

# Delegated Authority to Foster Parents

## Guidance and Procedure

This document sets out the arrangements for delegation to foster parents to make decisions relating to the children in their care.

The government requires all local authorities to have a delegated authority policy and advocates for children and young people in foster care to 'be able to enjoy the safe, stable childhood that all children and young people are entitled to'. ('Delegation of authority to carers: Developing your local policy, Dept. of Education, March 2014). In accordance with this aim, it is our view that authority for day-to-day decision making about the child should be delegated to their foster parent unless there is a valid reason not to do so. In addition, decisions should take account of the child's views, and consideration should be given to whether a child is of sufficient age and understanding to take some decisions themselves.

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## What is Delegated Authority?

Delegated authority is the process by which the foster parent is given permission to make certain decisions on behalf of the local authority, the child's parents and anyone else with Parental Responsibility (PR)\*. It is essential to fulfilling the local authority's duty to safeguard and promote the child's welfare that the most appropriate person to take a decision about the child has the authority to do so.

Delegated authority arrangements will be made in the context of the child's Care Plan and in consultation with those who have PR. It is expected that in the case of short-term care, foster parents will at least be permitted to make day-to-day decisions about the child's care and when the plan is for long-term care, they should be involved in longer-term decisions as well.

Where a particular decision is not delegated to a child's foster parent and rests with the local authority, there must be a clear system in place for ensuring that these decisions can be made by the appropriate person in a timely manner. Details of delegated authority arrangements should be recorded in the child's Placement Plan and shared with the child subject to age and understanding.

There are some decisions that the law prevents authority being delegated to a person without PR. These include applying for a passport, taking the child out of the UK for more

than a month, general anaesthetic for medical procedures, changing the child's name and deciding the child's religion.

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\*Parental Responsibility (PR) is a legal term that refers to the rights, duties and powers a parent has in relation to their children's care and upbringing. The responsible local authority for a child in care has PR when there is a Care Order or Emergency Protection Order in place. The parent never loses PR and the foster parent does not have PR. (*Children Act, 1989*)

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### The view of the birth parent/s

The child's parents do not lose PR when their child is in foster care. When a child is being voluntarily accommodated in care, the local authority does not have PR, and delegated authority arrangements will need to be agreed with the parent and anyone else who has PR.

If the parent is unable to engage in discussions about delegated authority, or refuses to do so, the local authority may need to intervene, and in the absence of PR they are able to make reasonable decisions for the purpose of safeguarding and promoting the child's welfare.

Where the local authority responsible for the child obtains PR through a Care Order or an Emergency Protection Order, they should, where possible and appropriate, consult parents and others with PR and comply with their wishes unless it is not consistent with the child's welfare. It is important to build effective relationships with 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.

### The Child's Competence to Make Decisions Themselves

Any decision about delegation of authority must consider the views of the child and, in some cases, if they are of sufficient age and understanding, it may be decided that they should be allowed to make these decisions themselves. An example of such decisions includes haircuts and ear piercing.

When deciding whether a particular child, on a particular occasion, has sufficient understanding to decide, the following questions should be considered:

- Does the child understand the question being asked of them, or what they are asking to do?
- Does the child understand the different options they have?
- Can the child weigh up the pros and cons of each option?

- Can the child express a clear personal view on the matter, distinct from repeating what someone else wants them to do?
- Is the child reasonably consistent in their view of the matter, or are they constantly changing their mind?

Regardless of the child's competence, some decisions cannot be made until the child reaches a certain age, for example tattoos and certain piercings.

Where appropriate, always consider seeking the child's view when making decisions.

## Types of Decision

Decisions about the care of a child in foster care are likely to fall into three broad areas:

### Day-to-Day Parenting

These are routine decisions about things like health and hygiene, school day trips within the UK and leisure activities. All decisions in this category should be made by the foster parent (and/or the child if they can make these decisions themselves) unless specific exceptions have been stated and explained in the Placement Plan.

### Routine but longer-term decisions

This category of decisions includes school choices, and the permanence plan will be an important factor in determining who should be involved in the decision. For example, if the plan is for long-term fostering until age 18, then whilst the parent's view should be considered, the school choice should, where possible, fit with the foster family's life as well as be appropriate for the child.

### Significant Events

These decisions are likely to be more serious and far reaching. When the child is voluntarily accommodated, their birth parents and others with Parental Responsibility should make these decisions. Where there is a Care Order or Emergency Protection Order, decisions will be made jointly by the local authority, birth parents or others with Parental Responsibility. Decisions should always take account of the wishes and feelings of the child, and the foster parent may be included depending on the specific circumstances.

## 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 parent is deemed a parent for the purposes of education law. This means that a foster parent should be provided with information about

the child's progress, invited to meetings about the child, and should be able to give consent to decisions regarding school activities.

Young people can sometimes apply independently 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 parents) confirming their approval of the application. Once they are over compulsory school age they can apply without the need for parental consent. Young people can also independently appeal against the refusal of a sixth form place.

## Delegation in the Context of the Child's Health

The Placement Plan should state which medical permissions are delegated to the foster parent. Ordinarily, the foster parent should be able to take children to routine medical appointments/ immunisations and give medication. Decisions about non-urgent treatment and general anaesthetics usually remain with the local authority and parent.

Young people aged 16 or 17 are presumed to be capable of consenting to their own medical treatment, provided they do not lack mental capacity, the consent is given voluntarily, and they are appropriately informed regarding the treatment process.

A child under 16 may consent to medical treatment (or refuse treatment) if they are judged by the medical professional to be competent. This is sometimes referred to as 'Gillick Competence' and the health professional will refer to the Fraser Guidelines if the issue relates to sexual health services.

If a child's consent is accepted, then it is not legally necessary to obtain consent from a person with Parental Responsibility. It is, however, good practice to involve the local authority and the young person's family in the decision-making process (unless the young person specifically wishes to exclude them or does not consent to their health information being shared).

If a child is not judged to be competent to make their own decisions, doctors should still aim to involve them in decisions relating to their medical treatment, as much as they are able.

Where a child or young person who is judged to be competent refuses treatment, it is possible that such a refusal could be overruled by the Court of Protection if it would in all probability lead to the death of the child/young person or to severe permanent injury. The local authority and/or health professionals involved will initiate legal proceedings.

The Court of Protection also has the power to overrule a refusal to consent by a person with Parental Responsibility.

***Accurate and timely recording on the child or young person's case record on Charms must be undertaken in all situations where decisions are made in respect of the child or young person's health.***

## The Placement Plan and Delegated Authority Agreement

Delegated authority arrangements should be clearly recorded on the Placement Plan including any requirement to notify the local authority that a particular decision has been made. The Placement Plan must be agreed with the foster parent and is most effective when drawn up at a Placement Planning Meeting with the foster parent present.

Where a decision is not delegated to the foster parent, but can be predicted in advance, the agreement of those with Parental Responsibility should be sought in advance and recorded in the Placement Plan so that when the decision arises, delay can be avoided.

The appropriate distribution of decision-making powers is likely to change over time, as the child gets older and circumstances change. The Placement Plan forms a part of the child's overall Care Plan and decisions about delegated authority should be considered at each review of the Care Plan.

## Further sources of information

- [The Children Act 1989 Guidance and Regulations - Volume 2: Care Planning, Placement and Case Review \(2015\):](#)
- [The Children Act 1989 Guidance and Regulations - Volume 4: Fostering Services:](#)
- [Fostering Services: National Minimum Standards:](#)

## Associated resources (external links)

- [General Medical Council guidance for doctors treating children 0-18 years:](#)
- [British Medical Association Children & Young People Ethics Toolkit.](#)