

Policy on Delegation of Authority to Foster Carers

Leicester City Council Education and Children's Services Department has produced a policy that gives carers clear guidance about the important changes in practice around delegated authority (please see policy detailed below).

Introduction

The Children Act 1989 Volume 2 Statutory Guidance on Care Planning, Placement and Case Review, which came into force on 1st April 2011, requires local authorities to ensure that the placement plan, which sets out the arrangements for the child to live with and be cared for by the foster carers, specifies any arrangements for the delegation of authority from the parents to the local authority. This should include any arrangements for further delegation from the local authority to the foster carer.

The Placement Plan

The placement plan should help the foster carer understand what decisions they can make. Where there are issues that a foster carer believes it would be in the child's interests for them to decide, and these are not covered in the placement plan, then the foster carer should discuss this with the child's social worker during the statutory visits.

Limitations of the delegation of authority

There are situations in which consent of those with PR for the child is essential and therefore cannot be delegated to another person. For example, consent to removal from the jurisdiction (UK) must be given by all the people who have PR, unless the child is in the care of the local authority (under a Care Order, Interim Care Order or Emergency Protection Order), in which case it can be specifically authorised by the local authority for up to one month.

If the local authority has an Emergency Protection Order or Care Order, the foster carer may assume that any officer of the local authority has the authority to delegate responsibility. However, if the local authority does not have such an order, it is the parent or someone else with PR who has to agree to delegate any authority to the foster carer.

Delegations of authority have to be agreed by those with parental responsibility. A foster carer never has parental responsibility for their fostered child; they can make decisions only by acting on behalf of the local authority and parent. Parental responsibility cannot be transferred.

Liabilities for those acquiring delegated authority and those with PR

Where authority has been delegated, the person who has PR still remains liable in law for any failure to meet any part of his parental responsibility. A person to whom authority has been delegated may also be liable in law if the decision they made was negligent or criminal.

Record of decisions to delegate authority

A written record should be kept in the Placement Plan of all decisions to delegate authority. The foster carer's placement plan will set out some circumstances in which authority will be delegated to them. Where there is disagreement, the Foster Carer or parents should, in the first instance, discuss matters with the child's social worker or their foster carer's supervising social worker (or an advocate, if the child has one). If the relevant parties remain unhappy about the way authority has been delegated, or that decisions taken are not in the child's best interests, then the matter should be referred to respective line managers for resolution.

If the foster carer or other parties remain unhappy with how the matter is being resolved, then they could raise this with the child's IRO, who in turn may seek information as to what steps the local authority is taking to resolve the problem.

The local authority has primary responsibility for a child that they have placed with a foster carer, regardless of whether anyone has PR for the child. A foster carer should therefore be guided by the local authority when making decisions for, or on behalf of the child.

Urgent decisions

A person with care of a child who does not have PR may do what is reasonable in the circumstances for the purpose of safeguarding or promoting the child's welfare. This applies equally if the person with PR cannot be contacted within the timescale necessary. This means that in an emergency, if it is not possible to refer back to the local authority, the foster carer can do what is necessary to keep the child safe.

A young person aged 16 (or a young person under that age who is considered by medical staff to have sufficient understanding of the implications of treatment) can consent to their own medical treatment. From the age of 16 a young person can consent to their own care plan when they are looked after by the local authority and there is no court order in place.

Key principles and pointers for practice

Key principles:

- Effective delegation of authority should minimise delays in decision-making and maximise the child's opportunity to enjoy their childhood and a full family life. In practice this means working out, as far as possible, the areas in which decisions can be delegated before the need to take them occurs.
- Young people's views and feelings should be taken into account when discussing the issues in relation to delegated authority.
- Parents must be supported and informed so they can play as full a part as possible in their children's lives.
- Foster carers should be enabled and supported to take everyday decisions about their fostered child where appropriate. In permanent placements this is even more important.
- A foster carer's span of responsibilities should take account of their wishes and feelings about undertaking the tasks involved.
- Decisions about delegation of authority should be based on good quality assessments of need and risk for the individual child and foster carer.
- Foster carers should be trained and supported to undertake appropriate risk assessments in areas in which they are authorised to make decisions.

Key practice points:

- The placement planning meeting is the forum to share information and to sort out arrangements and agreements when a child is placed. It should be focused on ensuring the day-to-day needs of the child are met with the minimum of disruption. It is also concerned with ensuring that the child can feel as normal as possible in the foster home. Subsequently, arrangements for agreeing delegated authority should reflect the child's Care Plan agreed at LAC Reviews. Delegated authority to foster carers or residential workers is therefore likely to be greater in permanent or longer established placements.
- Parents, foster carers and fostered children (subject to their age and understanding) should attend a placement planning meeting before the placement begins, or, where this is not possible, within five days after the placement starts in order to discuss and ensure that there is clarity about who will have the authority to make particular decisions.
- Parents should be given all the information they need to reach a decision about delegation of authority; they should be given full opportunity to discuss any concerns they have with the social worker and should be kept informed about decisions made about their child.
- Sharing information about day-to-day care and routines is essential but not enough in itself. Foster carers cannot care safely and make decisions without

good quality information about the history of the child and the family. Social workers must ensure that foster carers receive this.

Reviewing arrangements for delegation of authority

- Changes to delegated authority should be discussed with all the parties between reviews. Social workers could in their report to the LAC Review refer to changes made or any disagreements. Delegation of authority arrangements should be revisited at every review to ensure they continue to reflect the Care Plan. Any changes must be incorporated into the placement plan by the social worker. This will ensure that changes in the child's circumstances, or in the parent's willingness to delegate authority, or the foster carer's skills and confidence to take on authority, can be reflected in that plan.

Guidance and suggestions in relation to key consents and areas of decision-making

Where decisions or consents are required, these should be undertaken by who is best placed to lead on them. This advice should be interpreted in the context of the Fostering Service's own legal advice and policies. In particular, it should be noted that parent(s) must agree to authority being delegated, unless there is a Care Order in place and the local authority considers it necessary to limit the parent's exercise of their parental responsibility in the interest of the child's welfare.

Health Care

Foster Carers should be absolutely clear from the outset about their responsibilities if children require emergency medical treatment and if they require planned treatment. The child's health plan contained within the Placement Plan will set out the details of the child's health needs and how they will be met. The placement plan should clearly show where the foster carer has delegated authority to take decisions or give consents in relation to a child's health. The placement plan can be used by the foster carer as evidence of their delegated authority – for example should they may need to present this to a health professional.

Routine medicals

Foster carers should be able to sign consents for routine medicals – e.g. school or looked after children medicals whenever possible.

They should inform the child's social worker of the outcome of these.

Immunisations

Foster carers should be given delegated authority, whenever possible, to consent to immunisations. Parents may have concerns about particular immunisations, and this should be explored with them at the beginning of the placement.

Non-Routine Medical Treatment

Children should never have to wait for pain relief or emergency treatment as a result of confusion about who has authority to give consent. Situations may arise where children will sustain an injury or require emergency treatment – for example, because they have appendicitis or a broken bone.

The placement plan should include who can give consent to treatment in these scenarios so as to avoid, as far as possible, situations where it is necessary to contact the local authority's Emergency Duty Team out of hours, or to cause an officer from the local authority to have to go to the hospital to sign a consent form.

It should be noted, however, that even where authority has not been delegated, foster carers can do what is reasonable in an emergency to keep the child safe.

Invasive medical procedures

In some cases children may require invasive medical procedures. These may be planned, or unplanned but predictable – for example, a child has a long standing medical condition that results in frequent unplanned surgery. In other cases, invasive intervention may be required in an emergency.

Foster carers should not automatically be barred from consenting to such procedures. Delegated authority should be discussed at the outset of the placement and the placement plan should make clear who has been delegated. A copy of consent to treatment should be given to foster carers at the time of placement.

Optician

Foster carers should be able to sign for routine eye and sight tests and the provision of glasses.

Dentist

Foster carers should be able to consent to routine examinations and treatment wherever possible.

NB. There are no consent forms for routine dental examinations and treatment. The documents signed by adults accompanying children to the dentist are the means by which the dentist claims fees and payments. Presenting the child is assumed consent for the procedures that follow.

Education

School Day Trips:

Risk assessments for school trips and outings are the responsibility of schools. Foster carers should be delegated the task of providing agreements and signatures. Where this is not delegated, the reason should be made clear from the outset of a placement, wherever possible.

Funding for school trips:

It should be noted that procedures are in place for agreeing the level of funding for school trips and foster carers should never agree funding for school trips above their level of agreed financial delegation.

Longer School Trips / Trips Involving More Hazardous Activity:

Longer school trips at home or abroad that require additional funding from the local authority, and trips which involve potentially hazardous activities, will require foster carers to consult with social workers. There may also be implications for contact which will need to be resolved. Where consent is necessary from the local authority and/or the parents, it is important to ask for this as soon as possible in order to avoid the child missing out on an opportunity. Leicester City Council Education and Children's Services Department will operate on the general presumption that unless the child is likely to be put at a particular risk of harm which cannot be mitigated, he or she should be allowed to go on the trip.

Choosing a School:

The choice of an early years setting or school should be discussed and agreed by the holders of parental responsibility at the statutory review meeting in consultation with the Virtual School Team. The foster carers should then be able to accept the place and sign any relevant forms.

Change of School:

If the foster carer decides to move house or wants the child to attend a different school, this should be agreed at a review meeting whenever possible, and in consultation with the Virtual School Team. The impact on the child should be a significant factor in this discussion. The foster carer should be able to complete the practical steps to implement the agreed actions.

Meetings with School Staff:

In medium and permanent placements, the foster carer and VST should usually be the person to meet school staff to discuss progress and share information that the school needs to know in order to help the child succeed. Between reviews, the Foster Carer should ensure that the Social worker and, if appropriate, the parent is

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kept informed about the child's progress at school, particularly if there are any problems.

Accessing Education and Leisure Activities:

Looked after children should have the same opportunities as any child, to take full advantage of extra-curricular education initiatives. Foster carers should be delegated the task of providing agreement and signatures for these from the outset of a placement, wherever possible.

Sports Activities / Organisations

All children who go to school will participate in physical education – this does not require consent. Foster carers should be able to give consent to children participating in extra curricula sports activities, such as Scouts or Guides. Delegated authority to give such consent should be discussed at the start of the placement and the outcome recorded in the Placement Plan.

Leisure and everyday life in the foster home

Overnight stays:

The Government's intention is that foster carers should be able to make decisions about overnight stays as if the fostered child was their own child, and act as a protective parent would. The authority delegated to the foster carer to make decisions about overnight stays should be set out in the Placement Plan, along with any restrictions on overnight stays that may be necessary in exceptional circumstances.

(Volume 2, chapter 3, of the Children Act 1989 Statutory Guidance covers this matter in the section Shared Responsibilities and Consents.)

Visiting friends:

As with overnight stays, the statutory guidance concerning friends is clear: unless there is a reason for not delegating authority, the foster carer should be authorised to act as a good parent in decisions regarding visits to friends.

Personal Allowance:

Children should be given a personal allowance which is appropriate to their age and understanding, taking into account what is said in the placement plan. Children should also be supported to open a bank account.

Holidays in the UK:

Most holidays will require discussion with the parent and consultation with the local authority for funding and implications for contact arrangements. It is also necessary

for the local authority and parents to know the whereabouts of children. Foster carers should ensure that the local authority is given adequate notice of the intention to take a child on holiday. Holidays should never be taken during term time for school age children.

Holidays abroad:

The possibility of children accompanying their foster carers on a family holiday abroad should be discussed with parents 'in principle' when they become looked after. The parents' views and concerns should be known at the outset. In all cases, there should be clarity at the outset about consents, passports and the possibility that arrangements can allow for short notice, so the foster carers can take advantage of a cheap holiday deal or a trip at short notice for personal reasons. Consents and passports are also relevant in the case of school trips abroad.

There are restrictions on the amount of funding that the local authority will provide to foster carers taking foster children on foreign holidays. Holidays should never be taken during term time for school age children.

Haircuts:

This is often not straightforward and can be a fraught area for foster carers and children. It is an important issue which can require sensitive attention, as hair care and style may have cultural or religious significance for families. Decisions about the timing of, and arrangements for, haircuts should be delegated to those with whom the child lives, wherever possible. However, the issues need to be fully explored with parents at the outset. Arrangements should be agreed at the Placement Planning meeting and recorded in the Placement Plan; arrangements should be revisited, as necessary in reviews.

Contact

The principles and practice of contact need to be established and formalised in the Placement Plan and the review is the place for agreeing any changes in these. It may also be possible for foster carers, particularly in well-established placements, to undertake a degree of decision-making in respect of some contact arrangements if the parameters for this are clear and agreed beforehand.

Any task that involves foster carers in supervising contact or facilitating contact in the home requires that the foster carers have received adequate training for these tasks and that the necessary risk assessments have been undertaken.

Photographs and other media activity

There should be no restrictions on foster carers taking family pictures of their fostered child, or the child and their friends. The foster carer does not need consent for this. It is important that fostered children have a record and memories of their

childhood and photographs can be a helpful way for fostered children to make sense of their history.

Decisions on whether the foster carer can consent to other types of photographs or media activity can be more problematic, however, as issues of confidentiality and safeguarding can often be present. The issue of the age of competency of a young person to make informed decisions also has to be factored into the considerations of 'who decides what'. It should be assumed that young people over 16 years would be very much the 'lead' in these decisions.

School photographs – foster carers should be enabled to give consent for formal school photographs. They should be encouraged to ensure children have school and group photographs taken as part of their life history.

Other types of photographs/wider media activity – Many children love to be able to take part in activities that may lead to publicity in the media. Others wish to engage in paid or voluntary activities which drive improvements in foster care and that may attract media attention. While this should be normally encouraged and celebrated, the issues of 'who consents', needs to be judged in relation to particular known risks to the safety of an individual child. Young people and foster carers often feel they are struggling with blanket policies in these areas so individual consideration of each case is important.

Any restrictions on a child's photograph or name appearing in the media should be based on good explanations and clearly specified in the placement plan.

Participating in hazardous activities

Early anticipation and discussion of these types of scenarios can save much distress and disappointment. People's views will vary on what activity may be considered as 'hazardous' or 'risky'. The Government expects that the risk-averse culture will be challenged. It also wants foster carers to be able to act more often as 'any good parent would', however, prior consultation with parents and collaboration over these types of decisions are usually necessary and it is important that foster carers work within the local authority's policies in relation to any restrictions on certain activities and in ensuring any necessary insurance is in place.

If authorised to take decisions for a range of anticipated activities that can cause injury – such as skating, riding, sailing, wall climbing and karting – the foster carer would need to ensure that the child or young person had the correct safety equipment, adequate preparation and, where applicable, was supervised by a recognised instructor or supervising organisation. More unusual requests should be discussed at a review meeting and a decision on delegated authority agreed.

Foster carers should be reminded about the liabilities that accompany their delegated authority. (See above).

Personal Relationships & Sexual Health

Children will receive education about sex and relationships at school, unless parents have decided to withdraw their children from such lessons. However, the arrangements in schools for how sex education is delivered in the curriculum may differ. A child's participation in the school's provision for sex and relationship education should be discussed at the placement planning meeting and parents wishes identified and recorded.

If it is agreed beforehand that the child attends, the foster carer should be able to consent on any school documentation. There will also be occasions when issues around sex and relationships arise in the foster home. Unless parents have expressed particular wishes about what they want their child to be told and how, foster carers should respond as any reasonable parent would. All foster carers have access to training on Personal Relationships and Sexual Health.

Mobile telephones

This is an area with scope for considerable disagreement. As a general principle, foster carers with young people in permanent placements should be responsible for making decisions regarding the possession and use of mobile phones. Any restrictions should be specified at the time of placement or discussed in reviews. Parents may need help to understand that Foster Carers who are caring for other children in the household need to be able to operate as consistently as possible with all the children. Primary considerations will need to include safeguarding aspects of the young person being able to make contact with unsafe individuals, or inappropriate websites, if they have 'phones with internet connection.

Disability living allowance

If a claim for Disability Living Allowance (DLA) is made for a child under 16, it is the responsibility of the Secretary of State for Work and Pensions to appoint a person receive and deal with the allowance on the child's behalf. For most children outside foster care the appointee is usually a parent, or a residential home manager or key worker, but for fostered children the appointee is usually their foster carer. The parents' or local authority's agreement to this is not required.

It is the appointee's responsibility to use the DLA to support the child. DLA is not intended to be saved in its entirety, but any unused DLA can be saved and put towards future needs. The Department for Work and Pensions (DWP) is responsible for monitoring the award; there is no requirement to keep receipts or records of expenditure and the child's local authority and fostering service are not responsible for monitoring the award. However, the DWP can be asked to investigate if there are concerns that the DLA award is not being used appropriately. It is therefore always wise for foster carers to maintain records as to how they are administering DLA on behalf of the Secretary of State for Work and Pensions.

Body Piercings

Given its popularity, this merits discussion between the social workers, parents and foster carers before the request, or demand for it arises.

In permanent placements of older children, the judgement of the foster carers should generally prevail: they should be able to weigh up the arguments for and against giving permission and be confident to make decisions which do not accord with the child's wishes (if appropriate). In general, a young person should understand the health and aesthetic implications of piercing.

There will be circumstances when social workers, foster carers or parents disagree but have to accept that the young person is of an age to make such a decision for themselves.

It should be noted that, in English law, it is illegal for under 16's to have their genitals pierced. It is also illegal for females under 16 to have their breasts pierced, although this does not apply to males under 16.

Areas where Foster Carers cannot legally give consent

Religion

A child in the care of the local authority cannot be brought up in a religion that is different to the one they would have otherwise been brought up in. This does not mean that, where necessary, a child cannot be placed with a foster family of a different faith, if this family is appropriate to meet the child's wider needs. However, it does mean that the foster carers cannot actively seek to persuade the child to change their religion. If a fostered child is considering changing their religion, even if they are over 16, foster carers should seek advice and guidance about how they respond to this. Full consideration in a review needs to be given to the long-term implications for the child of departing from the faith of the family origin.

Taking the Child Abroad

Even with a passport, a fostered child cannot be taken abroad without the written consent of someone holding parental responsibility.

Passports

Young people can apply for an adult passport at age 16. Applications for passports for younger children can only be signed by a holder of parental responsibility – the parent or, if a care order is in place, an officer of the local authority. This does not prevent foster carers being authorised to undertake some of the preparation of the application form or, if necessary, collecting passports (with letter of consent from signatory) from regional passport offices.

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Passports are frequently a problem when carers want to take children on holiday at short notice, or early on in a placement. It is therefore essential that the placement planning meeting or first review considers arrangements for a passport application so this process is started as early as possible. For more information and guidance on this topic visit

www.ips.gov.uk/cps/files/ips/live/assets/guidance_notes_v_8.pdf

Tattoos

UK law is clear: 18 is the minimum age for a person to have a tattoo. The issue of parental consent, therefore, does not arise.

Legislation, National Minimum Standards, Guidance and definitions:

Care Planning, Placement and Care Review (England) Regulations 2010, Fostering Services Regulations 2011, and associated statutory guidance, which came into force in April 2011 and July 2013, underline the importance of social workers liaising closely with parents, children and foster carers from the start of a foster placement. To enable proper planning to take place and that clarifies the responsibilities that foster carers are being asked to undertake.

Key legislation and guidance:

The Children Act 1989

- Sections 2 to 4A concern parental responsibility, Sections 20 to 23 concern looked-after children.
- Sections 31 to 34 concern Care Orders.

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

- Regulation 9 and schedule 2 concern the Placement Plan.

The Children Act 1989 Statutory Guidance Volume 2: Care Planning, Placement and Case Review (2010) as amended by the Care Planning, Placement and Case Review and Fostering (Miscellaneous Amendments) Regulations 2013.

- Deals with the delegation of decision making about looked after children to their carers.

The Children Act 1989 Statutory Guidance

- Volume 1: Court Orders
- Volume 2: Care Planning, Placement and Case Review (July 2013)
- Chapter 3 contains a section on the effect of Care Order.

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- Volume 4: Fostering Services

The revised National Minimum Standards for Fostering Services (2011)

- Standard 6 refers to delegation about health.
- Standard 7 refers to delegation of decision making about education, leisure activities, overnight stays, holidays and personal issues such as haircuts.
- Standard 9 refers to delegation of decision making about contact.

IRO handbook

Statutory guidance for independent reviewing officers and local authorities on their functions in relation to case management and review for looked after children.

Parental responsibility

- Parental responsibility (PR) is defined in law as: 'All the rights, duties, powers, responsibilities and authority, which by law a parent of a child has in relation to the child and his property.'
- The local authority also has PR if the child is subject to a Care Order, Interim Care Order or Emergency Protection Order. When a child is accommodated by agreement (S20 CA1989), the parents (and others with PR) retain their PR and the local authority does not have PR. When a child is in care under a care or emergency Protection Order, the parent retains their PR but the local authority also has it and may limit the extent to which the parent (or others with PR) may exercise their PR. A person with PR may not surrender or transfer any part of it to another person; however a person who has PR may arrange for all or some of their responsibilities to be met in certain circumstances by someone else (including someone else who also has PR for the child). This is called 'delegating authority' and may be given for a particular event or arrangement such as a medical appointment or a school trip.
- The law also says that the person who does not have PR for a child but has care of the child, for example a foster carer may 'do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare'. This means that in an emergency, if no agreement has been made about what to do, the foster carer may do what is 'reasonable' in order to safeguard the child.
- Statutory guidance states that what is reasonable depends upon the urgency of the situation and how practical it is to consult a person with PR.

- Foster carers need the authority to make certain day-to-day decisions, such as whether a child they are caring for is allowed to stay overnight with a particular friend, or whether she or he can go on a school trip.

Cllr Sarah Russell, Assistant City Mayor

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