



BACKGROUND

There can sometimes be occasions when the Court will need to determine which Local Authority is responsible in respect of a family. The objective is to ensure the appropriate Local Authority takes responsibility for the child concerned, providing the family either with support, close monitoring or sharing parental responsibility. The appropriate Local Authority usually would be one best placed to provide the needed support for the child to ensure his welfare is safeguarded and promoted.

THE LAW

A designated Local Authority is defined in Section 31(8) Children Act 1989 as:

- a. *The authority within whose area the child is ordinarily resident; or*
- b. *Where the child does not reside in the area of a Local Authority, the authority within whose area any circumstances arose in consequence of which the order is being made.*

In *Re W (A Child) (Designation of Local Authority)* [2016] EWCA Civ 366, Ryder LJ reaffirmed the guidance given by Thorpe LJ in the earlier Court of Appeal decision of *Northamptonshire County Council v Islington LBC* [1999] 2 FLR 881, namely that:

- a) In designating particular local authorities in care orders, the Courts should construe sections 31(8) and 105(6) CA1989 to provide a simple mechanism for designation; and
- b) The function of the Court is to carry out a rapid and not over sophisticated review of the history in order to make a purely factual determination of the child's place of ordinary residence, or, if there was no place of ordinary residence, of the place where the case was carried over the Section 31 threshold, and to designate a Local Authority accordingly.

ORDINARY RESIDENCE

Ordinary residence is a question of fact and in most cases a child's ordinary residence follows his parents however the Court will consider the following factors as set out in *Re A (Children)* [2013] UKSC 60:

- Where the child is physically present.
- Why the child and their family are in the area.
- The parents' intentions about remaining in the area
- The child's degree of integration in a social and family environment. This may include:



August 2024

Author: Tegan Scott
Senior Lawyer, Children's
Social Care Law

Editor: [Jennifer Lee](#)
Head of Service, Children's
Social Care Law

Pathfinder Legal Services Limited is a private limited company registered in England & Wales. Our Company No is 09067468. We are owned by Cambridgeshire County Council and Central Bedfordshire Council.



- where other family members live;
- how long the child and their parents have been in the area;
- any clubs or activities the child or their family participate in;
- the GP surgery the child is registered with; and
- the school or nursery the child attends.

When making a decision on ordinary residence, the Court will not take into account the time that the child was living in the following places as set out in Section 105(6) Children Act 1989:

- A school or other institution.
- A place required under a youth rehabilitation order.
- A place required in a supervision order. The living requirement must be explicit on the supervision order, as opposed to being part of the care plan that the child lives with their parent or another (Re C (Children) [2018] EWCA Civ 900).
- LA-provided accommodation, for example, in foster care or a children's home, as a looked after child (LAC). A parent and child staying with relatives under a working together agreement is not LA provided accommodation (Re W (A Child) (Designation of Local Authority) [2016] EWCA Civ 366).

If the issue of ordinary residence is not clear, the Court will then move to the 2nd stage to consider in which area any circumstances arose in consequence i.e. where the points as alleged in threshold took place. This will then look at the facts of the individual case in respect of threshold pleadings.

PROCEDURE

The issue of designation should be considered at pre-proceedings, issuing of proceedings and the care planning stage. At the final care planning stage within proceedings, the Local Authority may be seeking children to be placed outside the area of the Local Authority with conduct.

Pre-proceedings – Local Authorities need to consider whether the child is ordinarily resident in their area. Local Authorities should communicate between Children's Services (and if required between legal representatives) to resolve responsibility for the child. These discussions should not delay the issuing of Court proceedings if a child is in need of protective measures.

Issue of proceedings – if there has not been resolution to discussions with the other Local Authority, or there has not been sufficient time to undertake these discussions due to urgency, then the issue of designation needs to be raised within the C110A application, statement, and care plan.

The other Local Authority will need to be listed as a party to be given notice and the form should set out an explanation as to designation matters. Once listed, the other Local Authority should be served with notice of hearing. Consideration should be given for a direction for the Other Local Authority to be provided with a bundle and for them to respond in a position statement prior to the hearing.

A clear position statement will need to be prepared by all parties and the other Local Authority for the Court to consider at the initial hearing and the Court will hear submissions in respect of designation.

Under (Re B (A Child) (Designated Local Authority) [2020] EWCA Civ 1673), a chronology should be prepared to assist the Court, which is succinct, factual and does not contain opinion. Where possible, the chronology should be agreed, but where this is not possible, the points of disagreement should be highlighted to the Court.

Care Planning - The Local Authority should be involving the other Local Authority as early as possible in care planning of a child if the child is likely to be placed with a parent or family member or lives in another Local Authority (L v London Borough of Bexley [1996] 2 FLR 595).

Under the [Working Together to Safeguard Children Guidance 2023](#), information about the child can be shared between Local Authorities for the purposes of child protection. As for the issuing of Court proceedings consideration should be given for a direction for the other Local Authority to be provided with a bundle and attend a future hearing. The other Local Authority may also be involved in respect of care planning.

About Pathfinder Legal Services Ltd's Children's Social Care Law Team

We have a highly skilled team of Lawyers and Paralegals who have a wealth of both Public and Private sector experience concerning safeguarding children and children's welfare. Our Lawyers have extensive experience in conducting Advocacy in all tiers of the Courts, including undertaking the more complex cases, enabling continuity and consistency of service to be delivered. Our Team is able to use their expertise in understanding the "real" child protection landscape, including parameters of good practice, Social Work demands and Budgetary restraints. We are key contributors to the workings of the Local Family Justice Boards that our Clients serve, ensuring that we maintain regular and good dialogue with the local Judiciary and other Partner Stakeholders involved in child protection.

About Pathfinder Legal Services Ltd

As a 'social enterprise law firm', Pathfinder Legal Services Ltd is one of the first of its kind to be established in the UK and is wholly owned by Cambridgeshire County and Central Bedfordshire Councils. We are experts in our field and provide a tailored legal service exclusively to the public and not-for-profit sectors, our clients are key, and our fees reflect this: our charging rates are substantially reduced and our billing system transparent. Our credibility, values and focus remain paramount to all that we do as a publicly owned legal service provider, with clients including Local Authorities, Integrated Care Boards, Foundation Trusts, Charities and Fire Services. In 2021 the firm was awarded 'Law Firm of the Year' (under its previous trading name of LGSS Law Ltd) at the prestigious Cambridgeshire Law Society's legal awards.

If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at operations@pathfinderlegal.co.uk

HUNTINGDON (Head Office)

3rd Floor – Pathfinder House
St Mary's Street
Huntingdon
PE29 3TN
dx 137872 - HUNTINGDON 8
t 01223 727927

NORTHAMPTON

One Angel Square
Angel Street
NORTHAMPTON
NN1 1ED
t 01223 699199

SHEFFORD

Priory House
Monks Walk
Chicksands
SHEFFORD
SG17 5TQ
dx 153440 - SHEFFORD
t 01223 507269