



Services for Children, Young People and Families

CHILDREN IN CARE

Delegated Authority
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Delegated Authority

Introduction

- There is a general understanding that in order for more children and young people to achieve and thrive in foster care Social Work practice around the delegation of authority to foster carers must improve.
- The full participation of foster carers in the planning process is crucial, inconsistency and confusion within this process can on occasions lead to a lack of trust and can undermine the prospects of a positive, stable placement.

Current issues with delegated authority

- Children and young people in care often miss out on sleepovers, holidays and trips.
- Parents of children/young people often feel irrelevant and on the outside of decision making and are sometimes unclear about who can make decisions about their children.
- Foster carers are also unclear about their roles and responsibilities and often feel caught between the different approaches to the delegation of authority.
- Supervising Social Workers, Field team Social Workers and Managers are also unclear with regards to delegated authority, variations between authorities, teams, individual Social Workers just add to the confusion.

Policy and legal matters

- The White paper, Care Matters: Time For Change (2007) directly dealt with issues around delegated authority and the current fragmented approaches. The paper stressed the importance of achieving 'normal childhoods' and stressed that the wishes and feelings of children and young people should be considered when deciding which parenting tasks and responsibilities should be delegated.
- It is important to remember that when children and young people live with foster carers the decision making and authority delegated to the foster carers does not cease to be the responsibility of the person or body holding parental responsibility. Delegation does not mean that parental responsibility is transferred wholesale to the foster carers.
- The children Act 1989 Section 2 to 4A, Section 20 to 23 and Section 31 to 34, Volume 4 Children Act and standards 6, 7, & (of the revised National

Minimal Standards) all outline matters around delegated responsibility and parental responsibility.

- The law states that the person who does not have PR for a child but has care of the child/young person for example through foster care 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 carers may do what is reasonable in order to safeguard the child/young people concerned. Statutory guidance states that what is reasonable will depend upon the urgency of the situation and how practical it is to consult a person with PR.

Guidance

- Where consents or decisions are delegated to foster carers this will be with their agreement and should never be forced upon them.
- Decisions about how responsibilities are shared between all parties should always be recorded i.e. within the placement information record and care plan. The Children Act 1989 Volume 2 Statutory Guidance on Care Planning, Placement and Case Review, which came into force on 1 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.
- Delegated responsibility decisions should be agreed by all parties at the first placement agreement meeting and recorded formally at this point within the Looked after Children documentation identified above.
- The designated person who has authority to make a particular decision or give particular consent must be clearly named on the placement plan with the designated responsibilities clearly set out.
- There should be constant reviewing of delegated responsibility with this being incorporated into the Looked After Children reviewing processes which will be chaired by an Independent Reviewing Officer.
- Any changes to the list of delegated authority must be clearly recorded within the relevant Looked after Children documentation i.e. placement plan, care/review plan.
- Foster carers will need to have training and support as they develop competence and confidence in the decision making delegated to them. This training will be facilitated by the Family Placement Team.
- Foster carers often find they need the authority to make certain day-to-day decisions, such as whether the 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. 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.
- Decisions about who undertakes care related tasks and decision making can change over time as the child's/young person's needs and wishes change. All parties therefore need to communicate effectively and record effectively respective roles and responsibilities within the relevant Looked after children documentation.

Frequently asked questions around parental and delegated responsibility

What is 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'.

- This means that a person with parental responsibility is responsible for the care and wellbeing of their child and, unless a court order says something different, that person and anyone else that also has parental responsibility, can make important decisions about the child's life (subject to important exceptions set out in the Delegated Authority Handbook for Social Workers and Foster Carers).

Who has PR?

- A child's foster carer never has PR.
- The child's mother has PR from birth.
- The child's father, (if married to the mother at the time of the child's birth has PR.
- Where a child's father was not married to the mother at birth he can acquire PR if he subsequently marries the mother or: he becomes registered on the birth certificate as the child's father (for a child born after December 2003). Alternatively the father and the child's mother can make a parental responsibility agreement providing for the father to have PR for the child or the Court can make a parental responsibility order in favour of the father.
- The Local Authority also has PR if the child is subject to a Care Order, Interim Care Order or Emergency Protection Order.

- A person with a Residence or Special Guardianship Order from the court has PR.
- Prospective adopters who have a child formally placed with them for adoption by the Court have PR, although the adoption agency may restrict their exercise of PR.
- An adoption agency has PR throughout the time that a child is authorised to be placed for adoption.
- Adoptive parents have PR and the birth parents cease to have PR from the moment the adoption order is made.
- A step-parent or civil partner may obtain PR by agreement with all the people who have PR, or via a Court Order.
- A guardian who is appointed after the death of a parent or other person with PR has PR, provided the proper legal formalities have been followed.
- A second female parent can acquire PR in a similar way to an unmarried father.
- PR can be shared by more than one person at the same time.
- In certain situations, one party with PR may limit the other holders' exercise of their PR.
- When a child is in care under a Care Order 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.
- When there is a Special Guardianship Order in force, the special guardian can, for the most part, exercise PR to the exclusion of anyone else with PR (apart from another special guardian) – although parents/others with PR could still apply to challenge a special guardian's decision about the child in court.
- When a child is placed for adoption the parent and the prospective adopters have PR in certain circumstances but the adoption agency can limit the extent to which either may exercise their PR.

Note that 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.

What does it mean to delegate authority ?

- 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 (e.g. 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 will depend upon the urgency of the situation and how practical it is to consult a person with PR.

Are there some situations where authority cannot be delegated?

- There are a number of 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 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.
- A person with PR may not surrender or transfer their PR.
- A person with delegated authority may only do what they are authorised to do (unless it is an emergency, in which case they can do what is reasonable to keep the child safe), whereas a person with PR can make almost any decision about a child's upbringing.
- Any arrangement with a temporary carer is not legally binding and a person who holds PR may take back their child, and/or the authority they have delegated, at any time, unless a court order says they may not.
- Any delegation does not relieve the parent, or other person delegating, of any liability that may arise as a result of a failure to meet that parental responsibility.

Who takes legal responsibility for decisions made?

- 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.

How does a foster carer know if the person delegating authority is able to make that decision?

- 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.
- A written record should be kept in the placement plan of all decisions to delegate authority.

What happens if the foster carer disagrees with what the Local Authority is proposing?

- The foster carer's placement plan will set out some circumstances in which authority will be delegated to them. Where there is disagreement, it is helpful to discuss the issue with the supervising social worker to understand the reasons that have led to the decision and to be clear about what options are available to the foster carer to take the matter further. Depending on the circumstances, the foster carer could, in the first instance, discuss matters with the child's Independent Reviewing Officer (or an advocate, if the child has one) if the foster carer feels that decisions taken are not in the child's best interests.

What should I do if there is no one with PR for the child?

- 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.
- However, 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.

What happens if the young person is 16?

There are some things that a young person who is 16 or over, or under 16 but mature, can consent to in their own right, for example;

- 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.

Carers' responsibility regarding education

Who is included in the definition of parent in the Education Act 1996?

- The Education Act 1996 (section 576) defines 'parent' to include anyone who has parental responsibility for a child, or who has day-to-day care of him or her. This means that someone, including a foster carer, can be a 'parent' for education purposes without having parental responsibility for the child in question. Because of this, it is important that foster carers understand their responsibilities and rights.
- Education law makes parents responsible for a child's regular attendance at school. If a fostered child does not attend school regularly, his or her foster carer may be requested to enter into a parenting contract. If the child's attendance does not improve, and the foster carer is unwilling to work with the school to improve the child's attendance, it is possible that the foster carer may be prosecuted or fined.
- A significant number of children who are looked after have special educational needs (SEN), or would benefit from being assessed for SEN as a route to gaining appropriate education support. If a child has a Statement of SEN, his or her foster carer/s should have a copy of this. An appeal to the Special Educational Needs & Disability Tribunal (SENDIST) on issues such as refusal to assess whether a child has SEN, or disagreement about the school named in a Statement of SEN, may be made by a foster carer.
- Despite these legal rights, foster carers are advised not to act without consulting the parties who have parental responsibility for the child (the Local Authority and/or the child's parents, as appropriate). Equally, the Local Authority and the child's school should ensure that carers are consulted and involved in decisions about a child's education, alongside those who have PR for the child.

The Decision Support Tool

This *Decision Support Tool* is to assist social workers, parents, foster carers and young people to talk to each other about delegated authority. It can help to prepare for the initial Placement Planning meeting and each subsequent review when the Placement Plan is considered. It is an aide to good practice in working with delegated authority. It does not replace or replicate the Placement Plan which is the legal requirement for this purpose. The required content of the Placement Plan is set out in Schedule 2 of the Care Planning, Placement and Case Review Regulations 2010; relevant statutory guidance is in Chapter 2 of the Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review.

The Decision Support Tool is supported and explained further in the Fostering Network's Handbook *Supporting Placement Planning*. It is based on consultations which suggest that the areas covered are those where it is particularly important to have clarity. The aims are to ensure that the Placement Plan;

- is viewed as a living document that can change over time
- covers all the areas necessary for every child
- Is as clear and inclusive of parents and foster carers as possible.

The *Decision Support Tool* is not a definitive list of tasks and responsibilities: over the life of a child's placement with foster carers, other areas will inevitably arise and require clarification and not all of the elements that are included will apply to every young person. In addition to preparing for planning meetings and reviews, its other uses are;

- To assist supervising social workers to prepare fostering applicants for the tasks in foster care and to assess their needs in relation to the *Training, Support and Development Standards for Foster Care*.
- For child care social workers to use with parents who need additional support to understand delegated authority. The leaflet *Information for Parents about Delegated Authority* may also help with this.
- Clarifying who is best placed to take everyday decisions depends on many factors: the young person's age, views, legal status and care plan, the parents' views and the experience and the views of the foster carers. Collaboration and consultation are essential for successful partnership working.

Using the Delegated Authority tool

- The tool is designed to be used at the initial placement planning meeting, so that all parties can be clear about which decisions have been delegated to carers. The agreement reached at the meeting should be clearly recorded on the form and copies given to everyone in attendance.
- The delegated authority should then be discussed at subsequent children in care reviews, where changes can be made dependent on changing circumstances and the best interests of the child in placement.



Delegated Authority Tool

Name of child/Young person

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Section 1 Medical and Health

	Consent / agreement / task	Who has authority to give consent/ agreement or undertake the task ¹	Notes (inc notifications, prior consultation/recording requirement/conditions)	Date
1.1	Signed consent to emergency medical treatment inc anaesthesia			
1.2	Consent – routine immunisations			
1.3	Planned medical procedures			
1.4	Medical procedure carried out in the home where the person administering the procedure requires training (e.g. child with disability/illness)			
1.5	Dental - signed consent to dental emergency treatment inc anaesthetic			
1.6	Dental - routine treatment inc anaesthetic			

¹ More than one than one person could have authority to give a particular consent/agreement or undertake a particular task, e.g. both the parent and foster carer may be attending parents' evenings. If this is the case, the individuals' respective roles should be clarified in the "Notes" column.

1.7	Optician – appts glasses			
1.8	Consent to examination /treatment by school Doctor			
1.9	Administration of prescribed/over the counter medications			
1.10	Permission for school to administer prescribed/over the counter medications			
1.11	Referral/ consent for YP to access another service e.g. CAMHS			

Section 2 Education

	Consent / agreement / task	Who has authority to give consent/ agreement or undertake the task ²	Notes (inc notifications, prior consultation/recording requirement/conditions)	Date
2.1	Signed consent for school day trips			
2.2	Signed consents for school trips of up to 4 days			
2.3	Signed consents for school trips of over 4 days			
2.4	School trips abroad			
2.5	Using computers at school			
2.6	School photos			
2.7	Attendance at parents' evenings			
2.8	Attendance at PEP meetings			
2.9	Attendance at unplanned meetings re incidents or immediate issues			
2.10	Registering at a school			

² More than one than one person could have authority to give a particular consent/agreement or undertake a particular task, e.g. both the parent and foster carer may be attending parents' evenings. If this is the case, the individuals' respective roles should be clarified in the "Notes" column.

2.11	Changing a school			
2.12	Referral/ consent for YP to access another service (please specify the service)			
2.13	Personal Health and Social Education			

Section 3 Personal, leisure and home life

	Consent / agreement / task	Who has authority to give consent / agreement or undertake the task ³	Notes (inc notifications, prior consultation / recording requirement / conditions)	Date
3.1	Passport application		Can only be applied for by someone holding PR	
3.2	Overnight with friends ('sleep overs')			
3.3	Holidays within the British Islands			
3.4	Holidays outside the British Islands			
3.5	Sports / social clubs			
3.6	More hazardous activities - e.g. horse riding, skiing, rock climbing			
3.7	Haircuts / colouring			
3.8	Body piercing		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	
3.9	Tattoos		It is illegal for anyone under the	

³ More than one than one person could have authority to give a particular consent/agreement or undertake a particular task, e.g. both the parent and foster carer may be attending parents' evenings. If this is the case, the individuals' respective roles should be clarified in the "Notes" column.

			age of 18 to have a tattoo	
3.10	Mobile phone			
3.11	Part time employment			
3.12	Accessing social networking sites e.g. Facebook, Twitter, MSN			
3.13	Photos or other media activity			

Section 4 Faith and religious observance

	Consent / agreement / task	Who has authority to give consent/ agreement or undertake the task ⁴	Notes (inc notifications, prior consultation/recording requirement/conditions)	Date
4.1	New or changes in faith, church or religious observance			
4.2	Attendance at a place of worship			

Section 5 Identity and Names

	Consent / agreement / task	Who has authority to give consent/ agreement or undertake the task ⁵	Notes (inc notifications, prior consultation/recording requirement/conditions)	Date
5.1	Life story work			
5.2	New or changes in 'nicknames', order of first names, or preferred names			

⁴ More than one than one person could have authority to give a particular consent/agreement or undertake a particular task, e.g. both the parent and foster carer may be attending parents' evenings. If this is the case, the individuals' respective roles should be clarified in the "Notes" column.

⁵ More than one than one person could have authority to give a particular consent/agreement or undertake a particular task, e.g. both the parent and foster carer may be attending parents' evenings. If this is the case, the individuals' respective roles should be clarified in the "Notes" column.

Section 6 Contact

	Consent / agreement / task	Who has authority to give consent/ agreement or undertake the task ⁶	Notes (inc notifications, prior consultation/recording requirement/conditions)	Date
6.1	Transport			
6.2	Arranging			
6.3	Facilitation			
6.4	Formal supervision			

Section 7 Other areas or categories

	Consent / agreement / task	Who has authority to give consent/ agreement or undertake the task ⁷	Notes (inc notifications, prior consultation/recording requirement/conditions)	Date

8. Additional notes or questions

⁶ More than one than one person could have authority to give a particular consent/agreement or undertake a particular task, e.g. both the parent and foster carer may be attending parents' evenings. If this is the case, the individuals' respective roles should be clarified in the "Notes" column.

⁷ More than one than one person could have authority to give a particular consent/agreement or undertake a particular task, e.g. both the parent and foster carer may be attending parents' evenings. If this is the case, the individuals' respective roles should be clarified in the "Notes" column.

