



Stepping In: Alternative Carers in Care Proceedings

In public law proceedings concerning children, the identification and assessment of suitable alternative carers is a central obligation arising from both statute and established judicial guidance. Where a local authority seeks orders under the Children Act 1989, the court must have regard to the welfare checklist set out in section 1, alongside the duty imposed on local authorities to promote the upbringing of children within their families wherever it is consistent with their welfare (section 17 and section 22C). In practice, this requires rigorous consideration of whether a child can be safely cared for by a relative or connected person as an alternative to parental care.

For practitioners, this area engages a structured framework shaped not only by primary legislation but also by the Care Planning, Placement and Case Review (England) Regulations 2010 and accompanying statutory guidance. These provisions govern the process by which potential carers are identified, assessed, and, where appropriate, approved, often within tight procedural timescales dictated by care proceedings. For lay clients, particularly family members who may be proposed as carers at a late stage, the legal and procedural requirements can be complex and difficult to navigate without clear guidance.

This article will examine the role of alternative carers within care proceedings, with particular focus on three key aspects. First, it will consider what is meant by an “alternative carer” in the context of the statutory scheme and case law. Secondly, it will address the nature and evidential weight of interim viability assessments, which frequently inform early decision-making. Thirdly, it will analyse the legal framework governing temporary approvals under Regulation 24 of the 2010 Regulations, including the scope and limitations of such placements. In doing so, the article aims to provide a clear overview for both legal professionals and prospective carers engaged in these proceedings.

What is an “Alternative Carer”?

Although the term “alternative carer” is not expressly defined in statute, it is widely used in practice to describe a person or multiple people, such as in the case of a couple, other than the child’s parents who may be considered to care for the child, either temporarily or permanently, if the court does not consider that the parents cannot safely do so. This will be an individual who could provide safe and suitable care for a child subject to care proceedings and is often a relative, friend, or connected person. Within the statutory scheme, such individuals fall under the category of “connected persons” for the purposes of fostering and placement regulations. The central question for the court is whether placement with such a person would meet the child’s welfare needs, taking into account factors such as safety, stability, and the ability to meet the child’s long-term needs.

A question often asked is whether the individual has to be related or have a pre-existing relationship with the child. Under section 22C(6)(a) of the Children Act 1989, when a child is looked after, preference should be given (where possible and consistent with the child’s welfare) to placing the child with a person who is a relative, friend, or other connected person. A “connected person” is defined (Children Act 1989, s.105) as: “a relative, friend or other person connected with a child.” It can therefore be distilled from this that the alternative carer does not need to be related to the child. However, generally, there is weight placed to there being a pre-existing relationship. There are some situations where a local authority or court might still assess the individual even without a prior relationship, for example, if no suitable relatives or friends are available, but the individual comes forward and has a strong motivation or relevant experience or if they have a special connection to the family (e.g. they grew up with the parent or are trusted by them).



A care plan that proposes adoption or long-term foster care without proper exploration of family options is unlikely to withstand scrutiny. For practitioners, early identification is essential. The Public Law Outline (PLO) encourages local authorities to identify potential carers prior to issuing proceedings, but in practice, candidates often emerge later, sometimes during the proceedings themselves. It is vital for practitioners, particularly at the ICO or early CMH stage to discuss with their clients any potential alternative carer options to be assessed.

It is no doubt a difficult conversation that one must have with a client at such an early stage in proceedings to address a potential outcome in which the child does not return to their care at the end. However, it is vital for clients to take control of the narrative at the earliest stage possible and to ensure that they are able to put forward realistic potential alternative carers. In addition, the court has previously considered situations in which a parent is positively opposed to proposing family members. In the case of *Re H (Care and Adoption – Assessment of wider family)* [2019] EWFC 10, Cobb J states at para 49 “*in exercising judgment – whether that be by the local authority, adoption agency or court – I am clear that the wider family should not simply be ignored on the say-so of a parent. Generally, the ability and/or willingness of the wider family to provide the child with a secure environment in which to grow (section 1(4)(f)(ii) ACA 2002) should be carefully scrutinised, and the option itself should be “fully explored”*”. The court and local authority are therefore able to ‘explore’ alternative carer options that may be opposed by the parents, but it should be reiterated that the court’s paramount consideration will always be the welfare of the child.

Interim Viability Assessments

An interim viability assessment is a preliminary assessment undertaken by the local authority to determine whether a proposed alternative carer is a realistic option for the child. It is typically completed within a short timeframe and is intended to inform early decisions about placement and further assessment.

Such assessments are not intended to be determinative. Rather, they act as a filtering mechanism to identify whether a full assessment such as a Special Guardianship assessment or full fostering assessment is warranted.

The courts have repeatedly cautioned against placing undue weight on “negative” viability assessments, particularly where they are cursory or inadequately reasoned. A viability assessment must be evidence-based, balanced, focused on the child’s needs and cognisant of available support.

Where a viability assessment is said to be negative (in that it does not propose any further assessment of the individual(s)), the court must consider whether that conclusion is sufficiently robust to justify excluding the proposed carer from further consideration. In some cases, particularly where the consequences are significant, such as adoption, the court may direct a full assessment notwithstanding an initial negative viability conclusion. Furthermore, there is an opportunity to appeal the negative assessment, so it is imperative to carefully scrutinise them. Common issues the author has previously identified include a failure to consider support packages; an over-reliance on historical concerns; insufficient analysis of protective factors or simply a lack of engagement by the local authority with the proposed carer.

The timing of viability assessments is often critical. Late identification of carers can disrupt proceedings and place pressure on the court’s timetable. In the case of *L and others (Children) (Care Proceedings)* [2017] EWHC 2081 Fam, (which has been expressly relied on in the recent case *Re A (Care Proceedings; Late Application for Assessment)* [2024] EWFC 339 (B)), Keehan J at paragraph 12 said: “*The message has to go out loud and clear that these very late challenges to viability assessments, or the very late identification of family members will only be countenanced by the Family Court if there is exceptionally good reason as to why they have not hitherto come forward, and the assessment of them does not have an adverse effect upon the timetable for determining the future of the children.*”



The court must balance procedural efficiency against the fundamental importance of exploring family placements. The key question is whether the proposed assessment is necessary to achieve a just and proportionate outcome with the court considering whether there is 'exceptionally good reason' as to why they have not previously been put forward. Where it is, extensions to the timetable may be justified. When there is a gap in the evidence and the potential outcome of the case is the most draconian measure of all, adoption, the court must ensure that 'nothing else will do'. The Court of Appeal's decision in *Re E (A Child) (Care and Placement Orders)* [2023] EWCA Civ 721, for example, emphasises at paragraph 41 that where there is an evidential gap which needs to be filled before the lifelong decision about adoption can fairly be made, the mere fact that filling it takes months does not automatically justify refusing an adjournment.

Regulation 24 Carers

The statutory framework for a regulation 24 carer is contained within Regulation 24 of the Care Planning, Placement and Case Review (England) Regulations 2010. This provides a mechanism by which a local authority may temporarily approve a connected person as a foster carer for a specific child. This allows the child to be placed with that individual on an emergency or short-term basis, pending full assessment. This provision is particularly pertinent where a child requires immediate placement and a suitable family member has been identified but has not yet undergone full fostering approval.

The Regulation 24 framework includes the following key elements: approval is temporary and granted for up to 16 weeks, extendable in limited circumstances; the carer must be of a connected persons status so should have an existing relationship with the child; there will be a basic assessment that includes checks on suitability, accommodation, and safeguarding with a full fostering or SGO to follow if the placement is to continue.

While Regulation 24 provides a valuable mechanism for keeping children within their family network, it also raises a number of practical and legal challenges such as lacking assessment quality due to the initial checks being limited due to urgency. Furthermore, the temporary carers may require significant support to manage the placement and ensure that it does not collapse before it is able to fully begin. For practitioners, it is essential to ensure that Regulation 24 placements are properly monitored and that clear plans are in place for progression, whether towards full approval, Special Guardianship, or alternative arrangements.

A difficult issue arises where a proposed connected person has not been approved under Regulation 24, but the evidence nevertheless suggests that they could safely care for the child.

The starting point is *Re A (A Child)* [2009] EWHC 865 (Fam), in which Munby J confirmed that the court may, under s.38(6) Children Act 1989, direct that a child live with prospective carers as part of an assessment, notwithstanding the absence of foster-carer approval. Such a placement remains under the court's control.

However, the jurisdiction has important limits. In *Re Y (A Child) (s.38(6) Assessment)* [2018] EWCA Civ 992, the Court of Appeal emphasised, as per *Re G (Interim Care Order: Residential Assessment)* [2005] UKHL 68, [2006] 1 FLR 601, that s.38(6) must be used for the assessment of the **child**, rather than as a means of assessing the suitability of a proposed carer or circumventing the fostering approval process. That approach was reaffirmed in *Re H (A Child: s.38(6) Assessment)* [2023] EWHC 1083 (Fam).

Accordingly, where Regulation 24 approval has been refused, s.38(6) should not simply be deployed as an alternative route to carer approval. There may nevertheless be scope for a court-directed placement where the evidence demonstrates that the proposed placement warrants testing, and the placement forms a necessary and genuinely child-focused part of the assessment. The distinction is therefore between using s.38(6) to assess the child in the proposed placement, which remains permissible, and using it to assess the proposed carer, which does not.



Conclusion

The role of alternative carers sits at the heart of public law children proceedings. The statutory framework, underpinned by the Children Act 1989 and the Care Planning, Placement and Case Review (England) Regulations 2010, reflects a clear policy objective: wherever possible, children should be brought up within their family network.

However, achieving this objective requires careful, evidence-based decision-making. Interim viability assessments must be approached with appropriate caution, and Regulation 24 placements must be used responsibly and transparently.

Ultimately, the proper identification and assessment of alternative carers is not merely a procedural requirement—it is a fundamental safeguard in ensuring that decisions about children's lives are both lawful and just.

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References:

Re H (Care and Adoption – Assessment of wider family) [2019] EWFC 10

L and others (Children) (Care Proceedings) [2017] EWHC 2081 Fam

Re A (Care Proceedings; Late Application for Assessment) [2024] EWFC 339 (B)

Re A (A Child) [2009] EWHC 865 (Fam)

Re Y (A Child) (s.38(6) Assessment) [2018] EWCA Civ 992

Re G (Interim Care Order: Residential Assessment) [2005] UKHL 68, [2006] 1 FLR 601

Re H (A Child: s.38(6) Assessment) [2023] EWHC 1083 (Fam)

Children Act 1989

Care Planning, Placement and Case Review (England) Regulations 2010

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