



**Version 1.0**

# **FAMILIES AND SOCIAL CARE**

## **SPECIALIST CHILDREN'S SERVICES**

  

### **DEFINITIONS OF CHILDREN IN CARE**

**Document Owner:**

Performance & QA Manager (CiC)

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# **CHILDREN AND FAMILIES SERVICES**

## **Definition of a Looked After Child (Child in Care)**

### **1. Introduction**

1.1. The following definition is provided to assist managers when deciding which children and young people should be viewed as a looked after child.

#### **1.2. Definition of terms used within the document:**

- 'In care' is the preferred term used by Kent County Council however as the term 'Looked After' has a specific legal meaning based on the Children Act 1989 (section 22 (1) a, b) it is used in this document: "**looked after child**" means a person under 18 who is subject to a care order under Section 31 of the 1989 Act (including an interim care order), or is accommodated under Section 20 of that Act.
- **A child** is defined as anyone under the age of 18 years. Where the context specifically relates to older children the term 'young person' is used.
- The term **local authority** is used to refer to Kent County Council, unless otherwise stated
- "**Family and friends carer**" means a relative, friend or other person with a prior connection with somebody else's child who is caring for that child full time. An individual who is a "**connected person**" to a looked after child may also be a family and friends carer.

### **2. Looked after children subject to some form of legal order**

2.1. All children who are subject to a Care Order (Section 31, Children Act 1989), Interim Care Order (Section 38, Children Act 1989) or Emergency Protection Order (Section 44, Children Act 1989) are looked after regardless of where they live since the local authority has acquired parental responsibility for that child.

2.2. Children who are placed, or are authorised to be placed with prospective adopters by the local authority under a Placement Order (Section 18(3) Adoption and Children Act 2002.) or with parental consent (Section 19 (1) Adoption and Children Act 2002) are Looked After.

### **3. Children in contact with youth justice services:**

3.1. Children aged 12-17 remanded in youth detention accommodation (YDA) Under s104(1) of Legal Aid Sentencing and Punishment of Offenders Act (LASPOA): *a child who is remanded to youth detention accommodation is to be treated as looked after by the local authority designated by the court. Youth detention accommodation is accommodation in a secure children's home, a secure training centre, a young offenders institution and accommodation specified by order under section 107 of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for purpose of detention and training order provisions) (s102 LASPOA).* They are entitled to the same care-planning process as all other Looked After Children.

- 3.2. For children who have appeared in court and have been bailed to reside where the local authority directs - they are looked after if they are being provided with a local authority funded placement. They are not looked after if the decision is that they should remain living at home.
- 3.3. Children aged 10 and 11 who have been refused bail may be remanded to local authority accommodation. 12 -17 year olds who have been refused bail may also be remanded to local authority accommodation (or to YDA if the relevant criteria are met.) In the case of children who were not already looked after, this will give them the status of a looked after child under Section 21 of the Children Act 1989 for the duration of the remand.
- 3.4. Children with a community sentence: Youth Rehabilitation Order (YRO) with a residence requirement to live in local authority accommodation are Looked After while they are in placement (Section 21 Children Act 1989.)
- 3.5. Children transferred from police detention to local authority accommodation under Police and Criminal Evidence Act 1984(PACE) are looked after under Section 21 of the Children Act 1989.

#### **4. Secure Accommodation:**

- 4.1. There are also a relatively small number of children who are subject to a secure accommodation order (Section 25 Children Act 1989). These children are looked after.

#### **5. Accommodated children:**

- 5.1. Children are looked after (accommodated) if they are in a placement that is either directly provided or arranged by the local authority (i.e. registered foster carers, connected persons undergoing an assessment to become a KCC foster carer to a particular child, or who have been approved as a KCC foster carer, supported accommodation, independent accommodation or accommodation that is provided by an approved agency on behalf of the local authority (i.e. P&V residential or independent fostering agency).
- 5.2. Children receiving accommodation under Section 20 of the Children Act 1989 must be in a placement for more than 24 hours before they are considered to be looked after.

#### **6. Unaccompanied Asylum Seeking Children**

- 6.1. All unaccompanied asylum seeking children are defined as being children in need (Section 17, Children Act 1989) and the local authority has a responsibility to provide them with suitable accommodation under Section 20 of the Children Act 1989. This is by virtue of the Hillingdon Judgement 2003, which determined that all unaccompanied asylum seeking children must be treated as being 'looked after' because there is no parent or other adult with parental responsibility available to care for them.
- 6.2. Following their 16<sup>th</sup> birthday and/or once the young person has achieved 'eligible status' under the leaving care act it is possible for their 'looked after' status to be removed and replaced with the status of 'Relevant Child' under the leaving care act ([Volume 3 of the Children Act 1989 Guidance and Regulations](#)). Such a decision should be made with the young person and formally agreed at a statutory review meeting chaired/overseen by the young person's Independent Reviewing Officer.

#### **7. Young people in supported accommodation or independent living arrangements (including unaccompanied asylum seeking young people):**

- 7.1. With respect to 16 and 17 year olds in supported accommodation or independent living arrangements, they will automatically be looked after if they are subject to a Care Order.
- 7.2. For young people age 16 plus where supported accommodation is their first 'placement or 'for young people aged 16 and 17 years accommodated under Section 20 (Children Act 1989) and who have acquired the status of 'eligible child' under the Children (leaving care) Act 2000 (including unaccompanied asylum seeking young people) and it is proposed that they move into supported accommodation or independent living arrangements, the decision as to whether they should be looked after should be made on a case by case basis using the following criteria as a guide:
  - (i) Is it in the young persons interests that, because of their assessed vulnerabilities they be treated as legally looked after (i.e. have regular statutory child in care reviews and visits in accordance with the Children Act 1989 and that this will make a significant difference to their future welfare/life chances)?
  - (ii) The young person is in agreement to being 'Looked After'?
- 7.3. If the answer to these questions is 'Yes' they should be considered looked after. Otherwise they should be treated as a relevant child under the Children (leaving care) Act 2000.

## **8. Young people age 16 and 17 years of age presenting as homeless:**

- 8.1. The local authority has a duty under Section 17 of the Children Act 1989 to assess the needs of young people who present as homeless. If the young person is provided with accommodation under Section 20 because they were assessed as being a child in need and requiring accommodation under Section 20 of the Children Act 1989, they are Looked After regardless of where they are placed. ([Homelessness protocols](#)) The courts have made it very clear that the Section 20 duty arises if the child requires accommodation for one of the reasons set out in section 20. The child will, as a matter of law, become a 'Looked After Child'. The child's wishes and competency in making an informed decision should be taken into consideration

## **9. Children placed with a 'connected person' ([Family and Friends Care](#))**

- 9.1. When the Local Authority is unable to place or rehabilitate a child who is Looked After with their parents or other person who has parental responsibility for the child, they must "give preference to" a placement with a person who is a relative, friend or other person connected with the child.
- 9.2. When the child has been placed with the relative or friend by the local authority because the person who had been caring for the child was deemed not to be providing suitable care, the child will be looked after, and the carer must be assessed as a local authority foster carer.
- 9.3. The child may be accommodated voluntarily with the agreement of the parents or subject to a Care Order.
- 9.4. A child subject to a Care Order will continue to be looked after until the order is discharged or the carer is granted an order which gives them parental responsibility for the child.
- 9.5. A child who is Looked After under Section 20 and is placed with a connected person, their looked after status will end when the local authority considers that the child no longer requires accommodation under Section 20(1) of the 1989 Act. Whether or not a child who is cared for by a connected person

should be looked after will be decided on a case by case basis. The key question will be whether the child is assessed to require accommodation under section 20(1) of the 1989 Act. (See 5.2 above) and it is the most appropriate way to promote their welfare. The local authority must also take into consideration the views of the child.

## **10. Children Accommodated in Health Authority, NHS Trust or Education Placements**

- 10.1 If a child is provided with accommodation by a health authority, NHS Trust or LEA, independent hospital or care home for more than three consecutive months, or the intention is that this will happen, Section 85 and 86 of the Children Act 1989 applies and the health authority, NHS Trust LEA, independent hospital or care home must notify the responsible local authority. The local authority must then take steps to enable them to decide whether the child's welfare is adequately safeguarded and promoted whilst staying in the accommodation and decide whether it is necessary to exercise any of their functions under the Children Act 1989. The responsible authority is the authority where the child normally resides and only if there is not one does the host authority become the responsible authority.
- 10.2. Most of these children will not be looked after. An initial assessment should be made of the child's situation in partnership with their parents and relevant health and education professionals. If the child is considered to be in need then a core assessment, support and services should be offered to families as appropriate. Accommodation under Section 20 of the Children Act 1989 may be offered or legal steps taken if this is felt to be necessary to promote and safeguard the child's welfare.

## **11. Joint Funded Placements:**

- 11.1. Many disabled children and children with special needs are placed in education or health placements on a joint funded basis with social services. If the **primary purpose** of the placement is to meet the educational or health needs of the child then they are **not** looked after and provided with accommodation under Section 20 of the Children Act 1989. They would however meet the eligibility criteria as a child in need and the services provided should be monitored and reviewed on a 6 monthly basis.
- 11.2. If the needs of the child or their family subsequently change then it may become appropriate to take steps to alter the status of the child's placement to that of a looked after child.
- 11.3. If a joint funded placement is made to meet the child's **social** as well as their educational or health needs (e.g. there are child protection concerns or parenting issues) they should be considered as looked after under Section 20 of the Children Act 1989.  
(<http://www.legislation.gov.uk/ukpga/1989/41/section/20>)



Guidelines updated  
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## **12. Short breaks:**

- (i) A child can be provided with short breaks under Section 17 (6) Children Act 1989 and not be Looked After. This would usually apply in situations where a one-off short break arrangement was being provided. Children should be treated as being 'looked after' for short breaks that are regular and planned throughout the year.

- (ii) There may be some children whose family have difficulty providing support to their child while they are away from home or monitoring the quality of care, the Local Authority may, in consultation with parents, decide to provide short break accommodation for the child under Section 20(4). Therefore If the child is provided with accommodation for a continuous period of more then 24 hours: the short breaks are pre-planned and in the same place and no break lasts more than 17 days and the total does not exceed 75 days in one year the child is Looked After for the period they are provided with accommodation. (Care Planning Placement and Case Review Regulation 48 apply – they must have a short break plan, an IRO must be appointed.
- (iii) If the child is provided with accommodation for a continuous period of more than 24 hours and the breaks are with a range of providers or any breaks lasts more than 17 days and the total exceeds 75 days in one year then the child is looked after under Section 20 Children Act 1989 for the period that they are provided with accommodation. The Care Planning Placement and Case Review 2010 Regulations apply in respect of care planning, review and visits.

***Wherever there is a proposal for a young person to leave their placement and/or cease to be Looked After, before the age of 18 (i.e. for the young person to become a relevant young person, rather than an eligible young person,) a child in care review must be called prior to any change being implemented so that all involved in his/her case can consider the wishes and feeling of the young person, the implications of the move/change and whether it is in their best interest.***

**(Amended version Pat Dickinson June 2013)**