

CHILDREN IN CARE

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Local Authority's Responsibilities to Children

Sometimes things go wrong in families and everyone then expects the State in the guise of the relevant local authority to step in and provide whatever is required to protect any children at risk of harm. Thereafter the local authority is expected to look after the child's needs in a safe secure and adequate way. Sadly not every child's experience of being in care or looked after by a local authority reflects this ideal. These duties of a local authority are set out here to give you some idea of what should be expected of a local authority. If this has not happened then the child may be in a position to do one of two things. The first is to see judicial review to seek a court order that the local authority should either stop a particular action or force them to do something they have unreasonably refused to do. The second is to bring a case seeking financial compensation. This is a very complex and rapidly developing area of law and one in which we at Henley Law have gained expertise.

The Duties of Care a Local Authority has to Children in their Area

Under the Children Act 1989 a Local Authority owes a duty to protect children in their area from foreseeable risks of harm. The local authority has a general duty to promote the welfare of children in need in their area and to enable children to be brought up by their families by providing a range of support services to the child and her family. This includes such services as advice, counselling, placement in family centres, day care provision, provision of holidays and recreational activities, and in exceptional circumstances, cash help. The concept of a 'child in need' is widely defined and there is some considerable variation between one local authority and the next in terms of the practical assistance, which is offered to families. The local authority can also ask for assistance from other departments and agencies, which must be given unless this would prejudice the normal provision of their services.

Accommodation

A local authority has the duty to provide accommodation to any child where the parents are unable to provide it for any reason. There is no distinction drawn between a child accommodated by the local authority to give brief period of respite to parents or a child accommodated for longer periods.

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However there is a distinction between children who are voluntarily accommodated by the local authority and children who are the subject of care orders in that it is only in relation to the latter child that the local authority has parental responsibility

The local authority has an obligation to provide accommodation to children over the age of 16 where it considers that not to do so would prejudice the welfare of the child.

Child Protection

There is a clear duty of care on a Local Authority to investigate risks and concerns and to carry out full and proper assessments where a local authority has reasonable cause to suspect that a child in its areas is suffering or is likely to suffer significant harm it has a statutory duty to make enquiries.

The purpose of such an enquiry is to decide what action if any is necessary to safeguard the child's welfare. It is usual to make an initial assessment, which involves inter agency enquiries regarding the child's education, health, general welfare and any particular matters which may have acted as a catalyst for the child coming to the attention of the local authority in the first place.

If necessary, a child protection conference can be convened to co-ordinate multidisciplinary responses to any perceived needs the child may have, which require local authority input. At this point the decision is made as to whether or not the child should be put on the child protection register and what action if any is necessary. Most children on the child protection register remain living with their parents and it is viewed largely as a precautionary measure.

However, in some cases the local authority may decide after conducting a core assessment that the child should be removed from parents or carers and that care proceedings need to be initiated.

Looked After Children (Children in Care)

Children who are the subjects of care proceedings and who are accommodated voluntarily are referred to as 'looked after' children. The local authority has an obligation to safeguard the child's welfare and to provide accommodation and assistance while in addition giving due weight to the child's wishes and feelings. There is a distinction between children who are the subject of care orders in that the local authority acquires parental responsibility, which is shared with parents, whereas parents retain parental responsibility for children who are voluntarily accommodated.

The local authority has an obligation to make plans for the child as soon as possible on accommodation and in so doing it must take into account the child's welfare, health, education, contact with the family and eventual return home. The local authority is expected to find an education placement for a looked after child within 20 days. Parents and the child must be consulted in relation to any decisions, which are made about the child. Plans for children who are looked after must be recorded in writing and reviewed initially after four weeks, then after three months and thereafter every six months

Where a child or parent is not happy with the care plan or with changes in the care plan they can make a formal complaint to social services. A looked after child should also have a personal education plan, which is attached to the care plan.

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Education for Looked after Children (Children in Care)

When a child becomes looked after either on a short-term or long-term basis it is the duty of the Children's Services Authority (CSA) as a corporate parent, to safeguard and promote his or her welfare. This means that alongside planning secure and reliable care and responding to the child's need to be well and healthy, local authorities have a specific responsibility to support his or her educational achievement.

Looked after children have a right to expect the outcomes we want for every child that they should be healthy, stay safe, enjoy and achieve. Making a positive contribution to society and achieve economic well-being. To achieve these five outcomes for looked after children, local authorities as their 'corporate parents' should demonstrate the strongest commitment to helping every child they look after, wherever the child is placed, to achieve the highest educational standards he or she possibly can. This includes supporting their aspirations to achieve in further and higher education.

Though some do well, the educational achievement of looked after children as a group remains unacceptably low. That is why the Children Act 2004 places a duty on local authorities to promote the educational achievement of looked after children ("the duty").³ Under section 22(3)(a) of the Children Act 1989, as amended by section 52 of the Children Act 2004, the duty of a local authority to safeguard and promote the welfare of a child looked after by them includes, in particular, a duty to promote the child's educational achievement. The authority must therefore give particular attention to the educational implications of any decision about the welfare of those children. The duty came into force on 1st July 2005 and applies to all children looked after by an authority, wherever they are placed.

Contact and Reuniting

The local authority has a general obligation to promote the reunification of children with their family as soon as is practicable. This principle has been reiterated in a series of cases before the European Court Human Rights however UK courts take the view that reunification will only occur if it can be demonstrated to be appropriate and in the child's best interests.

Where a child is the subject of a care order to the local authority the court's permission is required before the local authority can terminate contact between the child and its parents. In most cases such a proposal is only made where the local authority's plan is to have the child adopted.

In considering the question of terminating contact between a child and its parents, courts are required to give consideration to the rights of both parents and children to have their family life respected under Article 8 of the Convention. It is not uncommon for adoption of older children to be open to allow for continued direct and indirect contact with parents and other family members. Where contact has been refused and a child has been freed for adoption a parent or family member may still apply to the court for contact but requires the leave of the court to do so.

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