



## *Responsibility for Child Abuse within Foster Care in Sweden*

### SUMMARY

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The Social Board of each municipality in Sweden is responsible for providing care for children in need of it. A child may be placed with a foster family or in an institution, with or without its own or its parents' consent. Most such placements are consensual, in which cases the child's consent as well as that of its parents is required if the child is 15 or older (adulthood is deemed to begin at 18); the child's views must be taken into account regardless of its age. The majority of placements are with foster families being considered the best alternative for a child who for whatever reason cannot remain with its parents. Recent revelations of child abuse in foster care environments have resulted in Swedish legislation on the subject undergoing certain amendments. An investigation of standing legislation on the approval and supervision of foster families makes clear that more needs to be done to prevent child abuse. Improvements must be made in specifying the requirements that need to be met in choosing a foster family; present legislation fails to state these with sufficient clarity. It is also proposed that the Social Board have not only the right but the obligation to inquire into any relevant criminal records and to take the findings of such inquiry into account in arriving at its decisions. It is further proposed that an independent professional supervisor should be brought in to oversee the selection process to better assure that the child's best interests are being served.

→ **KEYWORDS:** CHILD ABUSE, FOSTER CARE, FOSTER FAMILY, APPROVAL, SUPERVISION, PREVENTION

### STRESZCZENIE

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*Odpowiedzialność za nadużycia wobec dzieci w pieczy zastępczej w Szwecji*

Instytucjami odpowiedzialnymi w Szwecji za zapewnienie dzieciom pieczy zastępczej są Rady do Spraw Społecznych funkcjonujące w każdej

gminie. Dziecko może zostać umieszczone w rodzinie zastępczej lub w placówce opiekuńczej, za własną lub rodziców zgodą albo bez takiej zgody. W większości przypadków do umieszczenia dziecka w pieczy zastępczej wymagana jest zgoda rodziców dziecka oraz jego samego w przypadku ukończenia przez nie piętnastego roku życia (pełnoletniość osiąga się wraz z ukończeniem 18 lat); niezależnie od wieku dziecka zawsze należy brać pod uwagę jego zdanie. W większości sytuacji dzieci, które, niezależnie od przyczyny nie mogą pozostać ze swoimi rodzicami, trafiają do rodzin zastępczych uznawanych za najlepszą formę alternatywnej opieki nad dzieckiem. Najnowsze doniesienia o przemocy wobec dzieci w środowiskach rodzin zastępczych uruchomiły proces zmian ustawodawstwa szwedzkiego dotyczącego systemu pieczy zastępczej. Badania przeprowadzone w zakresie wyrażania zgody na objęcie dziecka pieczą zastępczą oraz nadzoru nad nią wskazały na konieczność zmian tych procedur w celu zwiększenia ochrony dzieci przed nadużyciami w stosunku do nich. Zmiany te powinny dotyczyć określenia wymagań stawianych kandydatom na rodziców zastępczych, z uwagi na fakt, iż aktualne przepisy nie są wystarczająco przejrzyste w tej materii. Proponuje się również, by Rada do Spraw Społecznych nie tylko była uprawniona, ale przede wszystkim zobowiązana zbadać rejestry karne, w których mogą być ujawnieni kandydaci na rodziców zastępczych i podjąć stosowne dochodzenie w tej sprawie przed podjęciem decyzji o powierzeniu dziecka opiece takich osób. Ponadto, celem zwiększenia gwarancji zabezpieczenia jak najlepszego interesu dziecka, proponuje się uczestnictwo niezależnego inspektora w procesie wyboru rodziców zastępczych.

→ **SŁOWA KLUCZOWE** – PRZEMOC WOBEC DZIECI, OPIEKA  
ZASTĘPCZA, RODZINA ZASTĘPCZA,  
ZATWIERDZANIE, NADZÓR,  
ZAPOBIEGANIE

## Introduction

Wherever there are children there is a risk of child abuse. In Sweden several measures have already been implemented to minimize this risk in the context of foster care. Sadly, cases still occur, and those that are reported are probably only the tip of the iceberg. When a case of child abuse becomes known to the public two questions are always raised: What were the circumstances? and, Who was responsible? Criminal responsibility is, of course, dealt with by the courts, where anyone found guilty is sentenced and has to pay monetary compensation to the abused

child. On occasion, responsibility may fall on others as well as the immediate perpetrator(-s), e.g. the officials who decided where the child was to be placed for care, or those – individuals or committees – whose duty was to investigate and approve the facilities offering to give care. In this article, after a brief introduction on foster care in Sweden in general, I will focus on investigating and analyzing the extent of a connection between the risk of child abuse and the investigation, approval, and eventual oversight of foster care providers, especially those in family homes. Particular attention will be paid to how the assigning of children to foster care takes place in Sweden and to whether, and by what means, it may be possible to further diminish the amount of child abuse in foster care by more thorough pre-assignment investigation of the proposed persons and facilities. Specifically under investigation will be the Swedish regulations, preparatory work for legislation, and the principles generally observed, taking into account the decisions of the ombudsman.

## Foster care in Sweden

In any society at any time there will be children who, for one reason or another, do not receive the care they need from their parents or other close kin. This may be caused by the behaviour of the parents or of the child him- or herself. In former times the measures taken in Sweden in such cases were largely conditioned by religious belief; but other pressures were at work as well – e.g. the demand for cheap labor. Policy was largely driven by private interests or by a vaguely sentimental sort of philanthropy. It was largely carried out by such agencies as school authorities, church-sponsored charities, and the police, and these tended to group together as a single category the poor, the sick, the criminal, and the elderly. They operated without the restraint of any specific legal control. Today the care of children in need is the responsibility of public authorities who are held to account by regular supervision and operate under statutes imposed by law.<sup>1</sup> During the 1930s

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<sup>1</sup> For further details see e.g. E. Fahlbeck, *Förvaltningsrättsliga studier I*, Stockholm 1938, pp. 92 f, 188; L. Holgersson, *Socialvården*, Jönköping 1978, pp. 21, 29, 38; L. Holgersson, *Socialtjänst*, Kristianstad 1988, pp. 56 f, 69, 71; H. Strömberg, *Speciell förvaltningsrätt*, Lund 1983, p. 153; G. Bramstång, *Föresättningsgarna för barnavårdsnämnds ingripande mot asocial ungdom*, Lund

the Church of Sweden was stripped of its authority to determine how a child in need of care should receive it. By 1936, the National Board of Health and Welfare had become responsible for public child care and the management and development of the same throughout the country.<sup>2</sup>

As always, family homes remained the environment of choice for providing foster care for children, institutions being regarded as a second choice to be resorted to only when the other was not available.<sup>3</sup> It was also the former practice to consider the interests of the adults involved first. Today, in principle at least, the decisive rule is always to do *what is best for the child* – not only in choosing one foster care solution rather than the other, but in considering all aspects of the situation, not least the personality of the child, in making the choice. The necessity is now also recognized – once it has been decided that care is needed – of making all determinations concerning care as far as possible conducive to closeness, continuity, and flexibility.<sup>4</sup>

How long a child may be kept in foster care is now also regulated by law rather than, as formerly, being left to the discretion of the care givers or others involved. These could formerly keep a child in care for any length of time, even for several years.<sup>5</sup> Today it is an acknowledged principle that foster care should be terminated sooner rather than later, and in no case does the law allow it to go on after a child has reached the age of 18 or 21, if the care was required because of the behavior of the child.

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1964, pp. 52 ff, 62 f, 64, 75, 77 ff; G. Bramstång, *Sociallagstiftningen*, Stockholm 1985, p. 188; G. Bramstång, *Den offentliga barnvården*, Uppsala 1978, p. 9.

<sup>2</sup> R. von Koch, *Samhällets barnavård*, Stockholm 1945, pp. 33, 46, 102; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, 27th ed Norstedts juridik, 2014, p. 370 ff.

<sup>3</sup> L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 166 f. Socialtjänstförordningen (SoF) 3:2; In 1 November 2011, 13 200 children were taken care of and 66 % of those were placed in family homes. Socialstyrelsen, *Barn och unga – insatser år 2011*.

<sup>4</sup> K. Nordlöf, *Unga lagöverträdare I social-, straff- och processrätt*, Studentlitteratur 2012, pp. 19 ff, 47, 51 f; L.L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., pp. 20 f, 165 f; Socialtjänstlagen 1:2, 6:1; The Convention on the Rights of the Child art 3; Prop. 2009/10:232 *Strategi för att stärka barnets rättigheter*.

<sup>5</sup> L. Holgersson, *Socialvården*, op. cit., pp. 38 ff, 318; L. Holgersson, *Socialtjänst*, op. cit., p. 71 ff; G. Bramstång, *Den offentliga barnvården*, op. cit., p. 9; G. Bramstång, *Sociallagstiftningen*, op. cit., p. 188 f.

Moreover, in accordance with the Social Service Act, any decision to place a child in foster care must be reviewed at least once every six months by the Social Board. In cases where it is expected eventually to reunite a child with his or her parents, the transfer of responsibility back to the parents must be taken up as a possibility by the Social Board by at least the time the child has been three years in a foster home. Equal importance must be given to the value of renewed contact with the actual parents and the importance of assuring that the child in accordance with the principle of continuity receives a stable and safe upbringing.<sup>6</sup>

In 1902, Swedish law first acknowledged the State's right to separate a child from his or her family in conformity with the notion, based on Natural Law, that society as a whole has a responsibility for the welfare of its youngest members.<sup>7</sup> At the same time, although every child's right to receive care – if necessary, even under compulsion – was legally recognized, no recognition has been given yet to the personal integrity of the child and the extent of the authority of man-made law in the matter. Thus there arose conflicts between legality and efficiency, sometimes at the cost of humanity.<sup>8</sup> This was partly resolved in 1960, when a law was passed granting children 15 and older *locus standi*, the legal competence in the meaning of access to justice.<sup>9</sup> By doing so, the relevant legislation was no more grounded on Natural Law and aspect of benefit.<sup>10</sup> Today a child may be placed in

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<sup>6</sup> Socialtjänstlagen 6:8; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 187 ff.

<sup>7</sup> Lag (1902:76) angående uppfostran åt vanartade och i sedligt afseende försummade barn; Lag (1902:63) om fosterbarns vård; G. Bramstång, *Sociallagstiftningen*, op. cit., p. 189; H. Strömberg, *Speciell förvaltningsrätt*, op. cit., p. 153.

<sup>8</sup> Prop. 1902:30, p. 19 ff; Lag 1924:361 om samhällets barnavård; G. Bramstång, *Förutsättningarna för barnavårdsnämnds ingripande mot asocial ungdom*, op. cit., p. 59; G. Bramstång, *Sociallagstiftningen*, op. cit., p. 188; E. Fahlbeck, *Förvaltningsrättsliga studier I*, op. cit., p. 94 ff; L. Holgersson, *Socialvården*, op. cit., p. 105; L. Holgersson, *Socialtjänst*, op. cit., p. 125; P.-E. Wallén, *Svensk straffrättshistoria*, Del 2, Stockholm, 1973, p. 21;

<sup>9</sup> Lag 29 april 1960 om samhällets vård av barn och ungdom; S. Holstad, S. Larsson, *Allmänhetens rättsskydd*, Stockholm 1974, p.52.

<sup>10</sup> For more details see Prop. 1924:150, s. 39 f; SFS 1934:204; L. Holgersson, *Socialvården*, op. cit., p. 106; L. Holgersson, *Socialtjänst*, op. cit., p. 126; G. Bramstång, *Förutsättningarna för barnavårdsnämnds ingripande mot asocial ungdom*, op. cit., pp. 56 f, 85; G. Bramstång, *Den offentliga barnavården*, op. cit, pp. 10, 56; G. Bramstång, *Sociallagstiftningen*, op. cit., p. 189; R. von Koch,

foster care upon the conclusion of an agreement (preferably written) between its parents and the social authority; the consent of the child also being necessary if he or she is 15 or older, and the child's views taken into account regardless of its age. If an agreement is not reached, the Social Board may apply to the Administrative Court for authorization to enact compulsory placement. This may be necessary when a child's behavior and environmental circumstances are, and seem likely to go on being, such as to cause grave peril to its health and development.<sup>11</sup>

There may be various reasons why a child needs to be placed in the home of a family other than its own. It may be something intolerable in its own home environment; it may be suffering from physical or psychological maltreatment or neglect which imperils its health and development; it may be something in the child's own behavior, e.g. the abuse of addictive substances or the habitual engagement in some form of criminal or otherwise destructive behavior. In such cases it is always best if care and remedial upbringing are exercised with the child's (if over 15) and its parent's consent; but that absent, compulsory foster care may be the best solution. Any decision to take that route, however, must be reviewed and approved by a court of law before it can be carried out. In accordance with the Principle of Actuality any decision to place a child in care must be based on the child's present condition. The Principle also requires that care should begin (upon due consent, except in the case of compulsory placement) within a maximum time of four weeks.<sup>12</sup>

When a child is placed in care the Social Board must set out a plan which the care is to follow. This applies regardless of the child's age or the presence or absence of parental consent.<sup>13</sup>

Preliminary investigation concerning whether or not a child shall be taken into care must be carried out within four weeks.

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*Samhällets barnavård*, op. cit., pp. 33, 35, 128 f, 135; H. Eek, *Administrativa frihetsberövanden*, Uppsala 1943, p. 94, 109; H. Eek, *Rättssäkerheten i socialvården*, i *Rätten att leva*, Stockholm 1945, p. 91; H. Eek, *Socialrätt*, Helsingfors 1954, s. 90 f; I. Agge, *Frihetsberövanden som förvaltningsrättsligt tvångsmedel*, FT, 1938, s. 198; E. Fahlbeck, *Förvaltningsrättsliga studier I*, op. cit., p. 142.

<sup>11</sup> Lag (1990:52) med särskilda bestämmelser om vård av unga, Sec. 2-4; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., pp. 344-369.

<sup>12</sup> Lag med särskilda bestämmelser om vård av unga 1-4, 6-9 §§.

<sup>13</sup> The Social Service Act 11:3; Socialtjänstförordningen 5:1-1a; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 251 ff.

While it is taking place the child will normally be kept in a special home for children. For the processing to continue it must be shown conclusively that certain future conditions will occur; and evidence supporting the decision to go ahead must be substantial in nature and scope. In certain emergency situations it is imperative that the child be separated from a dangerous home environment while the decision is pending. This is to ensure that the child's health and wellbeing are subject to no unnecessary risk should the investigation throw up any unanticipated obstacles to the implementation of the proposed measures. Decisions taken in the absence of consent are subject to review by the Administrative Court.<sup>14</sup>

The committal of a child to foster care, for a short or long period, with or without parental consent, is defined legally as an advisory and supportive act of assistance. It carries with it the obligation to give the child satisfactory care and a wholesome upbringing, including adequate nourishment and all other things which parents or guardians are normally expected to provide. The care given must respond to the child's needs and be adapted to his or her situation in accordance with generally accepted standards. When the aims of the care have been achieved or the child has attained the age of 18 or 21, the Social Board will terminate the process.<sup>15</sup>

### The approval of a family home for foster care

The Social Service Act of 1982 takes a "holistic" approach; that is, the social services are expected to tailor their measures to each individual and his or her needs in the light of his or her social situation. The Act has been altered several times and more comprehensively in 2002. The Social Service Act stipulates that responsibility for providing facilities for the accommodation

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<sup>14</sup> Lag (1990:52) med särskilda bestämmelser om vård av unga, 6 §; G. Bramstång, *Den offentliga barnvården*, op. cit., pp. 34 f, 80; G. Bramstång, *Sociallagstiftningen*, op. cit., p. 300 f;

<sup>15</sup> G. Bramstång, *Den offentliga barnvården*, op. cit., pp. 29, 96, 99, 120; The Social service Act 6:7, 7c, 8; Lag (1990:52) med särskilda bestämmelser om vård av unga, 21 §; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., pp. 184 f, 187 ff, 404 f.

of children in need of care rests with the Social Board of each municipality.<sup>16</sup>

For a family to be accepted as a child's foster family it must obtain permission from their local Social Board – this, of course, subsequent to the Board's decision to place the child in care.<sup>17</sup> The same also applies when a child is placed for care in the home of relatives. Permissions and decisions regarding care in any home are contingent upon a preliminary investigation showing that it is capable of providing adequate and appropriate care. This investigation must be thoroughly documented. Conducting it is the responsibility of the Social Board. It is expected to be reliable and accurate. Precisely what it is to examine is not stipulated by law, but some general guidance may be found in the Social Service Act's requirement that a foster home guarantee good care and upbringing and generally favorable conditions for the child's development. The investigation should furthermore make clear the willingness and ability of the prospective foster family to give the child the care it needs, especially as regards the special needs of the particular child. It is important for the Social Board to be fully advised concerning the capacity of prospective foster parents to meet a given child's needs, taking into consideration the composition of the family and the health, both mental and physical, of all its members. Of course the child's own personality and needs must also be thoroughly investigated. And the investigators themselves must be well trained and experienced in understanding the condition and needs of children.<sup>18</sup>

When the Social Board has decided to place a child in a family's home for care a contract must be drawn up and signed by both the Board and the family. This should state the commitment of both to provide full support and protection for the child, and fully spell out the nature of the responsibilities involved in this commitment. The contract should also stipulate other rights and

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<sup>16</sup> SFS 2001:453; The later may be referred to as institutions. They are not dealt with in this paper although the topic of this paper is also relevant for this kind of care of children. L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., pp. 14 f, 165 ff; The Social Service Act 6:1-2.

<sup>17</sup> Lag (1990:52) med särskilda bestämmelser om vård av unga 5 §; The Social Service Act 6:5-6; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., pp. 369, 166, 178 ff.

<sup>18</sup> The Social Service Act 6:6; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 179 ff; JO 2002/03 s. 210, 2009/10 s. 272.



duties of both the Board and the foster family, as well as the period of the assignment, notice times, and the agreed amount of compensation.<sup>19</sup>

Besides its responsibility to find homes for foster family care, the Social Board is also responsible for instructing the members of foster families on how to fulfill their function. Such instruction should preferably take place before the child comes to live with the foster family; or, if that cannot be done, at least as soon as possible.<sup>20</sup> Moreover, after a family has received a child for foster care in their home the Social Board is expected to provide them with advice and moral support and any other form of assistance they can give. The child's own parents should also receive full support of this kind and be enabled as far as possible to maintain contact with both the child and the foster family.<sup>21</sup>

A family foster home is defined as the home of a private family who have contracted with the Social Board to provide a child with full-time care and upbringing. A foster family home may not be run as a business. Care in such a home must be of the same kind as a child would receive in its own home. Since a close emotional relationship with a significant adult is one of a child's primary needs in order to grow into a secure, harmonious, and effectively-functioning adult, institutional care is resorted to only when care in a foster family is not available. Foster care should differ as little as possible from the care a child would receive in its own home; this applies equally whether the care is consensual or compulsory. In accordance with the principle of closeness and circumstances permitting, the place where care is given should be as near as possible to the child's original home, and in this regard, not only geographic proximity but similarity of language and culture should be taken into account. Best of all, a foster home should be one in which management the child's own parents take part; though professional assessment may sometimes advise against that.<sup>22</sup>

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<sup>19</sup> The Social Service Act 6:6b; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 183 f; Prop. 2012/13 *Stärkt stöd och skydd för barn och unga* p. 130.

<sup>20</sup> Social Service Act 6:6c; Prop. 2012/13 *Stärkt stöd och skydd för barn och unga* p. 130.

<sup>21</sup> The Social Service Act 6:7a-b; Prop. 2012/13 p. 130

<sup>22</sup> Socialtjänstförordningen 3:2.

When considering what home to place a child in, the Social Board should give priority to the homes of relatives or others who already have a close relation with the child. Neither this consideration nor any other must, however, override the principle of giving priority to the child's overall best interests. Nevertheless research has shown that placement with relatives can be most favorable for a child's lifetime prospects. According to the National Board of Health and Welfare, placement with an unfamiliar family can double the chances of failure vis-à-vis placement in the home of a relative or close friend. Of course no placement can guarantee that a child will receive optimum care. Families, like other agents of foster care, must be examined closely to determine the extent of their willingness and ability to provide what is needed.<sup>23</sup>

Among the issues raised in an investigation into the care of children in foster homes conducted in 2001 was the need for a thorough survey of all foster care homes in Sweden. The investigators also suggested that guidance be provided to foster care parents concerning the needs of especially vulnerable children and the handling in general of the problems associated with the management of a foster home. They also stressed the need to educate foster parents on the special circumstances of unaccompanied refugee children. They recommended that methods be developed to encourage more attentive listening to children and a readiness to engage them in discussion of their life situation. It was also proposed that supervision of foster care homes be entrusted to The National Board of Health and Welfare and the County Administrative Board.<sup>24</sup>

In consequence of this report the Health and Social Care Inspectorate took on the responsibility of producing informative materials on the topic of children in foster care. These will include an outline of the rights of the child as well as the telephone numbers and other contact information to be made available for the use of the child who feels that social workers or other personnel are not paying due attention or sufficiently respecting his or her own views.<sup>25</sup>

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<sup>23</sup> The Social Service Act 6:5; Prop. 1997/98:102 *En strategi för att förverkliga FN:s konvention om barnets rättigheter i Sverige m.m.*; JO 2001/02 s. 204.

<sup>24</sup> Riksdagens revisorer, Rapport 2001/02:16 *Familjehemsvård*.

<sup>25</sup> Socialtjänstförordningen 3:20.

It is the responsibility of the Social Board to see to it that every child placed in a family foster home in accordance with the principle of flexibility receives good care and upbringing in conditions favorable to its growth and development. This means the Board must assure that the child receives suitable schooling and adequate medical care. All care should furthermore be aimed, as far as possible, at promoting the child's closeness to its own relatives and original home environment. It is the Board's responsibility to keep abreast of every child's ongoing care. All care in family homes should be given in close cooperation with the Social Board, and the latter should be informed of any significant change in the situation or circumstances referring to a child receiving such care.<sup>26</sup>

For finding suitable homes for children and securing good care for them in general the Social Board has access to certain procedural "tools."<sup>27</sup> It has, for example, the right to demand information concerning criminal conviction resulting in a penalty (other than a fine) of any member of a family whose home is being proposed for foster care.<sup>28</sup> It also has the right to seek and receive information from the Register of Criminal Suspects concerning crimes for which charges have been pressed. The required documents from relevant registers may not be older than six months.<sup>29</sup>

## The supervision of foster care in a family home

All social welfare in Sweden is presently under the supervision of the Health and Social Care Inspectorate. Established in June 2013, this authority is charged with the duties previously undertaken by the National Board of Health and Welfare. The Health and Social Inspectorate is expected to lay stress on the need for adequate and well conducted supervision. Several publicized

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<sup>26</sup> The Social Service Act 6:1-4, 6:7; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 165 ff.

<sup>27</sup> The Social Service Act 6:6.

<sup>28</sup> Förordning om belastningsregister 11 § Para. 1 nr. 8.

<sup>29</sup> Förordningen om misstankeregister 4 § Para 1 nr. 9; See JO 1994/95 p. 290.

cases in recent times have exposed serious shortcomings in supervision.<sup>30</sup>

The Health and Social Care Inspectorate are informed by each Social Board about children receiving care in foster homes in their district. Social Boards are therefore required to keep a list of all children under their care and to make the contents of this list available to the Health and Social Care Inspectorate.<sup>31</sup>

Since each Social Board must keep close track of the care of the children it has placed with foster families, it is expected to make regular contact not only with the children themselves but also with their parents, both original and foster. The aim of this contact is to assure the children are being cared for in the best way possible and to encourage contact between their original family and their foster family. Contact with children should be made by regular visits in person to the home where they are in care. There should also be one-on-one interviews with the child and personal conversations with the care givers. The Social Board should be particularly concerned with every child's health, development, social behavior, and education, and its relationship to relatives and other emotionally significant persons.<sup>32</sup>

For this purpose the Social Board is to engage a specially appointed Social Worker who is responsible for contact with children in care. This person must visit each child regularly as appropriate and in keeping with its particular needs and wishes. How contact with the child is maintained depends on the situation in each case; on the nature and severity of the situation, the child's age, the problems faced by the child's original parents, and the competency and character of the foster parents. More intensive contacts may be required at the beginning and end of a placement than during the times in between, when the original and foster parents already know each other and routines have been established. The importance of contact between the

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<sup>30</sup> Prop. 2012/13:20; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 6; For example Yara, an eight year old girl, was beaten to death by her foster parents in April 2014. The decisions of the Health and Social Inspectorate conclude that the Social Board lacked in investigation and supervision of the foster family. Nr. 8.1.1-18572/2014-12, Nr. 8.1.2-14077/2014 and Nr. 8.5-16859/2014-6.

<sup>31</sup> Socialtjänstförordningen 7:1.

<sup>32</sup> The Social Service Act 6:2, 7 and 7b; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 184 f.

specially appointed Social Worker and the child has been shown by Swedish researchers to be considerable, especially when it takes the form of private conversations with the child. The specially appointed Social Worker may serve as a link between the foster family and the original parents, and in that role he or she may be in the best position to answer questions the child will have. Research has discovered that even when a child in foster care seems well adapted to his or her situation, he or she may still suffer difficulties due to earlier experiences. For that reason care within a foster family often requires more support than the family alone can supply. None of which is to say that the existence of the specially appointed Social Worker relieves the Social Board of its own responsibility to keep abreast of the ongoing development of every child it has placed in foster care.<sup>33</sup>

At least once every six months the Social Board should review whether foster care is still needed for each child receiving it, and how it should be shaped and focused in the future. It must then consider not only whether foster care should be terminated but whether the plan according to which it is being administered should be changed. Such a review should also consider the possibility of the child being returned to its original parents – at once, in the near future, or much later. When a child has been in foster care for three years its Social Board must consider whether, in accordance with its best interests with regard to a stable and secure upbringing, it should be returned to its own home. Although most children in foster care in Sweden are there with the consent of their original parents, the decision to place a child in foster care and separate it from its own parents is in every case one of the most drastic operations performed by the Social Service. That is why it is so important for the Social Board to keep continually in touch with every child in foster care. The need for this can hardly be overstated.<sup>34</sup>

Owing to the importance of the supervision of family foster care, including the visiting of present and potential foster homes, and the maintaining of private conversations with the both children and the (actual or potential) foster parents, a three-year

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<sup>33</sup> The Social Service Act 6:7c; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 187.

<sup>34</sup> The Social Service Act 6:8; L. Lundgren, P.-A. Sunesson, A. Thunved, *Nya sociallagarna*, op. cit., p. 187 ff.

project has been undertaken some of the findings of which were published by the Health and Social Care Inspectorate in 2014. One aim of this project was to implement the appointment of a Special Supervisory Agent independent of the Social Board. This person was expected to hold a personal interview with the child in care at least twice a year (with the child's consent). The purpose of the interview was to learn whether the child is receiving satisfactory care and whether the conditions that were to be met for receiving the child are still in place. There has been a widespread sense of appreciation of the Supervisory Agent's professional competence by the children in care, as well as by the foster families and the social workers involved. Responses, however, have not all been entirely positive.<sup>35</sup>

## Discussion

Legislation in a democratic country should recognize such fundamental principles as the equality of all persons before the law in accordance with the rule of law. The following are some issues which have been raised concerning shortcomings in the current system of providing children with care in foster families.

As already mentioned, placing a child with a foster family should always be preceded by an accurate and reliable investigation by the Social Board of the family in question. Precisely what such an investigation is to cover is, however, not presently specified by the relevant regulations, with the result that uncertainties arise in determining the very nature and scope of the investigation. One consequence of this can be inadequate and unequal treatment of children and inconsistency in the standards used to evaluate foster families. An assignment to foster care is a radical intervention in a child's life and it calls for the utmost clarity in stating what is expected and how it is to be carried out. The Social Service Act's stipulation that a foster home must provide good care and upbringing and favorable conditions for the child's development is too vague to be an adequate safeguard against unequal treatment or the possibility of child abuse. More

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<sup>35</sup> L. Oscarsson, R. Lindahl, *Utvärdering av den nationella försöksverksamheten med tillsynsombud*, Slutrapport December 2014.

precise regulations are needed, in particular with regard to the identification of responsibility.

Moreover, while, as stated, the Social Board has the right to demand and receive information on criminal convictions and reports from the Register of Criminal Suspects, this right does not oblige the Board in every case to seek such information. This is much to be regretted. The Board should be required to demand such information. Disclosure of that kind is today required of everyone employed by any institution entrusted with the care of children. Failure to fulfill this obligation imposed on potential foster parents should be considered an act of misconduct potentially carrying criminal responsibility. At the very least, the absence of such information should result in the Social Board rejecting the family in question as a provider of foster care.

Review by an independent Special Supervisory Agent has clearly demonstrated the need for additional, more precise regulations. With these in place, it will be possible to manage foster care in family homes more strictly in accordance with the standards imposed by the Health and Social Care Inspectorate. Professional supervisory agents are desirable for a number of reasons, but they are chiefly needed as a safeguard against the abuse of children in foster care. It is essential that we should be able to give clear answers to the questions, "How could this have happened?" and "Who, besides whoever committed the abuse, was responsible?"

Any abuse of a child in foster care, whether in an institution or with a family, represents a failure of our responsibility to care for the vulnerable. It demands the adoption of new and better measures of protection. Failure to prevent the abuse of a child taints with guilt not only the actual perpetrator or perpetrators, but everyone responsible for having placed the child in danger of such abuse. All those involved ought, if found guilty, to be held criminally responsible. Nothing less will assure the children placed in foster care that they really have been treated with respect to their welfare and best interests. We must cease to submit children in need to the mercy of a sham guardianship papered over with the specious protection of regulations which impose no true responsibility.

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