

## The Children Act 1989 Guidance and Regulations

### - Volume 2: Care Planning, Placement and Case Review

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- 3.192 Managing the relationship between a looked after child's parents (or other carers with parental responsibility), the local authority, the foster carer(s) or the registered manager of a children's home (The foster carer or registered manager of the children's home is referred to in this guidance on delegated authority as 'the carer') is challenging, particularly as those providing the day-to-day care do not hold parental responsibility (unless the child is living at home). It is essential to fulfilling the local authority's duty to safeguard and promote the child's welfare that, wherever possible, the most appropriate person to take a decision about the child has the authority to do so, and that there is clarity about who has the authority to decide what.
- 3.193 Poor planning around delegation of authority can delay decision-making and lead to children missing out on opportunities that enable them to experience a fulfilled childhood and feel part of their foster carer's family or the daily life of their children's home. Looked after children say that problems obtaining parents' and local authorities' consent to everyday activities make them feel different from their peers and cause them embarrassment and upset. Failure to delegate appropriately, or to make clear who has the authority to decide what, can make it more difficult for foster carers and residential workers to carry out their caring role and form appropriate relationships with the children in their care (see annex 6).
- 3.194 Decisions about delegation of authority must be made within the context of:
- the child's permanence plan, which sets out the local authority's plan for achieving a permanent home for the child; and
  - the legal framework for parental responsibility (PR) in the Children Act 1989.

#### **Delegation in the context of the permanence plan**

- 3.195 When deciding who should have authority to take particular decisions, the most appropriate exercise of decision-making powers will depend, in part, on the long term plan for the child, as set out in the child's permanence plan. For example, where the plan is for the child to return home, the child's parents should have a significant role in decision-making; where the plan is for long term foster care, the foster carers should have a significant say in the majority of decisions about the child's care, including longer term decisions such as which school the child will attend. Whatever the permanence plan, the carer should have delegated authority to take day-to-day parenting decisions. This enables them to provide the best possible care for the child.

#### **Delegation in the context of the law on parental responsibility (PR)**

- 3.196 The child's parents do not lose PR when the child is looked after. Where the child is voluntarily accommodated under section 20 of the Children Act 1989 the local authority does not have PR. Where there is a care order or emergency protection order, the child's parents and the local authority share parental responsibility, although the local authority may determine how it is exercised. The foster carer never has PR.
- 3.197 Where a child is being voluntarily accommodated, the child's care plan, including delegation of authority to the local authority or child's carer, should (where the child is under 16), as far as is reasonably practicable, be agreed with the child's parents and anyone else who has PR. If the child is 16 or 17 the care plan should be agreed with them. A local authority cannot restrict a person's exercise of their PR, including their decisions about delegation, unless there is a care order or an emergency protection order in place.

- 3.198 Where a child is subject to a care order or emergency protection order, the local authority should, wherever possible and appropriate, consult parents and others with PR for the child. The views of parents and others with PR should be complied with unless it is not consistent with the child's welfare.
- 3.199 It is important to build effective relationships between parents and others with PR so that they understand that appropriate delegation is in the best interests of the child. Where parents initially feel unable to delegate, this may change over time as trust develops, so decisions should be kept under review through the care planning process, which parents should be involved in, where reasonably practicable (whether the child is voluntarily accommodated or under a care order).
- 3.200 Where a parent is unable to engage in the discussions about delegation of authority for whatever reason, or refuses to do so, the local authority will need to take a view. If the local authority has a care order, then they can exercise their PR without the parent. Where the local authority does not have PR they can still do what is reasonable in the circumstances for the purpose of safeguarding and promoting the child's welfare.
- 3.201 There are some decisions where the law prevents authority being delegated to a person without PR. These include applying for a passport (a child aged 16 or over who has the mental capacity to do so can apply for their own passport). Where there is a care order, the child cannot be removed from the UK for more than a month without written consent of everyone with PR or the leave of the Court (where the child is voluntarily accommodated the necessary consents must be obtained as for a child outside the care system). A local authority cannot decide that a child should be known by a different surname or be brought up in a religion other than the one they would have been brought up in had they not become looked after.

### **The child's competence to make decisions themselves**

- 3.202 Any decision about delegation of authority must consider the views of the child. In some cases a child will be of sufficient age and understanding to make decisions themselves. For example, they may have strong views about the often contentious issue of haircuts, and if the child is of sufficient age and understanding, it may be decided that they should be allowed to make these decisions themselves.
- 3.203 When deciding whether a particular child, on a particular occasion, has sufficient understanding to make a decision, the following questions should be considered:
- Can the child understand the question being asked of them?
  - Do they appreciate the options open to them?
  - Can they weigh up the pros and cons of each option?
  - Can they express a clear personal view on the matter, as distinct from repeating what someone else thinks they should do?
  - Can they be reasonably consistent in their view on the matter, or are they constantly changing their mind?
- 3.204 Regardless of a child's competence, some decisions cannot be made until a child reaches a certain age, for example, tattoos are not permitted for a person under age 18 and certain piercings are not permitted until the child reaches age 16.
- 3.205 Local authorities should, where appropriate, consider seeking the child's views on their preferred decision maker.

## Types of decision

- 3.206 Decisions about the care of a looked after child are likely to fall into three broad areas:
- Day-to-day parenting, e.g. routine decisions about health/hygiene, education, leisure activities;
  - Routine but longer term decisions, e.g. school choice;
  - Significant events, e.g. surgery.
- 3.207 All decisions in the first category should be delegated to the child's carer (and/or the child if they can take any of these decisions themselves). Where day-to-day parenting decisions are not delegated to the carers, any exceptions and reasons for this should be set out in the child's placement plan within their care plan.
- 3.208 Decisions about activities where risk assessments have been routinely carried out by those organising / supervising the activity, e.g. school trips or activity breaks, should be delegated to the child's carer. There is no expectation that local authorities should duplicate risk assessments.
- 3.209 Reasons not to delegate to the carer may include the child's welfare, if the child's individual needs, past experiences or behaviour are such that some day-to-day decisions require particular expertise and judgement. For example, where a child is especially vulnerable to exploitation by peers or adults, where overnight stays may need to be limited, the foster carer or children's home may need the local authority to manage this.
- 3.210 The second category of decisions will require skilled partnership work to involve the relevant people. The child's permanence plan will be an important factor in determining who should be involved in the decision. For example, if the plan is for the child to return home, their parents should be involved in a decision about the type of school the child should attend and its location, because ultimately the child will be living with them. Where the plan is for long term foster care, or care in a residential unit until age 18, then while the child's parents must be involved (unless there is a care order and the local authority has decided not to involve them), where possible the school choice should fit with the foster carer's family life as well as be appropriate for the child.
- 3.211 The third category of decisions is likely to be more serious and far reaching. Where the child is voluntarily accommodated the child's birth parents or others with PR should make these decisions. Where the child is under a care order or emergency protection order, decisions may be made by the birth parents or others with PR, which includes the local authority, depending on the decision and the circumstances. Such decisions should, however, always take account of the wishes and feelings of the child and their carer.
- 3.212 The expectation must be that the assessment and approval of foster carers, their training and previous experiences of, for example, caring for their own children, will equip them with the skills and competence to undertake the day-to-day caring task, including taking day-to-day decisions about their foster child's care. Any skills gaps should be urgently addressed so that foster carers are able to carry out their parenting role effectively.

## Delegation in the context of the child's education

- 3.213 The Education Act 1996 defines "parent" as including a person who has care of the child in question. Therefore a child's foster carer or residential worker is deemed a parent for the purposes of education law. This means, for example, that a foster carer should be treated like a parent with respect to information provided by a school about the child's progress; should be invited to meetings about the child; and should be able to give consent to decisions regarding school activities.

3.214 Young people can sometimes apply in their own right for a place at sixth form or FE college. If they are of compulsory school age their application must also be signed by a parent (which in the context of education includes foster carers or residential workers) confirming their approval of the application. Once they are over compulsory school age they can apply in their own right without the need for parental consent. Young people can also appeal against the refusal of a sixth form place along these lines.

### **Delegation in the context of the child's health**

3.215 The legal position concerning consent and refusal of health treatment for those under 18 years old is set out in chapter 3 of the Department of Health's [Reference guide to consent for examination or treatment, second addition 2009](#).

### **The placement plan**

3.216 The Care Planning, Placement and Case Review (England) Regulations 2010 (as amended) require that each looked after child's 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.

3.217 The person(s) with the authority to take a particular decision or give a particular consent must be clearly named on the placement plan and any associated actions (e.g. a requirement for the carer to notify the local authority that a particular decision has been made) should be clearly set out in the placement plan. Placement plans must be agreed with the child's carer, and are likely to be most effective when drawn up in a placement planning meeting which involves everyone concerned, including the carers.

3.218 Where a decision is not delegated to the child's carer, but can be predicted in advance, the agreement of those with PR to the decision should be sought in advance and recorded in the placement plan, so that when the decision arises, delay can be avoided.

3.219 For some decisions that are made by a person other than the child's carer, it may be expected that the carer will implement the decision. For example, parents or the local authority may agree to the provision of Child and Adolescent Mental Health Services, but ask the carer to take the child to appointments. This is not delegation of decision making to the carer, as the decision will have been taken by those with PR and a medical professional, but it will enable the delivery of the service to continue without the need for ongoing support from social workers. The child's placement plan should make clear what the expectations of the carer are in such cases.

3.220 The appropriate distribution of decision making powers is likely to change over time, as the child matures and circumstances change. The placement plan forms a part of the child's overall care plan. Decisions about delegation of authority should be considered at each review of the care plan.

## **Timeliness**

- 3.221 Where a particular decision is not delegated to a child's carer and rests with the local authority, there must be a clear system in place for ensuring that decisions can be made by the appropriate person in a timely way, with arrangements in place to cover sickness and annual leave. Details of these arrangements must be given to parents, carers and children (subject to age and understanding).

## **Local policy on delegation of authority**

- 3.222 Each local authority should have a published policy setting out their approach to the delegation of authority to foster carers and residential workers caring for children the local authority is responsible for. The policy should be signed by the Director of Children's Services and the Lead Member for Children. Efforts should be made to ensure that all practitioners involved with looked after children are aware of the policy (including carers) and abide by it. The policy should take account of this guidance and in particular the need to maximise, wherever possible, the authority for day-to-day decision making that is delegated to looked after children's carers, particularly where the placement is intended to be long term. It should address the issue of timely decision making.
- 3.223 The local policy is not intended to take the place of children's placement plans, which should take account of the child's individual circumstances when detailing how authority for decision-making is to be distributed. Children's placement plans should, however, take account of the principles set out in the local policy, as well as of the statutory guidance set out here.