



ST. MARY'S
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*Regulations 17 & 19 and the
oversight in favour of s38(6)*

Stephen Williams

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Stephen Williams (called in 2010) practices in all areas of family law, with particular expertise in public law proceedings. Stephen has extensive experience in representing local authorities, parents and guardians. He is well respected for his robust forensic questioning of witnesses, his attention to detail, his application of legal principles and his engagement with clients.

I wrote a previous article headed [*The lure of the s38\(6\) placement over the Regulation 24 'risk'*](#) within which I queried the increased tendency in public law cases for local authorities to propose s38(6) placements with family members rather than being willing to agree to those same family members being temporary foster carers. Within that article I focused solely on the position of extended family members, rather than placements with the parents themselves or in residential or foster placements to include parents.

The purpose of this article is to explore the rules around temporary approval for parents and again why the overuse of s38(6) assessments may be the result of a misunderstanding or misapplication of those slightly different regulations. It should be read simply as an addendum to that previous article but widening the scope ever so slightly.

Legal position on placements with parents

It is not proposed to repeat the content of my previous article regarding the legal duties that LA's have to accommodate children, suffice to say that preference has to be given to a parent or a holder of PR.¹ There are of course limits on this and it is only if they deem it consistent with their welfare² and if not possible they are required to *'place C in the placement which is in their opinion the most appropriate placement available'*.³

Thus, there is a requirement (as would be expected) for the parents (or those with PR) to be considered as a first option before even considering placing the child not with a parent.

Whilst extended family members are to be approved as temporary foster carers (pursuant to Regulation 24 of the 'Care Planning, Placement and Case Review Regulations 2010) the preliminary arrangements for placing a looked after child with a parent fall under regulations 15-20 of the Care Planning, Placement and Case Review Regulations 2010. What is clear within the regulations is that there is a distinction drawn between extended family members, who are deemed as foster carers, and parents who are not. This is relevant for solicitors for parents who seek a fostering allowance for their client who is a parent caring for a looked after child.

Regulation 17 provides that prior to placing a looked after child with a parent the LA must:

- a) *Assess the suitability of P to care for C, including the suitability of the proposed accommodation and all other persons aged 18 and over who are members of the household;*
- b) *take into account all the matters set out in schedule 3 in making their assessment;*
- c) *consider whether, in all the circumstances and taking into account the services to be provided the placement will safeguard and promote C's welfare;*
- d) *Review C's case in accordance with Part 6.*

¹S22C(3) CA 1989

²S22C(4) CA 1989

³S22C(5) CA 1989



Crucially however **Regulation 18** provides that even after the requirements in Regulation 17, a placement with a parent 'must not' take effect until it has been approved by a nominated officer. That nominated officer before approving the placement must be satisfied that:

- a) *The requirements of regulation 9(1)(b)(i) have been complied with;*
- b) *The requirements of regulation 17 have been complied with;*
- c) *The placement will safeguard and promote C's welfare, and*
- d) *The IRO has been consulted.*

Regulation 19 does however provide a mechanism for a nominated officer to approve, 'where necessary and consistent with C's welfare' a placement prior to the Regulation 17 assessment is completed if:

- a) *They arrange for P to be interviewed to obtain as much information specified in Schedule 3 about P and the other persons living in P's household who are over 18 as can be readily ascertained in that interview;*
- b) *Ensure the assessment and review of C's case are completed in accordance with Regulation 17 within 10 working days of C being placed with P;*
- c) *Ensure that a decision in accordance with regulation 18 is made and approved within ten working days after the assessment is completed.*

There is thus the ability for temporary approval to be provided in circumstances that are not particularly onerous (arranging an interview with the parent). The only risk for representatives of parents who go down this route, is that if the subsequent decision of the nominated officer is not to approve the placement, it has to be terminated. Unlike the rules that relate to family members (whose negative fostering assessment can be appealed) there is no mechanism for a parent to challenge a negative decision.

It is also notable that the matters contained within 'Schedule 3' of the regulations (what a parent is to be assessed upon) is exactly the same as 'Schedule 4' of the regulations which is what an extended family member is to be assessed upon except for two curious differences.

Firstly, the Local Authority does not have to consider the 'nature or quality of any existing relationship with C' for a parent, but it does with a family member. Secondly whilst the Local Authority doesn't have to consider the other persons over 18 living in a family members property (or at least not explicitly) it does with respect of a parent.

Legal position on s38(6)

As per my previous article practitioners will know that s38(6) is the mechanism via which the court can order an assessment of the child. As also per my previous article it is settled law that a court can use s38(6) to insist that a child is placed in a specific placement, thereby avoiding the approval mechanisms as set out above. Essentially the court takes the risk of the placement rather than any nominated officer.



Difference between parents and extended family members

For whatever reason it appears to the author that there are far less references to Regulation 17 than there ever are to Regulation 24. That is probably because there will always be more family members available than the two biological parents of a child. That said the purpose of this article is to emphasise that there is a readily available and identifiable mechanism for Local Authority's to approve placements of looked after children (even under interim care orders) with their parents.

Crucially for Local Authority advocates not wanting to fall foul of the rules both the more permanent approval, but also the temporary approval requires the authorisation of the 'nominated officer' within the Local Authority. That nominated officer is defined as:

'A senior officer of the responsible authority nominated in writing by the director of children's services for the purpose of these Regulations'.

Whilst this issue comes up comparatively rarely such that the nominated officer would not need to be on 'speed dial', it does seem important for social workers to be aware of who this officer is for the purpose of approvals. Predominantly that is because of the downsides that could be perceived in inviting the court to order a s38(6) assessment against it being an assessment approved by the Local Authority itself (explored in my previous article).

As with extended family members there is an all to readily acceptance by practitioners that a LA cannot place and thus s38(6) is seen as the only option. However again as with family members there is an obligation for a LA to place with parents if at all possible and there are mechanisms for this to be approved urgently, subject realistically only to an interview.

However in the event that temporary approval for a parent was utilised, representatives of that parent must be aware of the terms of Regulation 19 that would mean that if the LA determined (having done the relevant assessment) that the placement could not be confirmed, that placement would need to be terminated with no right of challenge. Being able to return a case to court within the timescales of this decision would appear to be important in this situation for both representatives of parents (fearing a removal from their client) and indeed Local Authorities (fearing an unregulated placement if they didn't remove the child).

Thus the objective of the article is to emphasise (like the previous article) that there are mechanisms that are available to be utilised within the relevant regulations. As before it is not intended to encourage conflict or militant arguments against LA counsel or solicitors, but to suggest that not always the correct mechanisms are utilised. There will probably be more known about parents than extended family members, and thus LA's objectively may have good reason not to take a chance upon a placement with a parent. In those cases, a decision of the court may be required to say the child has to be placed there. However, the s38(6) mechanism does not appear to be designed for when a LA doesn't know much about a parent or doesn't want to take the risk itself, much as was discussed in the previous article.



Contact Us



stephen.williams@stmarysflc.co.uk

St Mary's Family Law Chambers

26-28 High Pavement, The Lace Market, Nottingham NG1 1HN

Tel: 0115 950 3503 DX: 10036 Nottingham

Email: clerks@stmarysflc.co.uk

