

Practice Information Note 2 Delegated Authority (Wales)

The purpose of this *Practice Information Note* is to:

- Provide an overview of the legislation surrounding delegated authority
- Consider some of the questions raised by delegating authority to foster carers
- Provide recommendations for good practice

References to Legislation, Regulation and Statutory Guidance (Wales):

- **Fulfilled Lives, Supportive Communities: Delegated Authority for Foster Carers 2011** this supplements the provisions in:
 - *The Fostering Services Wales Regulations 2003 (Part V, regulations 34(3), 40 and Schedule 6 paras 3,4,6,7 and 8).*
 - *Regulation 4 of The Placement of Children Wales Regulations 2007.*
 - *Key Topic 4 - Securing and Promoting Welfare, of the National Minimum Standards for Fostering Services (Wales).*
- **The Placement of Children (Wales) Regulations 2007**
 - **The Fostering Services (Wales) Regulations 2003**
 - **National Minimum Standards for Fostering Services (Wales) 2003**

Key points

- The needs of children and young people, their views, age and understanding must be at the heart of matters connected by delegated authority.
- Foster carers do not hold parental responsibility. However, the government is clear that foster carers should be able to make everyday decisions about their foster children, wherever possible unless there is a valid reason not to do so. Foster carers should be able to do this competently and confidently.

- Foster carers should be provided with sufficient training and support from supervising and children's social workers to understand the principles of delegated authority in order to be enabled to use delegated authority as and when it is agreed.
- Children and young people who are fostered have themselves expressed a wish that they live as 'ordinary' a life as possible within a family. They do not want to feel different from their peers or to feel embarrassed or stigmatised because they are fostered. Nor do they want to miss out on activities and trips because a lack of clarity about who has responsibility results in delays in decision making.
- Decisions about the delegation of authority must be made within the context of the child's care plan and the legal framework for parental responsibility. The placement plan should record who has the authority to make particular decisions about a child. Foster carers should be actively involved in the placement plan.
- Welsh Government guidance (2011) on delegated authority for foster carers contains the following quote; *'children's social services and independent fostering providers may wish to review their existing arrangements in light of this guidance'*

Introduction

"One of the things I hated about being in care was having a carer who really wasn't allowed to be a carer... then having another group of people I almost never see trying to make all the decisions about my daily life... My first family couldn't cope! My new family wasn't allowed to cope. I'm sure it was more about the system caring for itself first and me second". Like Everyone Else: Report of the Delegated Authority Project (2009-2011) The Fostering Network

Delays and missed opportunities for looked after children as a result of poor planning around delegated authority can be a barrier to children experiencing a fulfilled childhood and feeling part of a foster carer's family.

Children and young people should, as far as possible, be able to take part in everyday and acceptable age appropriate activities as would reasonably be agreed by the parents of their peers.

There is an expectation that foster carers will have the appropriate level of skill and competence to undertake day to day decision making about a child in their care. Fostering services should make this expectation clear during assessment, and ongoing training should be offered to equip them to feel confident. Ideally such training should be multi-disciplinary with foster carers, children's social workers and supervising social workers in order that shared learning and understanding can take place.

A shared understanding of the wide range of decisions, whether relating to day to day matters or specific one off issues made in a child's life, requires sufficient

exploration in order that all parties involved establish and agree the extent to which authority to make decisions is delegated to foster carers. .

What decisions need to be made?

Broadly there are three categories of decision making for children and young people who are fostered. The first are the routine decisions such as for health/hygiene, school trips or leisure activities. Unless exceptions are laid out in the placement plan, these day to day decisions should be made by foster carers.

The second category concerns routine but long term decisions, such as a school choice, where the child's permanence plan will influence who should be involved in the decision making process i.e. parents, social workers, virtual school head and the foster carer.

The final category of decision making is around significant events, such as surgery, where implications can be far more serious and far reaching. When the child is voluntarily accommodated (S20), the birth parents or those with parental responsibility should make those decisions. If the child is under a care order (S31), decisions may be made which include the local authority, the birth family, and the foster carers, depending on the circumstances.

Reasons not to delegate decision-making to foster carers might include the child's individual needs, past experiences or behaviour where a greater involvement by the local authority might be needed.

There are some decisions that the law prevents authority being delegated to a person without parental responsibility. These are:

- Applying for a passport (child over 16 with mental capacity can apply for their own)
- Removal of a child subject of a care order from the UK for a period of more than one month without written consent of everyone with parental responsibility
- Deciding a child should be known by a different surname
- Deciding a child should be brought up in a religion other than the one they would have been brought up in had they not become looked after

Can foster carers agree to overnight stays?

Difficulties obtaining permission for sleep overs is often highlighted as a particular concern by children and young people. It should be normal practice for the responsible local authority, in agreement with those who hold parental responsibility, to delegate to the child's foster carer the day to day decision making about allowing a child to stay overnight with friends. This should be stated in the child's placement plan.

In the same way that parents make a judgement on whether or not there are known risks to staying in a particular household or visiting relatives, foster carers should also

be able to make decisions about suitability. Foster carers, as with any reasonable parent, should always have contact details for the household in which the child will be staying, and make contact with the household beforehand to assess the request and to confirm details.

DBS checks do not need to be sought; the [Disclosure Barring Service](#) would refuse to undertake the check on the grounds that it is not regulated activity. Also see link for the Department for Education guidance:

Can foster carers agree for a child to stay with a support carer/back up carer/relative of the foster carer/babysitter?

Different terminology is used across Wales when describing a support carer, back-up carer, relative of the foster carers or their nominated babysitter.

Regulations and statutory guidance outline clear requirements by fostering services to understand the formal or informal roles relating to an individual that undertakes the primary or additional caring responsibilities for children fostered. Furthermore, it seeks to clarify these roles within the context of the appropriate use of delegated authority to foster carers.

The formal assessment process

All foster carers are subject to a foster carer assessment and approval process as stipulated by the *Assessment and approval of foster carers: Amendments to The Children Act 1989 Guidance and Regulations Vol 4: Fostering Services (Jul 2013)*.

Although local variations may mean titles and roles are referred to differently, on the whole foster carer approval types fall within the following groups: emergency, short-term, short breaks, remand, long term, and therapeutic foster carers (exceptions relate to family and friends foster carers who are subject to temporary approval as foster carers). They are subject to the following processes:

- Stage 1 and 2 foster carer assessment and approval process
- DBS, medical and statutory checks
- References (personal and employment)
- Assessment of suitability, scrutiny and recommendation by fostering panel, and approval by the area decision maker
- Agreed and signed foster carer agreement
- Regular ongoing supervision and support, including training from the fostering service

Where individuals undertaking respite care require a formal assessment and approval, there needs to be a clear expectation about the purpose for which the fostering service is undertaking this process i.e. the terms of approval and suitability to provide specific care to a named child or within a specialist role in the fostering service.

The delegation of authority in respect of informal caring roles

Primarily individuals, such as friends or family members nominated by the approved foster carer, would fall within the category of informal caring roles.

It is therefore through agreements around delegation of authority, as recorded within the placement plan, that foster carers are authorised to identify and nominate someone they know to undertake the appropriate care of the child that they foster for a specific period of time (i.e. babysitting activity while a foster carer has other social, personal commitments, school drop off or pick up, or care that may include overnight stays with friends or family members known to the child). This is as any reasonable parent may do with their own children.

In such circumstances, it is important that a foster carer is contactable and available immediately to resume the care of the child, unless alternative arrangements have been agreed with the fostering service or within the placement plan. Furthermore, undertaking the care of the child within the foster carer's home may offer consistency and stability to a child's routine and provide familiar surroundings. Such decisions should be made to take account of the individual child's needs.

Effective placement planning and good practice should involve clear discussion by all parties around the involvement of informal care support, including the nature, frequency and length of time such support is required. Agreements should be written into the placement plan.

There is no requirement to undertake DBS checks and this should be made in local policy. The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services (Vol 4 Guidance), paragraph 3.87 states:

'Fostering services should seek to identify, as part of the approval process for a prospective carer, any individuals who may play a significant role in providing support for those carers. These may be back-up carers, regular baby-sitters, or family. There is no requirement to assess or approve these people as foster carers. In some cases, it may be appropriate for checks such as criminal record checks to be carried out, but there is no requirement and professional judgement should be used (see also the section in this guidance on delegated authority). In order for a disclosure check to be requested, the fostering service would need to be aware of such arrangements, and so the individual's involvement would need to be agreed by the fostering service.'

In summary, there is no requirement for a fostering service to obtain a DBS check or to assess and approve a back-up carer. Paragraph 3.87 above refers to a fostering service using '**professional judgment**' to ascertain whether it would be appropriate for a DBS check to be undertaken. Additionally, there is no specified length of time that a child fostered can spend staying with someone else before a DBS check is required; again that is a matter for professional judgment, and local policy.

Fostering services are required to have a written delegated authority policy. This should ensure good practice at the outset of any placement, provide clarification regarding arrangements, reduce delay in decision making, offer better use of existing processes and address the nature of formal/informal roles. Where day to day parenting decisions are not delegated to carers, any exceptions or reasons for this should be set out in the placement plan.

Care planning responsibilities – Respite Care

In circumstances where the agreed care plan for the child recognises the need for regular respite care, the provision of this is the responsibility of the local authority. This additional support to foster carers is formal in its nature, and hence the fostering service's local policy should provide clear expectations on supporting foster carers in line with guidance and regulations (*Vol 4: 5.66 and NMS 21*). There will, however, be occasions where the care needs of the child are not fully known at the point of placement, and the foster carer can request respite provision which again would be treated as a formal respite placement.

In formal arrangements, the care planning responsibilities must be in line with regulatory and legislative requirements outlined in The Placement of Children (Wales) Regulations 2007. Therefore, respite arrangements should be arranged with an approved foster carer who can appropriately meet the child's needs as written in the child's care plan.

Agreement to the varied roles and responsibilities taken by each person involved in the care of a child is significant and requires the participation of all relevant individuals (i.e. birth families, social workers, foster carers and children and young people with sufficient maturity and understanding) in care planning discussions and decisions.

Whilst care planning responsibilities rest with those who are the corporate parents for the child and require those people to make decisions about the best care arrangements for a child, the delegation of authority agreed and given to the foster carer is in respect of making day to day decisions about a child's immediate care needs and is underpinned by the idea of the normalcy of family life.

Delegated authority – child's competence to make decisions for themselves

Delegated authority must consider the views of the child if they are of an appropriate age and understanding. Young people may themselves want to make decisions about things like activities, sports, social clubs, and haircuts. If it is in their interest to do so, they may be allowed to make these decisions for themselves and this should be recorded in the placement plan.

The Placement Plan

Every child in care should have a care plan which will include details of their needs and how these will be met, contain information about their placement and the

longer-term planning for their care. The placement plan forms part of the child's overall care plan and lays out how the placement will meet the particular needs of a child.

The placement plan must make clear who has the authority to take decisions in key areas of the child's day-to day life, including:

- Medical or dental treatment
- Education
- Leisure and home life
- Faith and religious observance
- Use of social media and
- Any other areas of decision making considered relevant with respect to the particular child

In terms of good practice, the placement plan is a tool to enable foster carers to effectively support and meet the needs of children in their care. It is also a vehicle to promote essential communication between foster carers, children and young people, family members and social workers and so should be drawn up in a placement planning meeting to ensure everyone's involvement.

The placement plan should be treated as a 'living document' which will change and evolve around a child or young person's individual needs and maturity. It is within this context that the placement plan should set out clearly which decision making is delegated to whom, and which decisions the foster carer can make around the day to day care of a child to promote placement stability and good outcomes.

Please refer to The Fostering Network Supporting Placement Planning Handbook (Appendix 1: Delegated Authority - Decision Support Tool):

http://www.fostering.net/sites/www.fostering.net/files/public/resources/good_practice-guidance/delegated_authority_handbook_2011.pdf

The placement plan should be routinely reviewed in line with the statutory review process, and this mechanism will enable everyone involved in the team around the child to prioritise meeting the child's needs in a timely and inclusive manner.

What about children placed with other fostering providers?

Where a child is placed with foster carers approved by an independent fostering agency or another local authority, the responsible authority should make clear their policy and expectations around good practice in respect of delegated authority. In addition it is the responsibility of each independent fostering agency to have a delegated authority policy. It is the responsibility of all fostering service providers to ensure that, wherever a child is living, all parties are clear as to the policy guidance in respect of delegated authority.

The Fostering Network makes the following recommendations

- Statutory guidance requires all fostering services to have a policy about the delegation of authority to foster carers for children who are looked after. The policy must cover foster carers in local authority and independent agencies. The Fostering Network recommends that this is developed in consultation with foster carers and social workers and young people. It should be reviewed on a regular basis.
- The placement plan should actively involve the foster carer and, wherever possible, the child or young person and birth family so that everyone has a clear understanding about how the placement can meet the requirements, especially around delegation of decision making.
- Fostering services should ensure that placement planning, and the service placement plan forms, clearly incorporate matters relating to delegated authority in order to enable effective discussion, implementation and a comprehensive record of agreements.
- Foster carers should, wherever possible, be enabled to make the day to day decisions, including those around care arrangements.
- Clear and accessible information should be provided about delegated authority for parents of children in foster care. It should clarify who foster carers are, what they do, what happens when their child goes to stay with them and how decisions will be made and by whom.
- Delegated authority training should be included within the workforce training plan and must be offered to foster carers and staff at all levels. It should cover a definition of delegated authority, the legislative context, local practice implementation, the involvement of birth families and young people, placement planning and the importance of risk assessment and risk management.
- Children's social workers must be supported and trained in respect of their understanding about fostering and delegated authority.
- Independent Reviewing Officers have a key role in overseeing practice in relation to delegated authority when reviewing child care and placement plans. They should ensure that birth families, children and young people are as involved as possible, and should advocate for foster carers to be given more authority as appropriate and when necessary.
- Each local authority fostering service needs to make a commitment within their strategic plan to support their foster carers and social workers in their application and practice around delegated authority; this will be extended to include independent fostering agency foster carers where services are commissioned. Some foster carers may need to be empowered and supported to

take everyday decisions. Where the child is placed long term, this is even more important.

- Each local authority fostering service and independent fostering agency needs to update and review its delegated authority policy in keeping with statutory guidance and legislation implemented on the 1st July 2013 and the Department for Education's guidance regarding delegated authority.

Links to key documents

- The Fostering Network: Supporting Placement Planning - handbook on delegated authority (Apr 2011)
http://www.fostering.net/sites/www.fostering.net/files/public/resources/good-practice-guidance/delegated_authority_handbook_2011.pdf
- The Fostering Services (Wales) Regulations 2003
<http://www.legislation.gov.uk/wsi/2003/237/contents/made>
- The Children Act 1989 Guidance and Regulations, Volume 2: Care Planning, Placement and Case Review (Miscellaneous Amendments) Regulations (2013)
<http://www.legislation.gov.uk/uksi/2013/984/contents/made>
- The Placement of Children (Wales) Regulations 2007
<http://www.legislation.gov.uk/wsi/2007/310/regulation/4/made>
- The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services (2011)
<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00023-2011>
- National Minimum Standards for Fostering Services (Wales) 2003
<http://cssiw.org.uk/docs/cssiw/general/131009nmsfosteringen.pdf>
- Disclosure and Barring Service – a guide to eligibility for criminal records check
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349126/DBS_guide_to_eligibility_v6.pdf