

## Practice Information Note

The purpose of Practice Information Notes is to review current information and knowledge, outline the key issues and examine the implications for foster care, and provide best practice recommendations for fostering service providers and links to key documents. Each service will decide on practice based on the needs of the young people in its care and its foster carer population.

### Placing children with family and friends carers (England)

'Kinship' or 'family and friends' care is often used to refer to any situation in which a child lives with someone who is not their parent but is a family member or connected to the child in some other way. Arrangements made by parents for their children to live with such a person to whom they delegate their parental responsibility includes:

- Informal arrangements with a 'relative' (1),
- Private fostering arrangements with someone other than a 'relative' (2), or
- Child arrangements orders or special guardianship orders made in private law proceedings.

These are outside the scope of this Practice Information Note.

This Practice Information Note is in respect of children who are looked after or who are assessed as needing to be looked after. In this situation, family and friends carers are legally known as 'connected persons'.

#### The purpose of this Practice Information Note is to:

- Highlight local authority responsibilities to consider and support the placement of looked after children with family and friends carers
- Outline the means by which this can be achieved within the legislative framework in England
- Clarify the processes involved in assessing connected persons as carers for children
- Differentiate between assessments of potential kinship carers completed in response to a need for immediate placement, and those undertaken as part of permanence planning.

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1 A 'relative' as defined by the Children Act 1989, is a grandparent, brother, sister, uncle or aunt (whether by full or half blood or by marriage) or step-parent

2 A private fostering arrangement is when a parent arranges for their child under 16 years (18 if disabled) to live for more than 28 days with someone who is not a 'relative'

## References to legislation, regulation and statutory guidance (England):

- The Children Act 1989
- Care Planning, Placement and Case Review Regulations 2010 (as amended)
- Fostering Regulations 2011 (as amended)
- The Children Act 1989 guidance and regulations Volume 2: Care Planning, Placement and Case Review (revised June 2015)
- The Children Act 1989 guidance and regulations Volume 4: Fostering Services (2011 as amended)
- Family and Friends Care: Statutory Guidance for Local Authorities (2011)

## Key points

- A local authority must provide accommodation to a child in their area if there is no one with parental responsibility for the child, or the child has been lost or abandoned, or the person who has been caring for them is prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care. Such children are 'looked after' by the local authority under The Children Act 1989 and it is not appropriate for the local authority to negotiate 'informal arrangements' with a friend or relative in such circumstances.
- In deciding upon the most suitable placement available for a looked after child, the local authority must 'give preference to' a placement with a person who is a relative, friend or other person connected with the child – referred to as a 'connected person'. This person must be a local authority foster parent before the child can be 'placed' with them. In some circumstances, a court may make a legal order that directs that the child lives with them, in which case the child would no longer be placed with them as a foster parent.
- A placement with a 'connected person' may be planned or may be required as a matter of urgency. The process for assessment and approval of the 'connected person' as a carer is different in these two situations
  - Where an immediate placement is required, the care planning regulations allow for temporary approval of a connected person as a foster carer (subject to assessment under Regulation 24) where it is considered that they can provide the most appropriate placement available
  - Where a planned placement is required, a connected person can be assessed for their potential as a carer with an initial family and friends care assessment (also known as a 'viability' assessment). Anyone considered to have the potential to provide a suitable placement can then be assessed under the relevant regulations (usually fostering or special guardianship) as part of the permanence planning process for the child
- It is good practice for the child's social worker and the assessing social worker to share information and work together so that the care plan both informs, and is informed by, the assessment of prospective family and friends carers.

## Introduction

Family and friends carers provide stability and a sense of belonging to many children who, for whatever reason, cannot live with their parents. However, social workers responsible for the permanence planning for looked after children must help to determine when a child is best kept within their extended family network, and when they would benefit from being brought up outside their family. Such decisions are inevitably complex and emotionally charged. The following information is intended to help social workers work within the legal framework and processes in place whilst considering the role family and friends should play in support of the child and their future care.

## **Decision to accommodate**

It is critical that a local authority is clear, when involved in a decision for a child to live with a family and friends carer, whether the child is being looked after and placed with the carer, or whether the local authority is merely assisting in making an informal arrangement. Case law in respect of this was made in 2007 (*Southwark v D*) in which the judge said the following:

- 'If a local authority plays a major role in making arrangements for the child, the most likely conclusion is that it is exercising its powers and duties to accommodate the child.'
- Informal family care arrangements are usually made direct between individuals.
- If a local authority intends to merely assist in arranging informal family care rather than accommodating a child itself, the local authority must be explicit with those involved, including giving clear information about who will be financially responsible for the child. If this is not made clear the courts and others are likely to conclude that the local authority is making the placement itself. Only on receipt of such information can a potential foster carer give informed consent to accept the child on an informal family care arrangement.'

The Local Government Ombudsman (LGO) highlighted this issue in its report: *Family Values: Council services to family and friends who care for others' children*. There are LGO judgements published since that have required councils to compensate family members where the council maintained that arrangements were informal when in reality the child should have been looked after at the time they went to live with their relative (see 'links to key documents' below).

Once a decision has been taken that a child is to be looked after, they must be placed in accordance with the Children Act 1989 section 22C. If placement with parents is not appropriate, preference must be given to placement with an individual who is a relative, friend or other person connected with the child - they must, however, be an approved foster carer before the child is placed.

## **Immediate placement with a connected person**

When deciding on the most suitable placement for a child, the need to give preference to a family and friends carer sits alongside the requirement to place with an approved foster carer. In an emergency where there is an urgent need for a placement, there is not time to assess and approve someone as a foster carer under the fostering regulations.

Provision is made in the care planning regulations to place a child with a connected person having first approved them on a temporary basis as a foster carer (Regulation 24). A nominated officer (usually the fostering decision maker) must consider their suitability for temporary approval as foster carers following an assessment that gathers as much of the information required by [Schedule 4 \(Reg 24\)](#) as is possible within the timescales available. If temporary approval is agreed, the carers are foster carers in all respects other than the temporary nature of their approval.

When a child is placed with temporarily approved foster carers:

- The care planning regulations apply, meaning a care plan must be prepared and shared, a placement plan agreed and signed by the carer, and a review of the care plan take place within 28 days of the placement being made. Social work visiting requirements are initially more frequent than when the carer is already approved under the fostering regulations (see paragraph 3.236 of the [care planning statutory guidance](#)).
- The fostering regulations apply, meaning a foster care agreement must be signed and the carers must be paid, supervised and supported as foster carers by a named supervising social worker
- Arrangements must be made for a fostering assessment under the fostering regulations to begin as soon as possible

Temporary approval is agreed for up to 16 weeks so the fostering assessment must be completed within the timescale if the child is to continue to be placed as a looked after child. It is possible to extend the temporary approval for a further 8 weeks in certain circumstances to enable an assessment to be completed (Reg 25). If an alternative court order (for example, SGO) is made before the 16 weeks expires, the carers can withdraw from the fostering assessment prior to its completion.

### **Planned placements with a connected person**

When working with children and families, social workers work to support parents to make the changes necessary for them to provide care that safeguards and promotes the welfare of their children. Whilst focusing on maximising the chances that children can safely remain in or return to the care of their parents, social workers, must at the same time, be working to identify the most appropriate alternative care for the child should this not be possible.

Extended family and friends networks should be identified and engaged early on in this work so they can support efforts to effect change, and decide if they could potentially provide care for the child should this be needed.

During this 'planning for permanence', potential carers are identified, sometimes through a family meeting or more formal Family Group Conference. The suitability of potential carers is informally assessed prior to any formal assessment under regulations via an 'initial family and friends assessment' (also known as a 'viability assessment'). The Fostering Network contributed to [Good Practice Guidance](#) in relation to such assessments published by the Family Rights Group.

Any potential carer found as suitable will require further assessment under the relevant regulations (usually fostering, special guardianship or child arrangements order depending on the child's care plan). The basis on which family and friend's carers will care for the child should be made with reference to the specific needs of the family and child, and not be based on blanket policies regarding the local authority's approach to family and friends care.

The importance of early planning and timely identification, engagement with and assessment of extended family and friends can be critical. It can:

- Support children and their families in making and sustaining change
- Enable family members to take action themselves to secure the child's future within the extended family before concerns escalate to require the intervention of the local authority and/or the courts identify alternative carers, and
- Help to complete formal assessments within the 26-week timeframe for court proceedings.

### **Dealing with information of concern about temporarily approved foster carers**

When assessing temporarily approved carers who are caring for the child, information is gathered on an ongoing basis as part of the:

- Fostering assessment and supervision of the temporarily approved foster carers
- The care planning and social worker support to the child in placement

Information is best shared between the care planning and fostering services during this period so that any issues that may arise can be managed in the best interest of the child. However, the care planning social worker and the supervision social workers have distinct roles:

- The child's SW considers issues in relation to the placement. The question for them is 'does the new information alter the original view of the placement as the 'most appropriate' to meet the

needs of the child?' If it does, the child's SW will need to consider whether the child should be moved from the placement (see below).

- The supervising social worker considers issues in relation to the suitability of the carers to be approved as foster carers under the fostering regulations. The question for them is 'does the information indicate the person is or may be unsuitable to foster?' If it does, the information must be dealt with in accordance with the service's usual fostering assessment policies and procedures informed by the [amended fostering regulations 2013](#) (Reg 26) and statutory guidance [Assessment and approval of foster carers](#). The two-stage assessment process provides for the termination of assessment at stage 1, or consideration by the fostering panel of a brief report or completed assessment at stage 2. Temporarily approved carers have the same rights as other applicants to make written representations following a qualifying determination not to approve them as foster carers.

There is no provision within regulations for the termination of temporary approval. It will expire after 16 weeks unless it is extended because:

- The assessment has taken longer than anticipated and temporary approval is extended under Reg 25 for up to a further 8 weeks, in which case it will expire at the end of the extended time period, or
- The assessment has been completed and presented to panel but a review of the qualifying determination by the IRM is requested by the applicant, in which case temporary approval will expire once the outcome of the review is known and a decision regarding approval is made by the decision maker.

### **Moving a child from a Reg 24 placement**

If information of concern comes to light during the assessment period and the child's social worker thinks this suggests that the family and friend's foster carer is no longer the most suitable placement for the child, the care planning regulations require a review of the child's care plan to be held before the child is moved to another placement (Reg 14). There is no such requirement if the child is at risk of significant harm or there is a need to protect others from serious injury, or if the family and friend's carer's temporary approval expires.

However, if a child is moved from placement, there is no provision within care planning regulations to terminate temporary approval. The carer's temporary approval remains in place until it expires, even though the child for whom they were approved to care is no longer in placement with them. This situation can also arise when there are no concerns about the carer's suitability, for example, if the child returns home.

A local authority who wants to move a child from placement due to concerns about the carer's suitability to foster, or recognises they have to move the child because the carer's temporary approval has expired and cannot be further extended, may find that the court considering care proceedings in relation to the child will make an order (usually s38(6)) directing that the child remains living with the family and friend's carer whilst assessments are completed. Although, in such circumstances, the child technically ceases to be looked after and placed in foster care, the local authority should consider carefully the support that should be offered to the child and carers who find themselves in this situation.

### **The Fostering Network makes the following recommendations**

- Consider extended family as part of the early social work assessments - it can prevent unnecessary state intervention in children's lives and reduce demand for placements within the foster care system

- Follow the Good Practice Guidance in relation to initial family and friends assessments (also known as 'viability assessments') - considered assessments completed jointly by the fostering and child's social worker can inform options for the care of the child within their extended family and support network when necessary
- Ensure the decision as to whether the child is looked after or not is clear and communicated - the Local Government Ombudsman has issued several judgements against authorities which have not been clear about their legal duties to accommodate children and support family and friends carers
- Temporary approval should only be used in appropriate circumstances - in emergencies where it offers the most appropriate placement for the child and there are no known barriers to approval as a foster carer. Joint assessments (Reg 24) with fostering social workers and the use of the decision maker as the nominated officer can help to inform assessments and provide information to carers about fostering.
- Consider a system of early notification to fostering panel of temporary approval - it can help to monitor these and prepare panel should a request for an extension be needed
- Supervise and support temporarily approved foster carers in accordance with the fostering and care planning regulations - this includes allocation of a named SSW and a child's social worker/IRO to manage the placement
- Assess connected persons offering permanence under the regulation that will provide the most suitable permanence option for the child –blanket policies regarding Special Guardianship or foster care do not recognise individual needs.

### Links to key documents

- [Assessment and approval of Foster Carers](#) (2013) DfE
- Family and Friends Care: Statutory Guidance for Local Authorities (2011) DfE  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/288483/family-and-friends-care.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288483/family-and-friends-care.pdf)
- Family Rights Group (2017) [Initial Family and Friends Care Assessment: A good practice guide](#)
- Local Government Ombudsman (2013), [Family Values: Council services to family and friends who care for others' children](#), Focus Report: learning lessons from complaints.
- [London Borough of Southwark v D \[2007\] EWCA 182](#) - case law relating to the decision as to whether a child is living with a relative as a 'private arrangement' or as a 'looked after child'.
- Research in Practice (2015) [Assessing and supporting family and friends care Practice Tool](#)

### The practice support team

The practice support team comprises regional consultants covering England. The team provides a range of services to the Fostering Network members including:

- Practice advice information support and guidance
- Consultancy
- Practice briefings
- Training delivery

If you would like further information about the practice support team and what we can do to support you, please get in touch with Sarah McEnhill, Head of Practice on 0141 204 1400 otherwise you can email [sarah.mcenhill@fostering.net](mailto:sarah.mcenhill@fostering.net).

For more information please visit our website: [thefosteringnetwork.org.uk/advice-information/advice/practice-support](https://thefosteringnetwork.org.uk/advice-information/advice/practice-support).

March 2021