

Children's Services

Guidance on directions made under Section 38(6) (Court-ordered assessments)

1. Overview

- 1.1 When a child is subject to an interim care order, the Family Court may decide to make a direction for an assessment under s.38(6) Children Act 1989.
- 1.2 This can include the Court directing that a child should live with specified carers for a period of assessment. Directions under s.38(6) CA 1989 can result in a child being placed with a parent, relative or other connected person.

2. Key points

- 2.1 The following should be borne in mind:
 - A s.38(6) direction can only be made where a child is subject to an interim care order and is therefore **always a temporary position** pending assessment outcome or change of circumstances;
 - If a child is subject to a s.38(6) direction and is in the care of a parent, there is **no requirement** to obtain approval from the Director of Children's Social Care as required by regulations 17 or 19 of the Care Planning, Placement and Case Review Regulations 2010;
 - If a child is subject to a s.38(6) direction and is in the care of a connected persons carer, there is **no requirement** to obtain approval from the Director of Children's Social Care as required by regulations 22 or 24 of the Care Planning, Placement and Case Review Regulations 2010;
 - **The child is a child in care** and will need statutory visits, reviews, PEP etc;
 - The placement is regulated by the Family Court and only the Court can make the decision to end the placement/assessment. This means that the Local Authority must apply to the Court in the event social workers assess the child/ children would be at significant risk were they were to remain in the placement;
 - However, the Police may still exercise their protective powers under s.46 Children Act 1989, if they have reasonable cause to believe that a child/children would otherwise be likely to suffer significant harm.
- 2.2 The circumstances in which directions as to placement are made under s.38(6) will vary, but typically involve situations in which the Court considers it is in the child's best interests to be placed / remain with a parent or connected person,

even though they have not satisfied the necessary regulatory checks. In these circumstances, the Court can authorise a placement which would otherwise be unlawful.

3. Financial support to parents (and others with parental responsibility)

3.1 In some cases, a direction under s.38(6) can result in a child being placed with a parent or other person with parental responsibility.

3.2 Dependant on circumstances it may be reasonable to provide such a carer with a start-up grant (for example, to purchase beds, bedding, clothing etc). In addition, it may be appropriate to provide the carer with financial support until such a time as they are in receipt of child benefit.

- Any regular payment should not exceed the Child Benefit amount
- In most cases it is expected that any payments in lieu of Child Benefit will be reclaimed when any backdated Child Benefit payments have been made

4. Providing support to other connected persons

4.1 Directions under Section 38(6) do not result in a connected person becoming a foster carer. They will not receive “fostering allowances”. However, caring for a child at the direction of the court is a considerable expense for a family member, and it may therefore be appropriate for the Local Authority to provide some discretionary financial support. Applications for discretionary assistance should be made by the child’s social worker to the Child Placement and Allowance Group.

4.2 In order for the placement to be recorded on Mosaic, the carer will need to be recorded as a temporary foster carer.

- For existing connected person foster carers, allowances will be based on the current rates
- Extended family or friends caring for a child under a s.38(6) direction will receive the basic fostering rate which will not be means tested during the s38(6) period;
- If the outcome of the proceedings is that the connected person is approved as a local authority foster carer they will be eligible for payments of the relevant fostering rate in accordance with the usual arrangements;
- If the outcome of the proceedings is that the connected person is awarded a special guardianship order, they will be eligible for the 2-year transitional allowance. This will need approval from CPAAG (change of placement & allowance approval group)

4.3 It is recommended that where there is potential for the final outcome to be a child arrangements or special guardianship order, the process of financial

assessment be started early during the s.38(6) period so that the carers and the Court are fully aware of the financial support that will be available in the longer term.

- 4.4 Social workers will need to liaise with the Finance Team to ensure that regular payments to the required level can be made automatically via bank transfer. The Finance Team will need the details of the carer including bank details.
- 4.5 Where the allowance is backdated, any previous payments made will be deducted from the backdated payment.