

Legislation, Roles and Responsibilities

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1.1 Understanding the legal framework regarding children looked after

Part 1 of the toolkit explains the legal framework regarding Children Looked After and clarifies the roles and responsibilities of the key professionals involved. At the end of each section, further reading is referenced.

Why do children come into care?

There were over 92,000 Children Looked After in the UK in 2013 and over 68,000 children in care to local authorities in England. There are many reasons why children need foster care. These include family illness, family breakdown and problems at home, or a situation where their welfare is threatened. Over half of looked after children in England and Wales became looked after because of abuse or neglect in 2012/13. While every child's story will be different, each will have faced loss and separation from their birth family. It is worth noting that around 70% of CLA have some form of special educational need.

Definition of a Child Looked After and a child in care

Children Looked After are those provided with accommodation by a local authority continuously for 24 hours or more.

There are legal differences between a Child Looked After, and a child in care. Children in care are subject to a care order, an emergency protection order or are compulsorily accommodated. 'Children Looked After' includes all these categories, as well as those who are accommodated voluntarily (with the agreement of the parent, relative or young person themselves).

Care status

There are five main groups of Children Looked After.

1. Children who are accommodated under section 20 by Children's Services when the parent(s) is unable to care for a child. This must be with the consent of the parent(s) or, if over 16, with the young person's own consent (section 20, Children Act 1989).
2. Children who are the subject of a Care Order (section 31, Children Act 1989) or interim (temporary) Care Order (section 38, Children act 1989).
3. Children who are the subject of emergency orders for their protection (section 44 and 46, Children Act 1989).

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4. Children who are compulsorily accommodated through the criminal courts, usually the youth court. This includes children remanded to Children's Services or subject to a criminal justice supervision order with a residence requirement. (Section 21 – Children and Young Persons Act 1969).

5. Unaccompanied asylum seeking children (UASC) are children under the age of 18 who arrive in the country without a parent or a guardian. Many of these children will enter the care of Children's Services as children in care. This will be on a voluntary basis under section 20 of the Children Act 1989.

Read more:

The Children Act 1989 Court Orders, amended 2014. Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/306282/Statutory_guidance_on_court_orders_and_pre-proceedings.pdf

1.2 What are the roles and responsibilities of the local authority?

Local Authorities have a duty under the Children Act 1989 to safeguard and promote the welfare of Children Looked After by them. When a child is taken into care, the Local Authority shares parental responsibility with the birth parents, and may sometimes limit, or veto, decisions made by the birth parents. More detail about parental responsibility are given in section 1.7. The Local Authority is required to appoint at least one person, the Virtual School Head (VSH), to improve the educational experiences and outcomes of the authority's Children Looked After wherever they live or are educated. Key people and services with responsibility for Children Looked After:

- The Directors of Children's Services
- Virtual School Heads
- Social Workers
- School admissions officers
- Special educational needs departments
- Independent Reviewing Officers
- Personal advisers
- Care leaving services
- Lead members for Children's Services

Duties of Local Authorities to children in care

For all Children Looked After, Children's Services are required to:

- Promote a child's welfare, and ensure that they are safe.
- Listen to a child and take their views into account in decision making.
- Take into the account the views of parents and others whose views are relevant; this could include teachers.
- Ensure that a child's ethnicity, culture and language is integral to planning for a child.
- Promote a child's educational achievement.
- Promote contact with family and friends.
- Provide support for care leavers in transition to adulthood
- Draw up plans for a child's immediate and long-term future.

Care plan

- All children in care must have a written Care Plan. A Care Plan and placement agreement should be drawn up within 14 days of a child coming into care and 10 days for a first placement for a voluntarily accommodated child. The care plan is written and reviewed by the Local Authority.

The plan:

- Identifies intended outcomes and objectives for the child
- Provides the framework for working with the child and carers in relation to his or her emotional and behavioural development, identity, relationships and self-care skill

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- Outlines how Children's Services must promote and safeguard a child's welfare in both the immediate and long-term
- Takes into account a child's health and education, general welfare including consideration of religion, ethnicity and disability if appropriate
- Details contact arrangements between a child and his/her family and friends
- Explains how a child's parents or guardian will be involved with a child whilst they are in care.

A child and a child's parents/guardian (if appropriate), a child's social worker and Foster Carers should all be involved in drawing up the Care Plan and the placement agreement.

As part of the Care Plan, every child must have a Personal Education Plan (PEP).

Placement Plan

This is a document detailing the arrangements for day to day care of a child which meets the objectives stated in the Care Plan. It includes details of delegated authority (see section 1.7). At the age of 16, a young person's Care Plan becomes their Pathway Plan to independence. It will detail plans for further/higher education, training, and employment.

Statutory Reviews

- A Statutory Review is a meeting where all parts of a child's Care Plan are reviewed. It is the only forum in which the Care Plan can be changed.
- Designated teachers are responsible for ensuring that anything decided about a child's education at a Statutory Review is acted upon at the school and is transferred to a child's PEP.
- Review meetings are chaired by an Independent Reviewing Officer (IRO). IRO's are experienced social workers who are responsible for the Local Authority's review, implementation and monitoring of the care plan.
- A child's first review is held within the first four weeks of them coming into care and the PEP must have been drawn up by this date.
- A child's views must be sought prior to each review meeting and reported to the meeting by the IRO. A child should be encouraged to attend their own review or have an Independent Advocate to put forward their wishes and views.
- Reviews are attended by those involved in a child's life, including teachers.
- Professionals such as doctors and teachers can provide written contributions rather than attending in person.
- If a child's first language is not English, their IRO will arrange for an interpreter to come to the review with a child.

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- If a child has any speech or hearing difficulties, the IRO should make sure they get the support they need.
- Children are sent a copy of the outcome of their review.

Read more:

DfE (2014). *Promoting the education of looked after children: Statutory Guidance for Local Authorities*. Available from

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335964/Promoting_the_educational_achievement_of_looked_after_children_Final_23-....pdf

1.3 What are the roles and responsibilities of the Virtual School Head?

The Virtual School Head (VSH) is the person responsible for discharging the Local Authority's duty to promote the educational achievement of all the Children Looked After placed in the Local Authority's care, regardless of where they are currently living or educated (The Children and Families Act 2014 amended the Children Act 1989). The Virtual School Head is responsible for children looked after by their own local authority. Children placed out of borough remain the responsibility of the placing local authority.

VSH's ensure

- The educational attainment and progress of Children Looked After by the Local Authority is monitored and evaluated as if those children attended a single school
- Head teachers and designated teachers in schools are informed if they have a child on roll who is looked after by the VSH's local authority
- Social workers, designated teachers and schools, carers and IRO's understand their role and responsibilities in initiating, developing, reviewing and updating the child's PEP and how they help meet the needs identified in that PEP
- That all CLA, wherever they are placed, have up-to-date, effective and high quality PEP's that focus on educational outcomes
- That the educational achievement of children looked-after by the authority is seen as a priority by everyone who has responsibilities for promoting their welfare
- That Pupil Premium funding allocated to CLA is targeted effectively to improve the attainment of CLA and close the gaps in attainment and progress between CLA and their peers
- Information sharing between professionals, parents, carers and young people complies with confidentiality and data protection legislation and supports the educational attainment of CLA.

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Virtual schools for different local authorities offer a varying range of services and support including

- Supporting carers, social workers, and IROs to establish high expectations of CLA so they achieve their full educational potential
- Working with commissioners to ensure that fostering, care and education services provide quality, personalised experiences that promote educational achievement
- Working with schools so they understand the powerful role they have in improving the educational and wider outcomes for Children Looked After
- Ensuring that school governors and leadership teams understand the statutory responsibility for the designated teacher to receive appropriate training for their role
- Facilitating relationships between designated teachers and social workers so that PEP's are of a high quality
- Providing training for carers, social workers, designated teachers, schools and IRO's covering a broad range of areas including information about school admission arrangements; special educational needs; attendance and exclusions; homework; managing any challenging behaviour in relation to education settings; promoting positive educational and recreational activities and supporting children to be aspirational for their future education.
- Developing a culture of working with CLA that takes account of the child's views as appropriate, given their age and understanding

Read more:

DfE (2014). Promoting the Education of Looked After Children: Statutory Guidance for Local Authorities. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/335964/Promoting_the_educational_achievement_of_looked_after_children_Final_23-....pdf

1.4 What are the roles and responsibilities of a Designated Teacher?

The Designated Teacher (DT) in a school is responsible for prompting the educational achievement of CLA in their school. The DT has lead responsibility for helping school staff understand how CLA can learn and achieve

The Designated Teacher:

- Promotes a culture in which Children Looked After believe they can succeed and aspire to further and higher education, and where everyone working with CLA have high expectations and aspirations for Children Looked After.
- Makes sure the young person has a voice in setting learning targets, can discuss their progress and are supported to take responsibility for their own learning
- Promotes good home-school links through contact with the child's carer about how they can support his or her progress by paying particular attention to effective communication with carers
- Is a source of advice for staff about assessment and differentiated teaching strategies appropriate for individual children
- Makes sure that Children Looked After are prioritised in one-to-one tuition arrangements
- Ensures that there is a central point of contact within the school in order to facilitate working with others, such as social workers, Virtual School Heads and carers
- Has lead responsibility for the development, implementation, monitoring and review of the child's Personal Education Plan (PEP) within the school, and is responsible for ensuring that the PEP is updated and available in time for the Local Authority review of the child's wider care plan
- Helps CLA make smooth transitions to new schools or colleges, including arrangements for timely sharing of information
- Makes sure that the school does everything possible to provide educational stability for the CLA including promoting attendance and avoiding exclusion
- Contributes to the development and review of whole school policies to ensure that they do not unintentionally put Children Looked After at a disadvantage;
- Makes sure, in partnership with other staff, that there are effective and well understood school procedures in place to support a looked after child's learning.

The Designated Teacher should be given appropriate support by school leadership in order to fulfil their role. They are entitled to training and development, so that they can have up to date knowledge in order to respond to the specific teaching and learning needs of CLA and develop the understanding of everyone in the school who is likely to be involved in supporting CLA to achieve.

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The DT should be a member of the teaching staff with appropriate seniority, professional experience and status to provide leadership, training, information and advice to others that will influence the teaching and learning of Children Looked After.

The role of the DT in PEP's is discussed in section 2.4.

Read more:

DCSF(2009). *The role and responsibilities of the designated teacher for looked after children: Statutory guidance for school governing bodies*. Available from <http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/01046-2009BKT-EN.PDF>

1.5 What are the roles and responsibilities of Foster Carers?

The Foster Carer is responsible for the day to day care of the child. Foster Carers are responsible for the child's physical and emotional needs, that they attend the appropriate school, college or playgroup, and that their health needs are met. The degree of responsibility will vary according to the length of time the child is placed with the carer and the age of the child, as well as the amount of experience of the Foster Carer, and the degree to which the parent is involved in the child's life. Foster Carers play an important role as 'first educators' of children in their care.

Fostering is regulated by the Children's Act 1989, by the Fostering Service Regulations (2002) and National Minimum Standards (2002). A typical foster placement agreement includes the following expectations

- Promote the welfare of the child/young person and to treat them as a valued member of the family
- Keep the child safe
- Not use any form of corporal punishment or inappropriate sanctions
- Ensure that the child/young person is encouraged and facilitated to:
 - practice their religion
 - follow cultural traditions and speak their first language
 - understand their family history and value their heritage & ethnicity related issues
 - attend school/college/work and fulfil their potential
 - maintain contact with family members and any others significant to them (unless stipulated otherwise in the placement agreement)
 - acquire skills and knowledge to prepare them for adult and independent living from an appropriate age
- Arrange for the child/young person to receive medical/dental/optical attention when needed and allow him/her to be examined when required by the responsible authority
- Ensure that the child/young person has access to a balanced diet and opportunities for exercise commensurate with their abilities
- Not provide the child/young person access within the home to dangerous, illegal or inappropriate items, such as weapons, adult films, drugs

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- To ensure that any information given to the Foster Carers regarding a child/young person is kept confidential
- To keep a diary of events related to the child/young person
- To attend relevant child protection conferences, planning meetings and CLA reviews concerning the child/young person and provide written reports if requested, and help prepare the child/young person attending reviews and other important meetings

Furthermore, Foster Carers are expected to

- Promote self-care.
- Encourage a child to have good self-esteem.
- See the child as an individual.
- Promote a strong sense of identity in a child.
- Spend time with a child one on one.
- Offer the child an opportunity to develop a secure attachment to them.
- Promote trust through a mature and consistent approach.
- Encourage the child to make friends.
- Encourage them to socialise and build support networks through joining clubs or groups.

With particular reference to education, Foster Carers are expected to

- Work closely with the child's school.
- Take an active interest in the child's homework.
- Encourage a child to value learning.
- Support a child's attendance at school.
- Be an advocate for the child's individual needs.

Read more:

Fostering Network (2009) Foster care placement: regulations and guidance. London: Author. Leaflet available for order from www.fostering.net

The Fostering Network also has links to numerous legislation summaries that detail the expectations of Foster Carers. Go to www.fostering.net/resources/subjects/standards-and-legislation

1.6 Understanding the roles and responsibilities of social workers

Allocated social workers

All children in care have an allocated social worker. When a child is taken into care, their social worker exercises the local authority's parental responsibility (see section 1.7). This includes making sure that the child's needs are met, that their welfare is safeguarded and that they are encouraged to develop to their full potential.

Social workers have a legal duty to make sure that the child is being properly cared for emotionally and physically. This includes

- Ensuring that the welfare of the child or young person is safeguarded
- Ensuring that they are receiving care that meets their day to day needs
- Checking that they are receiving appropriate education
- Making sure they are having regular medical checks
- Ensuring that contact is maintained with the child's family and friends
- Making decisions regarding the child's care plan and future

The child's social worker will visit the child and their foster carers regularly to carry out these responsibilities. Legally, the social worker must visit the child within one week of the placement and then at intervals of not more than 6 weeks for the first year. After this, social work visits should not be longer than 3 months apart. Foster Carers can also request additional visits.

The social worker ensures that a care plan is in place. This care plan must include information about any educational needs that the child has, and the actions needed to meet those needs. This usually takes the form of a Personal Education Plan, which remains active throughout the time the child is looked after. Section 2.4 outlines PEP's and how to make these effective.

Supervising social workers

Each Foster Carer has a supervising social worker. Sometimes these are known as family placement workers or link workers. Supervising social workers are responsible for managing the fostering resources of their fostering service. They provide support and challenge for Foster Carers, and their roles and responsibilities include:

- Liaising with children's social workers
- Recruiting new Foster Carers
- Carrying out assessments of people who have applied to become Foster Carers
- Helping Foster Carers identify training needs
- Providing support to Foster Carers when they have practical or emotional needs arising from fostering children and young people
- Giving support and information if allegations or concerns are raised about a Foster Carer or their practice

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- Assessing and monitoring the needs of the whole foster family, and the impact of fostering on them, including the sons and daughters of Foster Carers
- Supervise the work of Foster Carers
- Carry out annual reviews with Foster Carers

The Fostering Network advises that supervision meetings should take place monthly.

Read more:

The Fostering Network (2009) *Working with social workers: information for foster carers*. London: author. Leaflet available for order from www.fostering.net

The Who Cares? Trust (2010) *Who cares about looked after children's education? A guide for social workers*. London: Author. Available from <http://www.thewhocaretrust.org.uk/>

1.7 Understanding Parental responsibility and delegated authority

Parental responsibility

Section 3 of the Children Act 1989 defines parental responsibility as

“All the rights, duties, powers, responsibilities and authority which, by law, a parent of a child has in relation to a child and his/her property. “

This means that a person with parental responsibility is responsible for the care and well-being of the child and, unless a court order says something different, that person, and anyone else that also has parental responsibility, can make important decisions about the child's life.

Local Authorities share parental responsibility with the birth parents for children in care under a Care Order, Interim Care Order, or Emergency Protection Order. Where necessary, the local authority may limit the extent to which the parent may exercise parental responsibility and can veto some parental decision.

If a child is subject to a Care Order, his or her parents or guardians cannot remove them from care unless the local authority agrees. A child's parents or guardians, and a child themselves, have the right to apply to the court to end a Care Order. All Care Orders end when a child reaches the age of 18, although some may be ended before this.

Delegated Authority

When a Local Authority has parental responsibility for a child who is in care, the child's social worker exercises parental responsibility and makes decisions about the child. However, the LA may arrange for some of their responsibilities to be met by the Foster Carer. This is called 'delegating authority'.

Many children and young people in care have expressed a wish to grow up as part of 'normal' families without the rules and bureaucracy which can limit their opportunities, lead to unnecessary delays, and make them feel different to their peers. The 1989 Children Act was amended 2013 to strengthen and clarify the statutory guidance on delegated authority and outlines three types of decisions:

a. Day to day parenting e.g. decisions about health, education, leisure (including permission slips for school trips and activities)

All decisions in relation to day to day decision making should be delegated to the child's carer (and/or the child if they can make these decision for themselves) unless there is a valid reason not to do so. Where day to day decisions are not delegated to the carer, exceptions and reasons should be set out in the placement plan. Where risk assessments have been routinely carried out by organisations organising/supervising the activity e.g. school trips or breaks, there is not an expectation that local authorities should duplicate risk assessments.

b. Routine but longer term decisions e.g. school choice

The decision making process about school choice is ideally collaborative and will depend on the child's permanence plan. If the plan is for long term foster care then, where possible, the school choice should fit with the Foster Carer's family life as well as be appropriate for the child. The placement plan must record clearly who has the authority to take particular decisions about a child.

c. Significant events e.g. surgery

Legally, Foster Carers may 'do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare'. This means that in an emergency, if no agreement has been made about what to do, the Foster Carer may do what is 'reasonable' in order to safeguard the child. Statutory guidance states that what is reasonable will depend upon the urgency of the situation and how practical it is to consult a person with parental responsibility.

Where significant events are known about in advance, the decision making process for these should be detailed in the placement plan.

The importance of the placement plan

The law requires local authorities to ensure that the placement plan, which sets out the arrangements for the child to live with and be cared for by the Foster Carers, should include any arrangements for delegation of authority from the Local Authority to the Foster Carer. The placement plan should help the Foster Carer and the school understand what decisions Foster Carers can make.

It is therefore vital that schools are familiar with the child's placement plan, so that they are clear which decisions can be made by the Foster Carer, and which need to be made by the child's social worker

Read More:

Fostering Network (2012). *Supporting placement planning: Handbook on delegated authority*. London: Author. Available from http://www.fostering.net/sites/www.fostering.net/files/public/resources/good-practice-guidance/delegated_authority_handbook_2011.pdf