

Sefton - Delegated Authority for Foster Carers Policy

Introduction

Decision-making for cared for children can be an area of conflict between foster carers, social workers and parents. Sometimes this can impact adversely on the quality of care given and the child's experience of being looked after.

Delegated authority simply refers to the 'authority' that has been given to foster carers to act on behalf of persons with parental responsibility, to make certain decisions about the child or young person in their care.

Such decisions could include matters such as giving permission to go on a school trip, have an overnight stay (sleep over) with friends, go on holiday or even have a haircut. It is important that at the start of every placement, everyone involved is clear about delegated authority: what authority has been given over to the foster carers, and what authority has been retained by children's services and/or parents.

This policy has been written to ensure that Sefton Fostering Service can comply with the statutory duty to ensure that decisions about cared for children are appropriately delegated to foster carers and that there is a clear understanding of when consent needs to be obtained in relation to the child's care and from whom.

The policy explores the issues that can arise out of decision-making and sets out how these can be resolved through the placement planning processes in a manner that promotes a high standard of care for cared for children and good working relationships between foster carers, parents and social workers.

Issues around decision-making for Cared For Children

Failure to adequately address issues of delegated authority (who makes what decisions about the care of looked after children and young people) can lead to problems and cause vulnerabilities in placement. For example,

- Children in foster care are often marked out as different from their peers because decision-making for their care is more complicated, with carers often having to seek permission from social workers for ordinary activities like school trips. On occasion, this can lead to delay which in the worst case, could lead to children missing out on activities because permission cannot be sought in time;

- Because of the split in decision-making between parents, foster carers and social workers it is not always clear who is responsible for what decision. This can lead to conflict between the parties and is likely to have a negative effect on the care of the child;
- Foster carers may feel that either they are being left to cope alone or that they are held back by the need to constantly seek permission to carry out basic caring responsibilities;
- Parents may feel that they are being pushed out of decision-making regarding their child/young person and may be unclear about who is responsible for making decisions about the child's care;
- Social workers often have different styles of working, with some delegating more authority than others and this can lead to inconsistencies of practice, especially where there is a change of social worker.

How this Policy will Improve Decision-Making

Delegated authority will be fully discussed, agreed and recorded at the start of every placement and foster carers, parents and children (where appropriate) will have an opportunity to contribute to this process.

Where possible, the most appropriate person will be authorised to make decisions about the child's care, reflecting the role of that person in the child's life and the importance of the decision. All parties should be fully aware of what decisions each person can make.

A robust framework of delegated authority will be in place for each cared for child that clearly states what decisions foster carers are able to take themselves and those for which further instructions must be sought from the social worker.

This is to:

- Safeguard and promote the welfare of the child;
- Enable foster carers to provide high quality care for the child;
- Reflect the wishes and feelings of parents where this is consistent with the child's welfare and recognise their continued role in the child's life;
- Facilitate the implementation of the child's care plan;
- Enhance the relationship between the child and the foster carer;
- Promote good working relationships between foster carers, Fostering Supervising Social Worker and parents;

- Speed up decision-making processes so that the child can have a normal family life whilst in foster care;
- Decision-making for looked after children will be a consistent practice that balances the need for continued parental involvement, children's services oversight of placements and flexibility for the foster carer to provide care for the child;
- Decisions on delegation of authority will be on a case-by-case basis and will take into account the permanence plan for the child, the child's needs and the best manner in which these needs can be met within placement. Clear arrangements for seeking permission where required will be agreed in advance.

Legal frameworks

Parental Responsibility

Parental responsibility (PR) is a concept that was introduced by the Children Act 1989 and is defined as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to that child and his property". This covers the child's care and upbringing and the right to make long-term decisions about the child's future.

When we talk about delegated authority, we are actually talking about the delegation of elements of parental responsibility for a child/young person for the duration of the placement.

A child's mother will always have parental responsibility. Fathers will share parental responsibility with the mother if:

- He was married to the mother at the time of the birth or they subsequently marry;
- Through a court order;
- By entering into an agreement with the mother to share parental responsibility;
- For children born after 1st December 2003, he jointly registers the child's birth with the mother.

If a father does not hold parental responsibility, he will still be considered the child's parent for the purposes of the Children Act and will be entitled to be consulted on any plans for the child and to have reasonable contact. However, he will not be entitled to remove a child from voluntary accommodation.

The local authority only acquires PR for a child if they are granted an interim or full care order from the courts. The courts do not 'take away' PR from parents, but allow the local authority to share PR with them. Therefore, the local authority still has a duty to consult and consider the wishes of parents. The local authority is able to override parent's wishes (limit their ability to exercise their PR) if they do not feel that parent's wishes are in the best interests of a child/young person. The local authority can also delegate elements of PR directly to foster carers.

The local authority does not acquire PR for any child who is being accommodated by voluntary agreement (often referred to as 'section 20'). In these cases, parents must specifically delegate authority for matters such as consent to medical treatment as part of the agreement to accommodate.

Duty to delegate authority

Sefton Council has a duty to ensure foster carers have authority to make day to day decisions regarding the child's care. However, by law anyone who is caring for a child can do what is reasonable at the time to safeguard and promote the child's welfare. This means that in an emergency, foster carers can take decisions without authority being delegated in order to protect the child. Such occasions are expected to be rare, and it is always imperative that the child's social worker or EDT (emergency duty team) is notified at the time of event or immediately after.

The expectation is that foster carers should be equipped by their assessment and approval, training and previous experiences of caring for children, 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.

For the purposes of the Education Act 1996, "parent" includes anyone who has day to day care of a child. Therefore, foster carers are able to fully engage with schools on the child's behalf and will be legally responsible for their attendance and behaviour. There are some decisions where the law prevents authority being delegated to a person without PR. These include:

1. Applying for a passport (a child aged 16 or over who has the mental capacity to do so can apply for their own passport);
2. 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;

3. 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.

These can only be consented to by those holding PR.

Delegation of authority for decision making must be fully discussed and clearly recorded in the child's Placement Planning Meeting prior to the placement starting. If this is not possible, a Placement Planning Meeting should be held within 5 days of the placement being made. Any required changes to delegated authority should be considered at the child's statutory looked after children review.

Within the Placement Planning Meeting and/or minutes of a review, there should be a clear record as to the types of decisions that have been delegated to the foster carer, and the type of decisions that have been retained by the parents or the Local Authority (where a care order is in place). There should also be clarity around the process foster carers should go through to obtain consent or action decisions on those aspects of care that have not been delegated to them.

Impact of the Child's Permanence Plan on Delegated Authority

Social workers should consider the type of placement and its likely duration when making decisions about delegating authority to foster carers. All foster carers will need to be authorised to make 'ordinary' decisions on the child's day to day care, but where the foster carer is looking after the child on a permanent basis, it is likely that longer term decisions such as the child/young person's school choices could be delegated to the carer. Delegation should reflect the increased role of the carer in the child's life.

Similarly, where rehabilitation to parents is the likely to be the plan for the child/young person, allowing parents to retain or regain a higher level of control over decision-making may be appropriate

The Child's Role

The views of the cared for child/young person should be taken into account when deciding on what decision-making authority will be delegated to foster carers. Their wishes and feelings should be balanced with a consideration of their age and understanding.

For example, older children should be encouraged to take responsibility for decision-making in their own right where they are considered competent to do so as this will help them develop vital life skills they will need on leaving care.

In other cases, a child/young person may have a strong view about their haircut. Often issues of hair care can be strongly linked to a child's developing sense of identity and self-esteem. As such, if the child is of sufficient age and understanding, it may be decided that they should be allowed to make their own decision regarding haircuts. However, it is essential that foster carers, social workers and parents are mindful of the consequences of hair care choices, particularly as children's schools often have rules and expectations around such issues.

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?

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.

Planning processes

It is vital that the delegation of authority for decision making is dealt with within the looked after children planning processes. As stated above, delegation should be agreed and recorded at the Placement Planning Meeting and reviewed regularly within the child's statutory reviews.

Roles and responsibilities: -

Children's Social Workers should:

- Seek the views of parents as well as the child/young person being cared for;
- Ensure parents with parental responsibility (PR) sign their consent to delegating authority on the appropriate documentation;
- Provide parents, carers and supervising social workers with clarity around the decisions and authority that has been delegated for the child/young person;
- Ensure arrangements remain flexible and changes are made where necessary.

Supervising Social Workers should:

- Contribute to the discussion on delegated authority in the Placement Planning Meeting;
- Contribute to the discussion on delegated authority and ensure that there is clarity on the foster carer's role in decision making (i.e. what can foster carers decide, what will they need to seek consent for);
- Monitor the foster carer's use of delegated authority and discuss any difficulties;
- Liaise with the child/young person's social worker around any difficulties or in negotiating any required changes to delegated authority.

The IRO (Independent Reviewing Officer) should:

- Be consulted on arrangements for delegated authority where required;
- Review all arrangements for delegating authority at each statutory review;
- Make recommendations on changes to arrangements where this is in the child's best interests;
- As part of the review process, meet with the child and parents prior to reviews to seek their views on delegated authority arrangements;
- Ensure arrangements are able to meet the child's needs and help Sefton Council to meet its corporate parenting responsibilities.

Prior to placement:

Social workers should explain to parents the nature of the decisions that need to be delegated to foster carers and discuss parental consent. This is to ensure parents are able to make informed decisions and to encourage them to engage with the process.

Where children are of sufficient age and understanding, social workers should also include them in any discussion regarding delegated authority as they may have their own views regarding who should make decisions about their care.

Following these discussions, it should be clear what the main areas of contention may be and where agreement can be reached. Social workers should also discuss with their supervisor whether any key decisions about the child's care must be retained by children's services, depending on the child's needs and circumstances.

Social workers should discuss the matter of delegating authority with the foster carer's supervising social worker to look at any issues around the carers level of experience, the specific needs of the child and what areas of delegated authority are likely to be covered at the Placement Planning Meeting.

Social workers should have particular regard to delegated authority where the child is living with a family and friends carer. There may already be an agreement in place between the carer and the parent on issues around the child's care and these should be respected where they are consistent with the child's welfare.

Placement Planning Meeting:

This meeting should be used to finalise and record agreements on delegated authority. Sharing information and a discussion on the child's routines should allow participants to identify what areas of decision-making are likely to arise during the placement that will need to be formally delegated to foster carers.

As far as possible, agreement should be made on any issue that is likely to arise so that the child's experience of care can be as normal as possible. Tasks agreed within the placement plan should have corresponding authority delegated.

The Care Planning, Placement and Case Review (England) Regulations 2011 (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.

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.

Statutory review:

The statutory cared for children's review will be crucial to ensure that the agreed framework of delegated authority is able to meet the child's needs and support the placement and care plan. The IRO should check each agreed delegation to see if it remains relevant or whether changes are needed.

It is likely at the first review that issues that had not been anticipated at the start of the placement have since arisen, requiring a decision; IROs must ensure that these matters are raised and resolved.

Recording:

Decisions relating to delegated authority should be recorded on the child's placement plan. Specific parental consent to matters such as medical treatment must be signed on the Placement Plan. Any extra consent required for individual children should also be recorded on this record.

The record should clearly state the name of the person to whom authority is delegated and the decisions they can take along with any associated actions, for example notifications to Sefton.

Where authority is not delegated for a decision, the reason for this should be recorded. Where it is known that consent for a decision will be needed in the future, consent can be sought in advance.

Immediate changes to delegated authority that take place between Cared for reviews in response to emergencies should be recorded in the case notes on the child's case record and discussed at the following review meeting.

Changes to delegated authority that are agreed at the statutory Cared for review should be recorded by the IRO in the minutes of the review meeting.

Changes to Delegated Authority:

As children's circumstances change, so will the nature of the decisions about their care, and consequent changes to delegated authority need to be discussed and agreed at the child's statutory Cared for review. Changes are likely to be required in the following circumstances:

- As the child gets older, and is preparing for adulthood and leaving care, responsibility for some decisions will need to be passed to them;
- Where a short-term placement becomes more long-term or permanent, more responsibility for day to day tasks and decision-making should be passed to the carer to reflect their increased involvement in the child's life;

- Where parent's roles are changing, for example if rehabilitation is likely or a move to permanence is decided on, there will need to be a corresponding change in how they share responsibility for decision-making;
- All decisions and subsequent arrangements should be recorded at the Cared for Statutory Review.

Decisions for Delegation:

Manner of Delegation

There are different levels of decision-making for Cared for children ranging from routine decisions around daily care to major decisions such as medical intervention. For some children, decision-making processes may be complicated by matters such as their legal or immigration status or specific medical needs.

Signed, explicit consent is needed from those with PR for activities such as medical treatment and interventions or applications for passports and must be signed by parents or social workers. Signed consent for matters such as school trips can be delegated to foster carers.

It is assumed that most daily decisions will be taken by the foster carer, but it must be made clear when new situations arise whether the foster carer will need to refer back to the social worker for a decision and how this process will be carried out in a timely way, for example if the social worker is not available.

There should also be agreement on how foster carers will keep social workers and parents informed where they have had to make emergency decisions in order to safeguard the child.

Health

- Foster carers should be given a signed consent record from parents for routine medicals, immunisations, dental, optician and general treatment (including administration of prescribed medication). Concerns about particular immunisations should be explored with parents at the start of the placement. Where a general anaesthetic is required, permission must be given by a senior manager, unless in an emergency (see emergency treatment below);
- If the child is subject to a care order and parents do not sign their consent, it may be signed by the service manager on behalf of the local authority;
- If the child is accommodated under section 20, parents must sign their consent so that routine medical checks and treatment can take place. If parents cannot

be persuaded to sign their consent, this should be reported to the service manager;

- Only an Assistant Director or Director can give consent for non-routine treatment for children who require specialist medical interventions and are subject to a care order;
- Foster carers may consent to any emergency treatment as the person who has care of the child but must try to gain consent in advance if possible and inform the local authority (social worker or EDT) of any consent given immediately afterwards;
- Young people aged 16 and 17 years old can provide their own consent to medical treatment if they are deemed to have the capacity to do so under the Mental Capacity Act 2005. This will be determined by medical staff. If it is thought they do not have the capacity to make the decision due to temporary impairment, the decision should be made by the local authority or by their parents depending on their care status;
- Young people aged 12-15 may give consent to medical treatment if they are thought to be 'Gillick' competent or meet the Fraser guidelines i.e. in relation to contraception. Again, this will be determined by any medical staff involved.

Body piercing - Young people should be assisted to 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. 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.

For more information on 'Gillick' competence see -

<https://learning.nspcc.org.uk/child-protection-system/gillick-competence-fraser-guidelines>

Education

- Decisions on what school a child or young person attends and whether they should change schools can only be taken within the statutory care planning process;
- Foster carers should be able to engage fully with a child's school and make routine daily decisions in order to make the child's education as normal as possible. Carers should have authority to sign consents for school trips and out of school activities, attend meetings, sign Home/School agreements and to maintain contact with the school and discuss the child's progress.

A child or young person's involvement in school provision for sex and relationship education should be discussed at the placement planning meeting and the parents' wishes identified. If it is agreed that the child or young person attends, the carer should be able to consent to any school documentation within the home. Unless parents have expressed particular wishes about what they want their child to be told, a carer should respond as any reasonable parent would.

- Young people who are not of compulsory school age may be able to make their own choices regarding any further education, for example applying for a place at college or university, otherwise foster carers or social workers should counter-sign applications;
- School trips abroad or that involve hazardous activities should be discussed with social workers and parents first.

General Decisions:

- In order to ensure a child/young person in care enjoys a 'normal' childhood, decisions on overnight stays and visits to friends should be delegated to foster carers where appropriate. Please see paragraph 'Overnight Stays' below;
- **Holidays** should be discussed with parents and social workers in advance as these may affect contact arrangements. Foster carers should ensure that the local authority is given adequate notice, and it is necessary for the local authority and parents to know the whereabouts of the child/young person. The authority does not support foster carers taking children on holidays within their school term. Whilst arrangements should be in place to allow short notice holidays, (especially in relation to school trips, cheap holiday deals etc), carers should give notice of their intention to book as far in advance of actually doing so as possible. The planning of all holidays needs to take account of contact arrangements for the child.

If the child requires a passport, discussions should take place with the child's social worker.

Anyone with PR must consent to the child being taken abroad. Parental consent will be sought for a child who is voluntarily accommodated under section 20 and where appropriate for a child on an interim/care order. For children subject to an interim care order or care order the local authority must be consulted in advance and give consent.

- Where possible, foster carers should have authority to organise and arrange a child's haircuts but this must be discussed in advance with parents as there may be religious or cultural aspects that need to be taken into account;
- Foster carers should be able to take photographs of the child/young person so that there is a record for the child/young person of their time in placement. However, authority needs to be delegated to the foster carer to consent to other photographic or media activity, for example school photographs or publicity materials for clubs on posters or websites etc. When deciding on this, social workers must have regard for any safeguarding aspects that may be compromised in respect of the child. This should be discussed at the outset of the placement;
- It is important that decisions about allowing the child access to mobile phones and social networking sites are discussed and agreed in advance, with consideration of e-safety, and the child's history and presenting problems. Foster carers may need to limit a child's use of mobiles or social networking sites in order to implement house rules or due to safeguarding concerns. In general, longer term foster carers will be delegated more responsibility to make these decisions for the child.

Contact arrangements will be formalised in the Placement Plan, and a review must agree any changes. In established placements carers may have a degree of decision making if parameters are clear and agreed in advance.

In most cases the social worker will arrange the contact and arrange for formal supervision if required. Foster carers are routinely asked to transport children to contact and at times facilitate contact, especially between siblings. Over the course of a longer placement, these tasks may be delegated to the foster carers when the circumstances and any risks are well established.

Passport application - Sefton Council has made an undertaking that all children should be equipped with a passport on entry into care. If this has not already been arranged, an application should be made so that flexibility exists for children to take up opportunities within or outside of the fostering household. Obtaining a passport can create delay with travel plans.

Attendance at a place of worship - It should be specified in the placement plan if permission is required from a birth parent.

New or changes in faith - Foster carers cannot actively persuade a child or young person to change their religion. If a fostered child or young person wishes to change their religion, full consideration should be given to the longer term

implications in a review. Young people should be supported to understand the full implications of a new or change in faith.

Participating in hazardous activities - Early anticipation and discussion is important. Prior consultation with parents and the local authority will usually be necessary. If the carer is delegated to take decisions on activities that can cause injury e.g. horse riding, skiing or climbing, the carer needs to ensure the young person has adequate safety equipment, proper supervision and adequate preparation and insurance.

Sporting activities including swimming - Foster carers should be able to support and consent to these activities unless there are particular issues that prevent their involvement. Children's past experiences may need to be considered. Based on knowledge of the child's needs an approach can be planned and recorded as part of the foster carers Safer Care Policy.

Overnight Stays (Sleep Overs):

In respect of overnight stays, it is only in exceptional circumstances that there should be restrictions placed on foster carer's being able to agree overnight stays with friends. Such exceptional circumstances would include where there are known risks in respect of exploitation, sexually harmful behaviour or risk of absconding. In such cases, careful consideration will be needed in consultation with the child's social worker.

In general though, it is expected that foster carers take account of the child's wishes and feelings, should take reasonable precautions in assessing the suitability of an overnight stay as they would for their own child, or as any other responsible parent would.

Foster carers should notify the social worker when such an arrangement is made so that the local authority is aware that a child is away from the placement address in case of emergency.

Timeliness:

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).

More information:

For more information for parents on delegated authority, follow the link to the Fostering Network's information pack: <https://www.fostering.net/all-about-fostering/resources/good-practice-guidance/information-parents-children-in-foster-care-del>

For more information for young people on delegated authority, follow the link to the Department for Education's 'Young People's Guide':
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/305147/Delegation_of_authority_to_carers_YP_version.pdf

For more information for Foster Carers on delegated authority, follow the link to the Fostering Network's web page on delegated authority:
<https://www.thefosteringnetwork.org.uk/advice-information/looking-after-fostered-child/delegated-authority>

For more information regarding 'Gillick Competency' or the Frasier Guidelines please visit the NSPCC's website by following this link:
<https://learning.nspcc.org.uk/child-protection-system/gillick-competence-frasier-guidelines>