



Children's  
Rights Alliance  
for England

## FAQ - Full Answer



**“My sister and I have been in care for six months. The social workers decided that she’s going to a foster home and I’m going to a children’s home fifty miles away. We don’t want to be separated and I don’t want to leave this area. What can I do?”**

### **The law on placements in care**

Whether you are being “looked after” in care with the consent of parents (accommodated under [section 20](#) of the Children Act 1989) or without their consent (a care order under [section 31](#)), the local authority has a number of very relevant legal duties towards you.

The legal duties of the local authority (the social workers) are that it:

- ◆ must safeguard and promote your safety and welfare, and particularly promote your “educational achievement” (section 22(3) and (3A));
- ◆ before making any decision about you, must so far as possible find out what your wishes and feelings are and give these “due consideration”, having regard to your “age and understanding” (section 22 (4) and (5));
- ◆ when deciding on where you live, so far as is “reasonably practicable in all the circumstances of the case”, must ensure the placement (section 22C):
  - allows you to live near your home
  - does not disrupt your education
  - if you have a sister or brother in care, allows you to live together
  - does not mean you are living outside the local authority area
- ◆ “reasonably practicable in all circumstances of the case” does not include saving the local authority money;
- ◆ must have sufficient children’s homes and foster placements in the area to meet the needs of looked after children (section 22G);
- ◆ must, with your involvement, make a plan for all aspects of your care, including where you live (section 31A);



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- ◆ must, with your involvement, review that plan at least every six months, or whenever there is a significant change to be decided, like a change of placement (section 26);
- ◆ must respond to any complaint made by you within set time limits (section 26); and
- ◆ must provide you with an independent advocate if you make a complaint (section 26A).

The review of your placement must be organised by the Independent Reviewing Officer (IRO), whose job is to make sure that the local authority fulfils its duties towards you. The same person should be your sister's IRO.

As well as duties under the Children Act, you also have rights under the [Human Rights Act](#) and the [European Convention on Human Rights](#). In particular Article 8 says that you have the right to “respect for family life”. This right can be interfered with in limited circumstances, for example if necessary to protect you from harm or to protect the rights of others.

There have been many cases in the UK and at the European Court of Human Rights on Article 8, but not as yet a satisfactory one on the right of sisters and brothers (siblings) to live together. CRAE believes that siblings, and particularly siblings in care, should have much stronger rights under Article 8 to be kept together and the courts should be asked to ensure this right is respected.



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## What you can do

You should have been introduced to your IRO in your first week of care and there should have been a review to agree this change in your and your sister's care plan. If there was, it obviously did not go well. The IRO is a very important person in the lives of children in care and has particular and extensive duties and powers. Even if you think that you don't like or trust your IRO it is important that you both inform him or her that you are not happy about the placement decision and you want it stopped before you are moved.

There are various things you can do. You don't have to choose between them, you can do them all:

- ◆ You can make a formal complaint to the local authority under section 26 of the Children Act 1989. The local authority has to consider freezing any placement move until the complaint is dealt with, and any refusal to do this might help show it is acting unreasonably. If you make a complaint you should get an independent advocate, who may be helpful.
- ◆ You can see a [lawyer](#) about challenging the decision under [judicial review](#). This could be in relation to both the local authority's duties under the Children Act and under the Human Rights Act (see the law on placements above).
- ◆ You could ask your IRO to refer your case to an organisation called CAFCASS (Children and Family Court Advisory and Support Service) under section 26(2A) of the Children Act 1989. They should look into your problem and might assist in a legal challenge.
- ◆ Make a complaint to the local [ombudsman](#). The ombudsman cannot order the local authority to change your placement, but his or her investigation and recommendations can have a strong influence. You can only complain to the ombudsman once you have been through the local authority's complaints process.
- ◆ Write to the [Children's Rights Director](#) or the [Children's Commissioner](#) who can ask the local authority to reconsider their decision.

When making your case, you have two very strong arguments on your side.



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First, the government now accepts that it is important to keep siblings together in care – and Ministers have expressed dismay that so many are separated. Government guidance says:

*Being able to live with brothers and sisters where they are also looked after is an important protective factor for many looked after children. Positive sibling relationships provide support both in childhood and adulthood and can be particularly valuable during changes in a young person's life, such as leaving care.*

*A number of factors however, can militate against achieving the positive placement of brothers and sisters together – they may have entered care at different times and/or they may have very different needs related to past experiences, current emotional and behavioural development and age, especially where there are significant age differences. There may be practical difficulties in accommodating large sibling groups together. In some circumstances a child may have been abused by a brother or sister. An understanding of family functioning and family history, as well as listening to the wishes and feelings of children, are therefore key to informing these judgements.*

*If it is likely that brothers and sisters who are not able to be placed together at the start of a care episode will remain looked after for the medium to long term, arrangements should be made as part of each child's care plan which will enable brothers and sisters to live together, taking into account the other factors [in section 22C(8)(b)]... (Guidance on placement, para 3.21-23)*

The local authority may argue that it is more important for your sister's welfare that she go to a foster home than that she continues to live with you. You need to show that it is as much in her best interests as yours that you stay together. Although a foster home can be the best place for children in care, this is not always the case – your lawyers and advocates will have plenty of evidence to show that fostering often breaks down, particularly if the child concerned does not want to be there. The local authority would also have to show that it was not possible or in your or her best interests to be fostered together with your sister.



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Second, the law recognises that it is very important for children in care not to have their education disrupted, and for them to remain in touch with their local community. The guidance gives great stress to stability in education:

### *The importance of stability in education*

*When a child becomes looked after the responsible local authority will arrange a suitable care placement. In doing so, the child's allocated social worker, supported by local authority management and resources, should do everything possible to minimise disruption to the child's education. This means maximising efforts to arrange a care placement which enables existing educational provision to be maintained where this is in the best interests of the child. Subject to age and understanding, it is important to seek the child's views about his/her education. Where a child is in Key Stage 4 (years 10 and 11) everything possible should be done to maintain the child in her/his existing school and a move should only be made in exceptional circumstances. Where it is impossible for the child to remain in his/her existing educational placement the care placement should not, except in an emergency, be made unless the education provision is made at the same time. (para 2.69)*