



**Leicester City Council**

**Private fostering policy**

October 2019

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# Private Fostering Policy

## Introduction

The policy and procedures for dealing with private fostering were required after the introduction of the following national documents: -

- The Children (Private Arrangements for Fostering) Regulations 2005.
- National Minimum Standards for Private Fostering.
- Children Act 1989 Guidance on Private Fostering (2005).
- Private Fostering - Promoting Awareness of the Notification Requirements (BAAF) (2005).

They came into force in July 2005.

The changes were proposed because of: -

- History of Under-Response to private fostering situations.
- Lack of Notifications to local authorities by private foster carers and parents of children so placed.
- Victoria Climbié inquiry.

## 1. Definitions

If a child or young person under the age of 16 yrs is staying with anyone other than a relative as defined by the Children Act 1989 i.e. an aunt or uncle, grandparent, step parent or sibling, for 28 days or more, then they are privately fostered.

This is the case whether or not a private foster carer received a financial contribution from the child or its parents.

### 1.1 Definition of relative

Relative is defined in the Children Act 1989 (Section 105) as a grandparent, sister, uncle, aunt or step-parent. The relative can be related to the child by full blood, half-blood, or 'affinity' (which means marriage).

### 1.2 Step-Parent

Legally, in the context of private fostering, a step-parent is a person who is, or has been, a party to a marriage in relation to which a child has been treated as a 'child of the family'. Cohabitation does not count.

### 1.3 Privately Fostered Child

This means a child under the age of 16 years (or 18 if a young person with disabilities) who is cared for and provided with accommodation by someone other than:

- a parent of his / hers.
- a person who is not a parent of his / hers, but who has a parental responsibility for him / her.
- a relative of his / hers (See 1.1 below).
- a local authority.
- for 28 days or more.

If a period of care lasts less than 28 days, but further periods are planned, which total 28 days or more, then the private fostering procedures apply.

#### 1.4 Private Fostering

The term "private fostering" describes the arrangement made between the parent and the private carer who becomes responsible for caring for the child. The duty of the carer is to safeguard and promote the child's welfare.

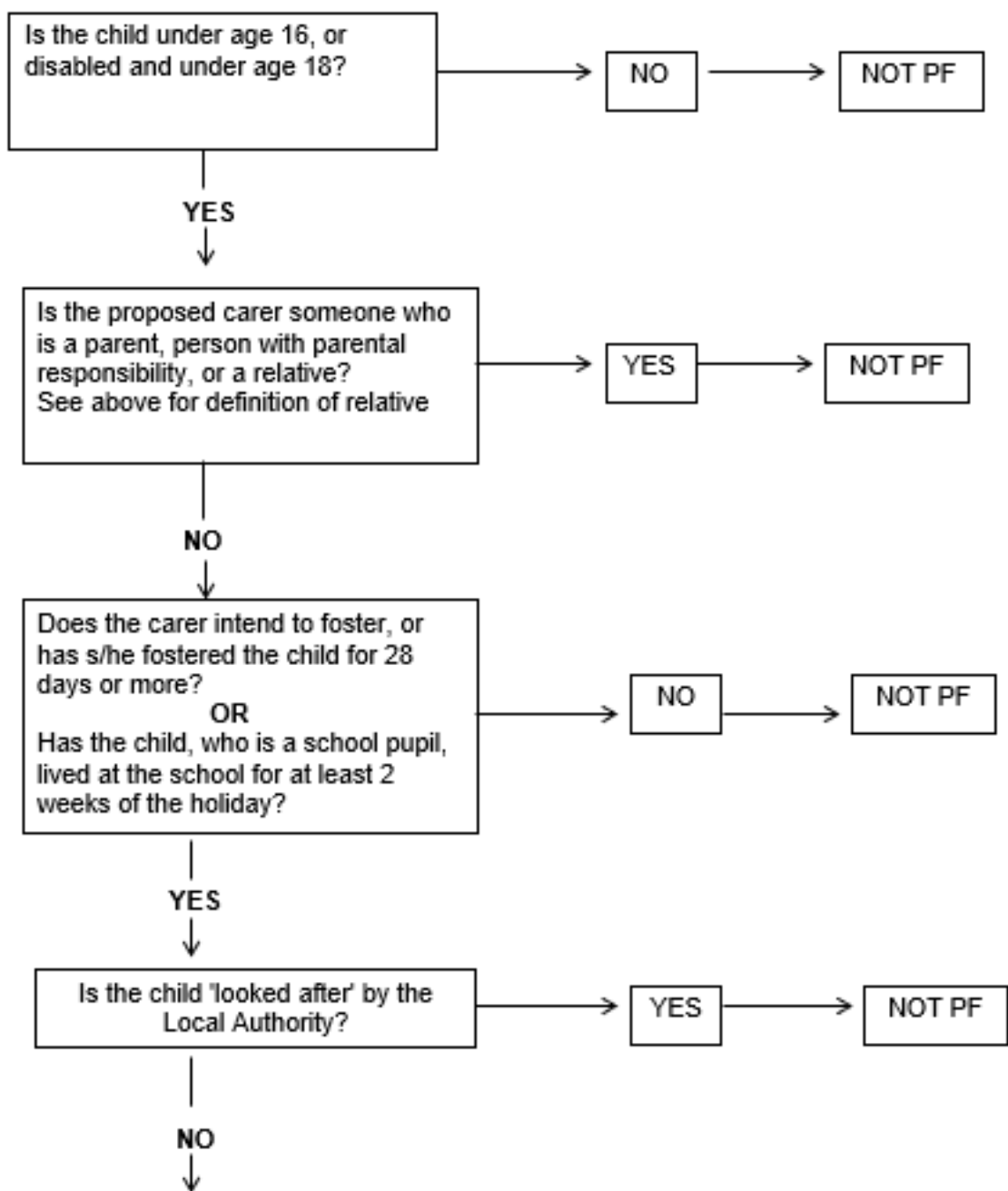
## 2. Other relevant basic legal points

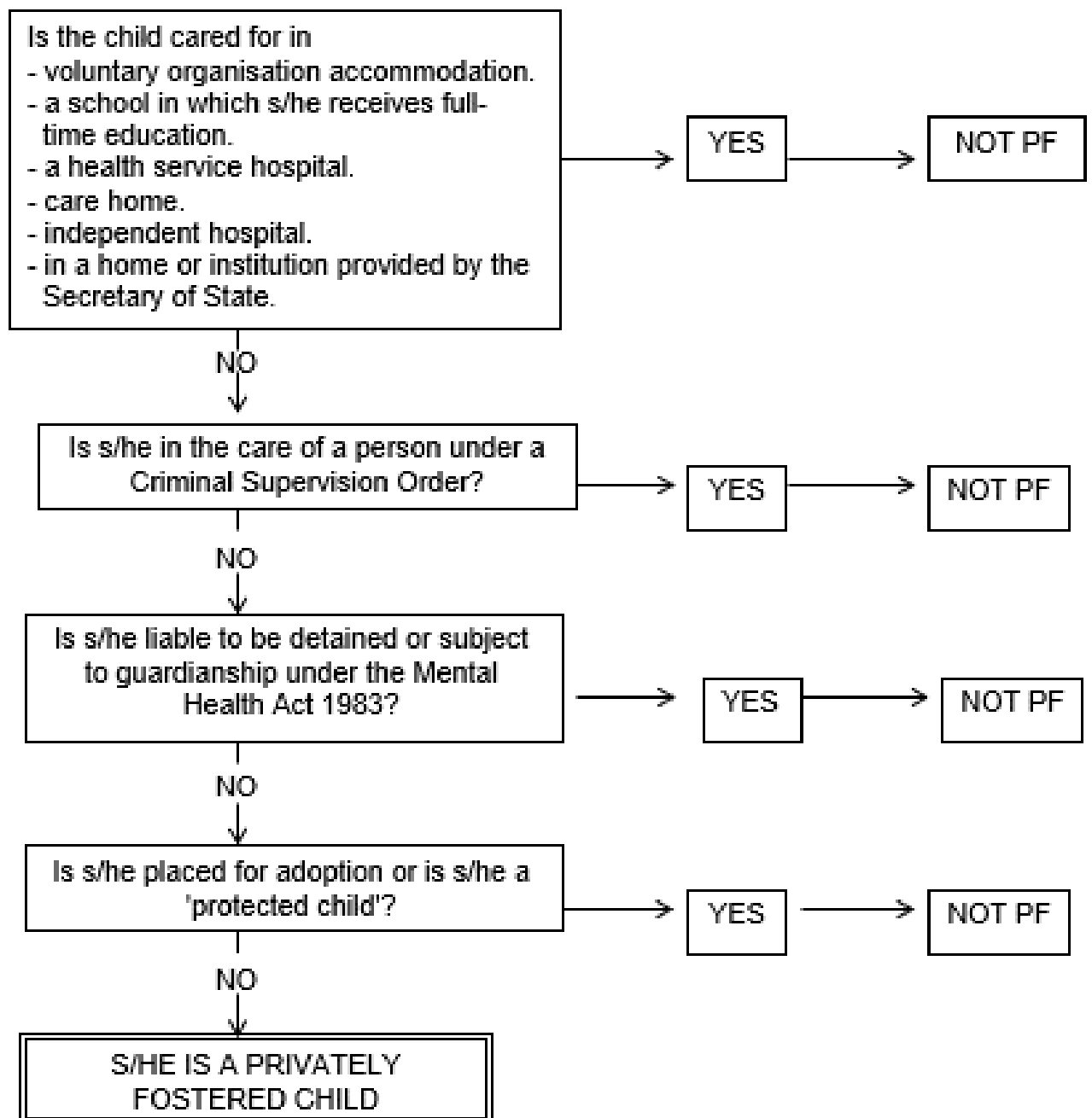
- 2.1 In law, at any point during the placement, a parent with parental responsibility can remove the child from the placement.
- 2.2 The 'placing' parent need not have parental responsibility.
- 2.3 Most children living in other households, away from their parents, will be:
  - In Local authority foster care via a Care Order or Section 20.
  - In private foster care.
  - Living in a non-statutory arrangement.
- 2.4 When you read the guidance to the private fostering regulations and the minimum standards, they are predicated on the notion that privately fostered children will have parents that make formal arrangements for their children to be cared for away from home.
- 2.5 They also assume that the person placed in the role of private foster carer will, at least in a limited way, be aware of the formal responsibility that they are taking on and that the arrangements are made in a planned way. This is often not the case.
- 2.6 A private fostering arrangement may not come about due to a planned and conscious decision by parents being made for children or young people to be cared for away from their home, as envisaged by the guidance to the private fostering regulations. A crisis or unplanned event may result in a private fostering arrangement coming about. A child may 'vote with their feet', or the birth parent may die. The 'placement' need not be approved by the birth parent.
- 2.7 If one focuses on the guidance and minimum standards, rather than the law, it is easy to become confused about whether an arrangement constitutes private

fostering or not, because in the absence of a parent who agrees to the arrangement, some of the standards and guidance do not make sense.

- 2.8 It is advised that with each arrangement being considered, it will be helpful to follow the flow-chart below.
- 2.9 If you are in any doubt about whether the child concerned is privately fostered or not, contact the lead officer for Private Fostering, James Tingley, Team Manager 370303 Jeannette Harvey, Service Manager 372134

### 3. Private fostered child





#### 4. General Points

- 4.1 Private foster carers do not have parental responsibility, this remains with the birth parents. Birth parents should be encouraged to maintain contact with their children and to participate in any decisions concerning their health, education or future welfare needs.
- 4.2 It is the duty of the local authority to satisfy themselves that the welfare of children privately fostered in their area is being satisfactorily safeguarded and

promoted, and to ensure that advice is given to parents and carers whenever necessary.

- 4.3 A proper balance needs to be maintained between parental rights to make private arrangements for the care of their children, and the local authority's obligations to satisfy themselves about the safety or welfare of the privately fostered child.
- 4.4 In Leicester, up to now, there have generally been 2 main groups of private foster placements: -
- a) Teenagers, placed with non-related friends and neighbours, often because of difficulties at home.
  - b) There have also been increasing numbers of children arriving in the U.K. as "refugees". This can be on an individual basis or within a group, brought by a variety of groups and organisations, into the U.K. Such children placed within 'families' fall within private fostering regulations.
- 4.5 However, there are a range of possible case situations - here are some examples;

#### Example 1

Birth parents approach a non-relative to care for their child for any period over 28 days. That person agrees to do this, and the local authority is notified of their plan and / or action. This is a private fostering arrangement.

#### Example 2

An older child may, for example, decide that she is going home with her best friend and the best friend's parent may agree, possibly under pressure, for the child to stay with them. This may be an arrangement that the birth parent strongly disagrees with. The birth parent may, however, be unable to enforce the return of the child to his / her own home due to the child's age and size. This is a private fostering arrangement, if it lasts or if it is proposed to last more than 28 days.

#### Example 3

A child has lived abroad with her mother from birth. Her mother dies, and this results in there being no-one with PR for her. She is sent to this country to live with extended family (who do not fall within the legal definition above) or with members of her community. This will be a private fostering arrangement. However, it may be appropriate for this carer to take legal advice about obtaining parental responsibility for child, for example, through Child Arrangements Order or Special Guardianship Order on long-term basis.

## **5. Roles and Responsibilities of Parties Involved**

### 5.1 Leicester City Council Children Social Care and Early Help



- 5.2 Under the Children Act 1989, the department has a specific duty to safeguard and promote the welfare of children living in their area and where appropriate, assess whether children are in need. Within this context, the Department has a duty to monitor and assess all children placed with private foster carers.
- 5.3 The child's right to safety and security will be the primary aim of monitoring private fostering arrangements, and where the child is from an ethnic minority, our aim will also be to ensure that his / her own culture and language needs are met.
- 5.4 For older children, there is a clear expectation that they will be fully involved in planning for their future, together with parents and carers. It should be assumed that children separated from their parents in private foster care are children in need, unless otherwise shown to be the case.
- 5.5 The Children Act 1989 and associated Guidance and Regulations are clear that private fostering should never provide a backdoor into adoption. Where permanence is an issue, appropriate legal advice should be made available. Departmental procedures require work with parents, (including contact with the local authority in which they live, if this is not Leicester City), carers and, where appropriate, the child. Clear planning before new arrangements are made will ensure the best possible outcomes for the child and avoids the need for emergency action.
- 5.6 The department intends that procedures concerning children and young people placed with private foster carers will provide a framework for good practice by ensuring participative planning at all stages.
- 5.7 Welfare principle
- 5.8 The welfare of the child is of paramount importance: the general principles, to which family proceedings courts must have regard and which have been adopted by social workers to aid in assessing private fostering arrangements, are set out in the welfare checklist in Section 1 (3) a) - f) of the Children Act 1989:
- a) the ascertainable wishes and feelings of the child concerned (considered in the light of his / her age and understanding);
  - b) His / her physical, emotional and educational needs;
  - c) The likely effect on him / her of any change in his / her circumstances;
  - d) His / her age, sex, background, and any characteristics of him / her which the court considers relevant;
  - e) Any harm which he / she has suffered or is at risk of suffering;
  - f) How capable each of his / her parents, and any other person in relation to whom the court considers the question relevant, is of meeting his / her needs.
- 5.9 In this context (f) could refer to the capability of private foster carers. The local authority has a general duty to safeguard and promote the welfare of children in need, and to promote the upbringing of such children by their families so far as this is consistent with the welfare duty to the child. (Section 17 (10) of the Children Act 1989).

- 5.10 It may therefore be that the duty to safeguard and promote the child's welfare is more appropriately met by providing services under Section 17 (3) of the Act to a parent who proposes that their child is privately fostered, and that would be best achieved by referring the parent to their home local authority if they are not from Leicester City. Negotiation may be required between the local authorities.
- 5.11 In respect of privately fostered children, the local authority has a duty to satisfy themselves that the welfare of children who are privately fostered is being satisfactorily safeguarded and promoted, and to provide necessary advice to those caring for them. This includes the duty to ensure that parents and carers fulfil their responsibilities to the child.  
The local authority's role is to satisfy themselves that private fostering arrangements are satisfactory, and that foster carers and premises are suitable.
- 5.12 The practical responsibilities of the local authority in a private foster arrangement include the following: -
- a) receive notifications from parents or carers.
  - b) assess the suitability of the arrangements (within 42 days)
  - c) visit the child in line with statutory requirements.
  - d) ensure that carers are aware of the child's racial, cultural, linguistic and religious needs and are helped to meet them.
  - e) offer advice and support to parents, carers, and children involved in private fostering arrangements.

Although the Children Act 2004 provides the Secretary of State with a power to establish a registration scheme for private foster carers in England, the local authority currently has no power to create a register or approve private foster carers. However, they must satisfy themselves about the suitability of arrangements, carers and premises.

## **6. Parents**

- 6.1 A parent may arrange (under Section 2 (9) Children Act 1989) for a private foster carer to undertake some of their parental responsibilities, but parents always retain parental responsibility in respect of the child/ren
- 6.2 Within a private fostering arrangement, the responsibilities of the parent include: -
- i) Notification to the Local authority of their intention to place a child with, or remove a child from, a private foster carer.
  - ii) Providing carers with adequate information about the child, including health records, dietary preferences, school records, hobbies, religion and ethnicity.
  - iii) Informing carers and Local authority of any changes of address.
  - iv) Financially maintaining the child.
  - v) Planning for the child's future.
  - vi) Exercising parental responsibility appropriately, including having appropriate contact with the child.

- 6.3 Parental responsibility is defined by the Children Act to include all the powers and duties of parents in relation to a child and his property. A parent may arrange under Section 2 (9) of the Act for a private foster carer to meet some of his / her parental responsibilities, but a private fostering arrangement does not absolve a parent of his / her parental responsibilities.  
Responsibility for safeguarding and promoting the welfare of the private carer child rests with the parent.
- 6.4 Parental participation is one of the key principles of the Children Act. The local authority must give careful consideration to arrangements made for the child's parent to exercise his / her rights, powers, duties and responsibilities.
- 6.5 Private foster carers
- 6.6 Private foster carers have a responsibility to safeguard and promote the welfare of the child and are empowered (Section 3 (5) Children Act 1989) to do what is reasonable to safeguard and promote the child's welfare.
- 6.7 Within a private fostering arrangement, the responsibilities of the carer include: -
- (i) notification to the local authority of their intention to receive a child, and to cease to care for a child.
    - Advising their local council of their intention to foster a child at least 6 weeks in advance or, where an emergency arrangement is made, within 48 hours of the child's arrival.
    - Notifying their local council when a child leaves their care, stating why and giving the name and address of the person into whose care the child has been moved.
  - (ii) agreement to a full assessment of themselves and their household's suitability to foster children privately.
  - (iii) informing the local authority of changes of circumstances within the household.
  - (iv) allowing the child to be visited by the local authority and be seen alone.
  - (v) maintaining contact with parents and encourage visits to take place.

## **7. Procedures**

### **7.1 Notification**

Who must notify the local authority?

- a) persons proposing to receive a child to be privately fostered must notify the local authority not less than 6 weeks or more than 13 weeks before the placement is due to take place.
- b) persons already caring for a child in an emergency must notify the local authority not more than 48 hours after the child was received.

- c) parents or persons with parental responsibility for a child must notify the local authority in whose area they propose to place the child, not less than 6 weeks or more than 13 weeks before the placement is due to take place.
- d) Any person who is or proposes to be involved (whether or not directly) in arranging for a child to be fostered privately, shall notify the local authority not less than 6 or more than 13 weeks before the fostering arrangement begins, except in an emergency, in which case they must notify within 48 hours of placement.

The carer is required to give very specific information about the placement to the local authority, to ensure that the local authority is able to carry out its duties and responsibilities to the privately fostered child and ensure that the parent is given the necessary information to make informed decisions about the placement.

- e) The local authority may also be notified by another agency involved with the child, birth family, or private foster family, for example, the child's school, health representative, youth worker, etc.

If, on receipt of such a notification, the worker confirms this meets the criteria for private fostering, then the following process needs to be actioned: -

- If the child is already an open case to a child care team, then a Single Assessment will need to be updated by the allocated Social Worker. The Social Worker will need to contact the named worker for Private Fostering who will complete the assessment of suitability and will instigate the Private Fostering process.
  - If the child is not an open case to a child care team, then the referral will be screened by DAS and passed to the Single Assessment Team to undertake the assessment on the child. They will also notify the named Social Worker/TM for Private Fostering who will undertake the suitability assessment and instigate the Private Fostering procedures. DAS will select the outcome Single Assessment and the Private Fostering pathway will be created manually.
- f) In practice, the local authority will probably continue to receive notifications in two ways: -
    - Advance notification by carer, parent or child that such an arrangement is being planned in the next 6 - 13 weeks.
    - Notification by carer, parent, child or other party that child has already moved into another family, or finding out by chance, for example, during a social work visit for another reason. In the National Guidance, this is referred to as an emergency situation (although in reality, it may continue to be the majority of situations).

## 7.2 Process following notification

(These apply whether child / family is currently known to the department as an open case or whether not currently known).

- (a) Where advance notification
- Worker gives information about private fostering and process that is required. Advises that notification has to be in writing, not just verbal.
  - Worker obtains information from referrer
  - Visit to be made to home of potential private foster carers within 7 days to assess the suitability of the home conditions and plans for the private fostering arrangement. This should be undertaken by the named Private Fostering worker, ideally jointly with the allocated Social Worker.
  - Worker takes out P. F. pack (consisting of relevant forms to be signed by different parties.
  - Will need to talk to parents and child.
  - Written report will be completed following these sessions (on LL)
  - Ask to be informed when child moves into private foster carer's home.
  - No further action then until notification received that child has moved in.
- (b) When child has moved (i.e. 28 days start from this date).
- Visit to child in new home within 7 working days of moving in, or of notification if that post-dates the child's move. Action required as outlined above.
  - If no pre-notification visit has taken place, then worker to take PF pack for completion.
  - Discussion with new carers.
  - Discussion with parent.
  - Written report of findings. Complete on LL

## **8. Roles & Responsibilities within Children & Young People's Service after 28 days.**

- 8.1 The regulations concerning private foster care make it clear that assessment of suitability takes two forms, the first concerning the welfare of the child, the second concerning the suitability of the accommodation and the private foster carer.
- 8.2 In Leicester City, it has been agreed that the lead role for completing the suitability assessment for the carers (incorporating the assessment of the needs of the child and the suitability of the carers and their accommodation to meet those needs) will be undertaken by the named Private Fostering worker. The assessment is recorded in the private fostering assessment form, reflecting the child's needs and the ability of the carer to meet these needs. This will be passed the Service Manager to approve the suitability decision. This must be completed within 42 days.
- 8.3 Statutory (reg 8) visits and recording  
The child and carers must be visited as frequently as necessary to safeguard and promote his / her welfare and at least at the frequency required by guidance and regulations. This is once within the first week of placement. Thereafter, not less than once every 6 weeks in the first year of placement and during the second and subsequent years of placement, visits must take place not less than 3

monthly, and, in addition, when reasonably requested by the child or carers. Visits should be recorded on LL on the Regulation 8 visits form. These will be recorded by the named worker for Private Fostering.

#### 8.4 The recording of the visits should state;

- Who is present (it is an expectation that the child, the carer and other family members will be seen). The child is expected to be seen alone.
- Child's needs – health, education, emotional behavioural development, identity, social presentation, family and social relationships, views and wishes of the child/young person.
- Role of parents – how does the parents or those with parental responsibility support the arrangement, include within this consideration for contact, financial issues, health and education needs.
- Capacity of carers to meet the child's /young person's needs – basic care, ensuring safety, guidance and boundaries and the arrangements for contact, education, health and dental care, suitability of the accommodation and sleeping arrangements for the children.

8.5 All other visits can be recorded onto case notes and should take place as and when requested by the child/carers or deemed appropriate by the allocated Social Worker.

#### 8.6 Visits for children subject to a Child in Need plan

These visits will be carried out in accordance with procedural expectations and will be recorded as such. The child in need plan will be reviewed 6 weekly in keeping with local procedure. The child's allocated Social Worker will be responsible for recording these visits.

#### 8.7 Placement endings

When the placement ends, the parent must notify the local authority. When a child leaves their care, the private foster carers must notify the local authority within 48 hours, stating the name and address of the person into whose care the child has been moved.

The social worker must ensure that private foster carers are given a sample letter in order to notify the department of a placement ending.

The social worker must ensure that all professionals are informed in writing of the ending of the private fostering arrangement. If the placement has ended abruptly or in such a way as to distress the child, parents or carers, the letter should draw attention to the social worker's concerns.

#### 8.8 After Care

#### 8.9 Specific Considerations:

A child who has been in private foster care may become a "qualifying child" in respects of the Children Act (Leaving Care) Act 2000. The local authority may advise, assist and befriend such a person if s/he asks for help. Assistance may be in kind, or in exceptional circumstances, in cash.

## 9 Other relevant matters

9.1 Requirements for specific actions by the private foster carer

9.2 Local authorities have the power to impose requirements on such carers and it will be a recommendation of the assessment whether to impose a requirement after full consultation and discussion. Requirements may refer to an individual child or may be more general such as stipulating the number, age, and gender of children who may be fostered or may refer to practical matters in the home, such as safety factors. Other requirements might refer to the provision of toys that reflect the child's ethnic origins, a different approach to discipline, or a requirement to have the child medically examined. Any costs incurred by the carer to ensure these measures are complied with may be recoverable from the parent of the child. The local authority will have no financial liability in respect of requirements. The Service Manager will notify the prospective carers of any requirements in writing, with reasons for the requirement, right of appeal, and time limit within which the carer may appeal. (Children Act 1989, Schedule 8, Paragraph 6, Sub section 4).

9.3 Parents will also be notified in writing of the Service manager, Looked after Children recommendation to request additional requirements in respect of the placement. Once a recommendation has been made, a carer has 14 days in which to comply or to appeal to the court if the carer does not agree with the recommendation. While the appeal is pending, the requirement does not take effect.

9.4 If the requirement concerns the child's safety, it is important that parents are kept fully informed - they may be advised to remove the child prior to an appeal being heard.

If the time allowed has expired, and the requirement is not complied with, the local authority may impose a prohibition, served in writing to the person, giving reasons and outlining the appeal process. This should be undertaken in consultation with the department's legal advisors.

9.5 Granting Exemptions

9.6 Leicester City Children and Young People's Service will apply the same criteria to the granting of exemptions in private fostering arrangements, as required by the Children Act 1989 (Schedule 7, Paragraph 4), in respect of local authority foster care. The local authority therefore has the power to grant exemptions to the usual fostering limit, taking into account the following factors:

- the wishes of the child as can be ascertained
- the best interests of the child (see Welfare Principles).
- the wishes of the parent
- the long-term plans for the child

Exemptions must be:

- in the best interests of the child.
- exceptional.
- in respect of a particular child(ren) only.

- time limited, with a clear plan for returning to the fostering limit.

9.7 Since exemptions must be in relation to a specific child, they should form part of the social worker's assessment and be discussed with the Service Manager, who can agree the proposal for a specific period of time and review the arrangements at the end of that time. Where an exemption is granted, written notice must be given to the private foster carers, and include the names of specific children, and the plan for a return to the limit.

9.8 The parents of all the children in placement must also be sent written notification of the decision to grant an exemption. The letter should also contain a copy of the Children's Social Care and Early Help complaints procedure.

9.9 Exemptions must be reviewed 6 monthly and any changes to the plan taken back to the Service Manager, Looked after children.

However, as noted earlier, the expectation is that exemptions will not generally be sought or agreed.

9.10 Appeals by prospective carers:

9.11 If the carer wishes to appeal against the refusal to grant an exemption, they must apply to a court within 14 days of the receipt of the letter refusing exemption under Schedule 8 (8) of the Children Act 1989.

9.12 Should the social worker be aware of a carer's intention to appeal, they should contact the department's legal adviser. Carers should also be informed of the department's complaints and representation system.

Carers refused an exemption may wish to apply for registration as a private children's home under the Children's Home Regulations 2001. In this situation they should be advised to contact the Commission for Social Care Inspection Regional Inspectors for Private and Voluntary Homes.

9.13 Prohibitions on prospective foster carers

A local authority has the power to prohibit a person from privately fostering children where they are of the opinion that: -

- the person is not suitable.
- the premises are not suitable.
- it would be prejudicial to the welfare of the child for him to be, or continue to be, accommodated by that person in those premises.

It may be necessary to apply prohibitions very quickly on occasion. Legal advice should always be sought, and the appropriate information made available to the service manager for the child. A view should be sought from a legal services representative. The Service Manager, Looked after Children has the authority to make an immediate decision if necessary.



Prohibitions may be imposed on a person who applies to privately foster, as well as a person already privately fostering. A prohibition may apply generally to a person, or specifically to a named child or named premises.

A prohibition must be in writing, specifying reasons for the prohibition and information about the appeal procedure, and sent by recorded delivery or delivered by hand.

Any prohibition being considered should be discussed fully with the Legal Department prior to a decision being made. Where a prohibition is imposed, the parents should be kept fully informed, and advised to remove the child. The authority may need to take other action to safeguard the child's welfare.

The carer has 14 days in which to appeal to the court against prohibition. The local authority has the power to cancel a prohibition, and thus may be able to respond appropriately to action taken by the carers, or new information.

#### 9.14 Persons disqualified from being private foster carers

A person may be disqualified where:

- S/he has been convicted at any time of certain offences. Consult with the department's legal advisors for the details of Regulation 2 (6) and the Schedule to the Disqualification for Caring for Children Regulations 2002.
- A care order has been made at any time in respect of a child in his / her name.
- His / her rights and powers over a child have been removed from him / her at any time.
- She / he has been refused registration as a child minder or similar.
- She / he has been prohibited from fostering privately.
- She / he lives in the same household as someone who is disqualified.

The applicant must disclose these facts to the local authority, when giving notice of an intention to privately foster, or if those facts arise during the period of the private fostering arrangement the local authority has the authority to waive the restriction to the applicant becoming a private foster carer under certain circumstances having regard to the date of the offence or order, the type of offence or order, the degree of culpability of the persons and the person's activity and involvement with children since the offence or order (Vol 8, The Children Act 1989, Guidance & Regulations, Para 2.7). If the local authority refuses to lift the restriction on disqualification, they shall inform the applicant in writing giving reasons for the refusal and giving details of the appeal procedure. The Service manager, Looked after Children has the authority to undertake this.

The decision should be recorded, which the applicant should also sign, and each should retain a copy.

## Appendix 1

