Fostering

Delegated Authority

The Trust Board has granted the Chief Executive of the Sandwell Children's Trust the authority to approve this document.

Sandwell Children's Trust

Delegated Authority

Regulations and Standards

The Children Act 1989 guidance and regulations - Volume 2: care planning, placement and case review, June 2015

The Children Act 1989 Guidance and Regulations, Volume 4: Fostering Services

Fostering Services: National Minimum Standards

Scope of this Chapter

This chapter sets out the arrangements for delegation to carers to make decisions relating to looked after children.

Contents

1. Delegated Authority

Principles:

- Authority for day-to-day decision-making about a child should be delegated to the child's foster carer(s), unless there is a valid reason not to do so*;
- A 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 foster carer;

- Decisions about delegation of authority should take account of the child's views, and consideration should be given as to whether a child is of sufficient age and understanding to take some decisions themselves.

*'The carer' means the foster carer where the child resides.

It is essential to fulfilling Sandwell Children's Trust 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.

Decisions about delegation of authority must be made within the context of:

- The child's Permanence Plan, which sets out the agency's plan for achieving a permanent home for the child; and

- The legal framework for parental responsibility in the Children Act 1989.

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 and decision-making about their foster child's care. Any skills or knowledge gaps should be urgently addressed so that foster carers are able to carry out their parenting role effectively.

Where a particular decision is not delegated to a child's carer and this rests with the agency, there is 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 are given to parents, carers and children (subject to age and understanding).

2. Delegation in the Context of the Permanence Plan

Whatever the permanence plan, the foster carer should have delegated authority to take day-to-day parenting decisions. This enables them to provide the best possible care for the child.

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 short term the placement planning meeting should discuss what day-to-day decisions can be made by the foster carer, for example ordinary activities such as:

  - Haircuts - discuss and agree in the placement plans;
  - Overnight stays with friends and foster carer support networks - discuss and agree in the placement plans and subsequent reviews;
  - School trips up to 4 days in the UK - discuss and agree in placement plans and reviews;
  - Medical treatment - discuss and agree in placement plans, consents should be given and recorded.

3. Delegation in the Context of the Law on Parental Responsibility

The child's parents do not lose parental responsibility when the child is looked after. Where the child is voluntarily accommodated under Section 20 of the Children Act 1989 the agency does not have parental responsibility. The agency does have parental responsibility where there is a Care Order or Emergency Protection Order. The foster carer never has parental responsibility.

Where a child is being voluntarily accommodated, the Child's Care Plan, including delegation of authority to the agency 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 parental responsibility. If the child is 16 or 17 the Care Plan should be agreed with them. The agency cannot restrict a person's exercise of their parental responsibility, including their decisions about delegation, unless there is a Care Order or an Emergency Protection Order in place.

Where a child is subject to a Care Order or Emergency Protection Order, the agency should, wherever possible and appropriate, consult parents and others with parental responsibility for the child. The views of parents and others with parental responsibility should be complied with unless it is not consistent with the child's welfare.

It is important to build effective relationships between parents and others with parental responsibility 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).

Where a parent is unable to engage in the discussions about delegation of authority for whatever reason, or refuses to do so, the agency will need to take a view. If the placing authority has a Care Order, then they can exercise their parental responsibility without the parent. Where the placing authority does not have parental responsibility they can still do what is reasonable in the circumstances for the purpose of safeguarding and promoting the child's welfare.

There are some decisions where the law prevents authority being delegated to a person without parental responsibility. 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 parental responsibility 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 placing 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.

4. The Child's Competence to Make Decisions Themselves

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.

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 and understand 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 18.

Where appropriate, consider seeking the child's views on the decision.

5. Types of Decision

Decisions about the care of a 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/educational settings choices;
- Significant events, e.g. surgery.

Day-to-day Parenting

All decisions in this category should be delegated to the child's foster carer (and/or the child if they can make any of these decisions themselves, in accordance with Section 4, The Child's Competence to Make Decisions Themselves). Any exceptions and reasons for this should be set out in the Child's Placement Plan within their Care Plan.

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 foster carer. The child's social worker would generally not duplicate risk assessments.

Reasons not to delegate to the carer may include, if the child's individual needs, past experiences or behaviour(s) 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 may need the agency to manage this. See also the Safeguarding Children and Young People Procedure, Missing Children Procedure and Safeguarding Children and Young People from Sexual Exploitation Procedure.

Routine but Longer-Term Decisions

This 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 until age 18, then while the child's parents must be involved (unless there is a Care Order and the agency 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.

Significant Events

This 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 parental responsibility 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 parental responsibility, which includes the agency, 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. See also, Delegation in the Context of the Child's Health.

6. Delegation Relating to the Child's Education

The Education Act 1996 defines 'parent' as including a person who has care of the child in question. Therefore, a child's foster carer 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.

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) 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 theselines.

7. Delegation in the Context of the Child's Health

Young people aged 16 or 17

Young people aged 16 or 17 are presumed to be capable of consenting to their own medical treatment, provided the consent is given voluntarily and they are appropriately informed regarding the particular intervention. If the young person is capable of giving valid consent, then it is not legally necessary to obtain consent from a person with parental responsibility. It is, however, good practice to involve the young person's family in the decision-making process - unless the young person specifically wishes to exclude them - if the young person consents to their information being shared.

Children under 16 - the concept of Gillick competence

- Child 'Gillick Competent'

  A child of under 16 may be Gillick Competent to consent to medical treatment, i.e. they have sufficient understanding to enable them to understand fully what is involved in a proposed intervention. Deciding whether or not a child is Gillick Competent can be a difficult judgment, and legal advice should be sought as necessary. It has a wider meaning than the term Fraser Competent which specifically refers to contraceptive advice.

  The understanding required for different interventions will vary considerably. Thus a child under 16 may have the capacity to consent to some interventions but not to others. The child's capacity to consent should be assessed carefully in relation to each decision that needs to be made.

  In some cases, for example because of a mental health issue, a child's mental state may fluctuate significantly, so that on some occasions the child appears Gillick Competent in respect of a particular decision and on other occasions does not. In such cases, legal advice may be sought.

  If the child is Gillick Competent and is able to give voluntary consent after receiving appropriate information, that consent will be valid and additional consent by a person with parental responsibility will not be required. It is, however, good practice to involve the child's family in the decision-making process, if the child consents to their information being shared;

- Child Not 'Gillick Competent'

  Where a child under the age of 16 lacks capacity to consent (i.e. is not Gillick Competent), consent can be given on their behalf by any one person with parental responsibility. Consent given by one person with parental responsibility is valid, even if another person with parental responsibility withholds consent. However, legal advice may be necessary in such cases.

Refusal of consent

Where a young person of 16 or 17 who could consent to treatment, or a child under 16 who is Gillick Competent, refuses treatment, it is possible that such a refusal could be overruled by a court if it would in all probability lead to the death of the child/young person or to severe permanent injury. Legal advice must be sought.

Where necessary, the courts can overrule a refusal to consent by a person with parental responsibility.

For further information, see **Department of Health's Reference guide to consent for examination or treatment**, second edition 2009.

8. The Placement Plan

The 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 agency 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 foster carer, and are likely to be most effective when drawn up in a Placement Planning Meeting which involves everyone concerned, including the foster carers.

Where a decision is not delegated to the child's foster carer, but can be predicted in advance, the agreement of those with parental responsibility to the decision should be sought in advance and recorded in the Placement Plan, so that when the decision arises, delay can be avoided.

For some decisions that are made by a person other than the child's foster carer, it may be expected that the foster carer will implement the decision. For example, parents or the placing authority may agree to the provision of Child and Adolescent Mental Health Services (CAMHS), but ask the foster 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 Parental Responsibility 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.

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 reviewed and update at each Looked After Review and Foster Carer Review.

9. When and How to Share Information

Foster carers should use their judgement when making decisions on what information to share and when they should follow their agency's procedures. If in doubt they should consult their Supervising Social Worker. The most important consideration is whether sharing information is likely to safeguard and protect a child. (Information sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers, March 2015)

The Information Sharing Guidance for Practitioners makes a point which should be borne in mind. Information can be held in many different ways, in case records or electronically in a variety of IT systems with access for different professionals. The use of emails in professional communications also raises another mechanism for sharing information other than in direct person to person contact. However the information is shared, it should always be recorded in the individual's record.

See: Information sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers (March 2015) - When and how to share information.

The decision-making process must weigh up what might happen if the information is shared against what might happen if it is not shared. It is important to note that a lack of information sharing is a consistent theme within Serious Case Reviews.