from any person who presents a risk of harm to C,
  3. Ensure that the accommodation and home environment is suitable with regard to the age and developmental stage of C,
  4. Promote the Child's learning and development, and
  5. provide a stable family environment which will promote secure attachments for C, including promoting positive contact with P and other connected persons, unless to do this is not consistent with the duty to safeguard and promote C’s welfare,

(c) 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,

(d) their family relationships and the composition of their household, including particulars of—

* 1. the identity of all other members of the household, including their age and the nature of their relationship with the connected person and with each other, including any sexual relationship,
  2. any relationship with any person who is a parent of C,
  3. any relationship between C and other members of the household
  4. other adults not being members of the household who are likely to have regular contact with C, and
  5. any current or previous domestic violence between members of the household, including the connected person,

(e) their family history, including—

* 1. particulars of their childhood and upbringing including the strengths and difficulties of their parents or other persons who cared for them,
  2. their relationships with their parents and siblings, and their relationships with each other,
  3. their educational achievement and any specific learning difficulty or disability,
  4. a chronology of significant life events, and
  5. particulars of other relatives and their relationships with C and the connected person,

(f) particulars of any criminal offences of which they have been convicted or in respect of which they have been cautioned,

(g) their past and present employment and other sources of income, and

(h) the nature of the neighbourhood in which their home is situated and resources available in the community to support C and the connected person

# Private Family Care Arrangements – full guide

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 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.