



## Safer Caring: A New Approach supplementary resources (2017)

### Chapter 2: Risk sensible, not risk averse

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#### Delegated authority

In July 2013, the Department for Education published new statutory guidance for England regarding delegation of authority. This was subsequently incorporated into the revised statutory guidance for England called [Children Act 1989 Guidance and Regulations Volume 2: Care planning, placement and case review](#) (July 2015).

In 2012, there was already provision for the delegation of authority to foster carers through agreement with parents and the local authority. However, the necessary cultural shift to maximise the role of foster carers in taking key day-to-day decisions for children in their care was slow to develop. The 2013 guidance sought to move this forward and the key points are:

- Authority for day-to-day decision-making about a looked after child should be delegated to the child's carer, unless there is a valid reason not to do so.
- A looked after child's placement plan should record who has the authority to take particular decisions about the child. It should also record the reasons where any day-to-day decision is not delegated to the child's carer.
- Decisions about delegation of authority should take account of the looked after child's views. Consideration should be given as to whether a looked after child is of sufficient age and understanding to take some decisions themselves.
- Each local authority should have a published policy setting out their approach to the delegation of authority to foster carers and residential workers.

The guidance recognises different levels of decision-making in relation to children in foster care, as follows:

- Day-to-day parenting (such as routine decisions about health/hygiene, education and leisure activities).
- Routine but longer-term decisions (such as choice of school).

- Significant events (for example, surgery).

The 'risk sensible' approach advocated in Safer Caring: A New Approach is given further credibility by the government's push for maximum delegation to foster carers of day-to-day parenting decisions, and the explicit recognition that the child or young person will have views to be considered and/or the capacity to make the decision for themselves.

Children's placement plans are now expected to record the decisions that are delegated, and the reasons for why any day-to-day decisions are not delegated. There is recognition that, in seeking to maximise the delegation of authority to foster carers where possible, children in long-term placements will achieve greater sense of stability and security if delegation of authority also includes those routine and longer-term decisions which, for children in short-term placements, often continue to be made by parents.

The requirement for the local authority to have a delegated authority policy should provide clarity and support for foster carers in relation to their role in decision-making about children in their care.

In Wales, the guidance [Delegated Authority to Foster Carers](#) was published in 2011. And in Northern Ireland, guidance on delegated authority to foster carers was published via a circular to trusts in February 2010.

In Scotland, the term 'delegated authority' isn't used. Under Scottish law those caring for children who are not their own, such as foster carers, have powers of decision-making in their own right. In 2015, [Decision Making Guidance for Foster Carers](#) was published to help clarify for foster carers what their approach should be towards day-to-day decisions for the children in their care.

## **The Care Inquiry**

In 2013, a group of eight charities chaired by The Fostering Network published the findings of The Care Inquiry, which explored the issue of how best to provide permanent homes for children who cannot live with their birth parents. The report, [Making Not Breaking: building relationships for our most vulnerable children](#), summarised the recommendations that came out of the inquiry process which reviewed all research evidence to date and took evidence from children and young people, parents, kinship carers, foster carers, residential staff and adoptive parents. It considered the various arrangements in which children are cared for: living with their parents, with other birth family members or friends, with long-term foster carers, special guardians or adoptive parents.

The main conclusion was that 'permanence' for children means 'security, stability, love and a strong sense of identity and belonging' which is not connected to legal status, and that one route to permanence is not necessarily better than any other. This paved the way for recognition in England, in 2015, of long-term foster carer as a legal route to permanence (see Chapter 6: It's not just about you).

The report also concludes that it is the relationships with people who care for and about children that are the 'golden thread' in children's lives. The importance of the relationship between children and their foster carers, social workers and others who care for and about them is the 'lens' through which we should view what we do and plan to do. Safer Caring: A New Approach is more relevant than ever in its promotion of the status of foster carers, the role that foster carers play in decision-making about children in their care, and the need for a risk sensible, not risk averse approach that supports children to grow and learn within the context of a nurturing relationship with their primary carer.

## **Caring for a young person aged 18+**

For many years, foster carers have continued to support children they have cared for beyond the age of 18 years. However, this was historically done on an informal basis with great local variations in practice.

Local authorities in England, Scotland and Wales now have a duty to enable a fostered young person to remain living with their foster family when they reach the age of 18 if that is what they and their foster carer want. Northern Ireland also has its own arrangement for caring for a young person aged over 18.

The introduction of this new duty has highlighted the differences between caring for a looked after child in a fostering placement as a foster carer, and supporting a young adult 'care leaver' as a former foster carer. Whilst the needs of a young person do not change overnight, their legal status does. Implementation of the new duty has created benefits but also challenges for those negotiating changes around this time of transition. A focus on keeping everyone safe at the point when young people legally become adults is made easier where young people have been supported to prepare for adult life by being encouraged to take responsibility for decisions as they mature.

Safer Caring: A New Approach has much to contribute. A risk sensible, not risk averse approach to safer caring enables children to look to their carers to make day-to-day decisions in respect of them when younger in a way that allows them to take managed risks. It also enables young people as they mature to have opportunities for full participation in decision-making alongside their carers in a way that allows them to learn to manage risk themselves, and to develop resilience when things do not go as expected.

## **Criminal record checks**

It is a requirement of the fostering regulations in England and Wales that foster carers and all adult members of their household over 18 years of age have an enhanced criminal record check completed as part of the assessment of their suitability for approval as foster carers.

In December 2012, the Criminal Records Bureau (CRB) merged with the Independent Safeguarding Authority (ISA) to become the [Disclosure and Barring Service](#) (DBS) for England and Wales and new eligibility rules were brought in. This, along with changes to delegated authority guidance, has led to changes in practice in terms of which additional DBS checks are undertaken by fostering services in relation to support carers, babysitters and others connected to the fostering household. A person is not eligible for an enhanced check unless they are in a regulated service (for example foster carers and their household), and only eligible for a standard DBS check if they meet DBS guidelines regarding frequency of contact and level of supervision with the child. Further guidance can be found on the [Gov.uk website](#) with additional [guidance for children's social care providers](#).

The introduction of an 'update' service also allows 'status checks' on people who successfully register for the update service, although there are important differences in relation to 'home based positions' (such as foster care) in respect of the information checked when compared to that sought for a full enhanced certificate.

In Scotland the criminal record checks organisation is [Disclosure Scotland](#). An enhanced disclosure (known as the Protecting Vulnerable Groups Scheme) is carried out on all potential foster carers as well as anyone in their household over 16.

[AccessNI](#) carries out criminal record checks in Northern Ireland. Foster carers are required to have enhanced checks, as well as all members of their household over the age of 10.

It is recognised that a criminal record check is only one aspect of safeguarding to be considered when looking at the role of others in supporting foster carers and children who are fostered, and that promotion of relationships and 'normal' experience of family life is beneficial to children growing up in foster care. Delegated authority, where agreed, places responsibility on the foster carer to make decisions about who is and is not safe to involve in the care of the child outside of any formal agreements regarding contact with the child's family and friends. There are no specific time limits set in regulations or guidance about the length of time a child can spend in the care of another person to whom the foster carer has delegated day-to-day care, although the needs of the child must always be the primary consideration. The child's individual safer caring plan should address any particular issues to be considered in reaching these decisions.

## **Restraint**

In balancing risk in relation to fostered children, foster carers must make decisions about allowing children the freedom to learn from activities and sometimes from making mistakes, whilst at the same time minimising any risk that they may harm themselves or others. This is at the heart of the debate about the use of restraint in foster care.

Whilst foster care sets out to create a normal family environment, children can sometimes be dealing with issues from their past and present circumstances which lead them to behave in ways that challenge those around them and present risk of harm to themselves and/or other people and/or property.

Fostering legislation, guidance and standards emphasise the need for foster carers to work within a written policy on control, restraint and discipline of children where no form of corporal punishment is used on any child placed with a foster carer, no child placed is subject to any measure of control, restraint or discipline which is excessive or unreasonable, and where restraint is used on a child only where it is necessary to prevent injury to the child, other people or serious damage to property. The emphasis is on training foster carers to be skilled in defusing difficult situations, avoiding situations escalating and promoting positive behaviour in the context of the relationship between the carer and the child.

Where invited by the child, foster carers should be supported to have appropriate physical contact with children to offer reassurance, protection and concern for the child's physical and emotional well-being. Where uninvited, carers should ensure that any physical contact lies in the realms of 'good parenting', such as preventing a child running into the road or removing a young child from danger that they may not understand, such as that from hot objects.

Each fostering service must make a decision about its policy in relation to the use of physical restraint by its foster carers.

In England fostering services are expected to report annually to Ofsted the numbers of times that a foster carer uses 'physical restraint' in relation to a child in their care. The Ofsted definition of physical restraint is 'stopping a foster child/young person from doing something they appear to want to do by physical means' (for example, the foster carer moving the child/young person or blocking their movement to stop them hurting themselves or others or from seriously damaging property). Where it is permitted as a last resort, carers must be provided with training in safe techniques appropriate to the child in their care, and agreements must be reached and recorded. In any such physical contact, there are risks to all involved and the child's safer caring plan and placement agreement must set out

expectations and agreements between the child, their family, the foster carer and those in their household, the fostering service and those responsible for the child's placement.