

Delegating Authority to Foster Carers and Children's Homes

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Agreed by: CYPS Policies and Procedures Group

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Document Summary

This policy is based on the Children Act 1989 Guidance and Regulations, Volume 2: Care Planning, Placement and Case Review June 2015 which updates the Statutory Guidance Delegation of Authority: Amendments to the Children Act 1989 Guidance and Regulations (2013). It also reflects the relevant key recommendations from the review report Foster Care in England (2018) for the Department for Education (DfE).

This policy has been written to ensure that Suffolk's Children and Young People's Services comply with the statutory duty to ensure that decisions about the care of looked after children are appropriately delegated to foster carers and children's homes 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 placement planning processes in a manner that promotes a high standard of care for looked after children and good working relationships between foster carers, children's homes, parents and social workers.

Please note: References to foster carers and children's homes includes independent providers such as fostering agencies and privately-run residential care as well as local authority provision.

We will, on request, produce this policy or parts of it into other languages and formats so that everyone can use and comment upon its content.

Version Control	Reason for revision and summary of changes needed	Date
2.2 Gill Davies	To reflect updated statutory guidance 2015, the DfE report: Foster Care in England Feb 2018 and views of Social Care Fieldwork Service. This includes the addition of a section on Contact.	14 January 2019
2.3	To add references to the new Placement Planning Guidance and recording process on Liquid Logic	October 2023
2.4	Added information regarding use of virtual family time in exceptional circumstances.	November 2023

Delegating Authority to Foster Carers and Children's Homes

Purpose and scope of policy

1.1 Introduction

This policy sets out Suffolk County Council's approach to the delegation of authority to foster carers and children's homes caring for children who Suffolk is responsible for. It takes account of government guidance and in particular the need to maximise, wherever possible, the ability for day-to-day decision making to be undertaken foster carers and children's homes, particularly where the placement is intended to be long term.

Statutory guidance requires that this policy is agreed and signed by the Director of Children's Services and the Lead Member for Children (see page) and efforts will be made to ensure that all practitioners (including foster carers) involved with children in care are aware of the policy and abide by it.

This policy ensures that there is a clear understanding of when consent needs to be obtained and from whom. It also explores the issues that can arise out of decision-making and sets out how these can be resolved through placement planning processes in a manner that promotes a high standard of care for looked after children and good working relationships between foster carers, children's homes, parents and social workers.

1.2 Issues around decision-making for children in care

Failure to address the issues arising from who makes what decisions about the care of looked after children can lead to the carers being unable to care for children in the best way possible and, in some cases, can lead to disruption of placements.

Poor planning around delegation of authority can disadvantage children in care because delays decision-making i.e. when permission cannot be sought in time, can 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.

Children in care say that problems obtaining parents' or local authority consent to everyday activities [like school trips and sleepovers] make them feel different from their peers and cause them embarrassment and upset.

Because of the split in decision-making between parents, foster carers, children's homes and social workers it is not always clear who is responsible for what decision. This can lead to conflict between parties and can have a negative effect on the care of the child.

Foster carers and children's homes may feel that they are being left to cope alone or that they are excessively restrained by the need to constantly seek permission to carry out basic caring responsibilities. Foster carers and residential workers need to know what they can agree to, for the child, and what must be agreed by others.

Parents can feel that they are being 'locked out' of decision-making for their children and may be unclear about who is taking decisions about their child's care. This may lead them to refuse to delegate authority which, in turn, could undermine the placement. Parents should be empowered to contribute to decision-making processes wherever possible.

1.3 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, children's homes, parents and children (where appropriate) will have an opportunity to contribute to this process.

The most appropriate person will be authorised to make decisions about the child's care, reflecting the child's needs and plan for permanence, the role of that person in the child's life and the importance of the decision, with all parties fully aware of what decisions each person can make.

A robust framework of delegated authority will be in place for each child in care that clearly states what decisions foster carers and children's homes 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 and children's homes 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/children's home.
- Promote good working relationships between foster carers, Fostering Supervising Social Worker/ children's homes and parents.
- Speed up decision-making processes so that the child can have a normal family life whilst in foster care or in a children's home.

Decision-making for children in care (CiC) 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/children's homes to provide care for the child.

2 Legal frameworks

The policy is based on the Children Act 1989 Guidance & Regulations, Vol. 2: Care Planning, Placement & Case Review June 2015 Ch.3: Placement: Delegation of authority.

2.1 Parental responsibility (PR)

Parental responsibility is a concept that was introduced by the Children Act 1989 and covers the child's care and upbringing and the right to make long-term decisions about the child's future. It is aspects of PR that are delegated to foster carers/children's homes for the duration of the placement. Only those who hold PR for the child can delegate authority to foster carers/children's homes but ultimately, they remain responsible for the child.

Key factors in relation to PR are:

- 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, or
 - by entering into an agreement with the mother to share PR for children born after 1st December 2003, he jointly registers the child's birth with the mother.

If a father does not hold PR, he will still be considered the child's parent for the purposes of the Children Act and is entitled to be consulted on any plans for the child and to have reasonable family time with the child. He is not entitled to remove a child from voluntary accommodation.

The child's parents do not lose PR when the child is looked after but the delegation of authority is different depending on how the child has come into local authority care.

Where the local authority has been asked by the parent to look after their child or they have agreed that it is in the child's best interests to be accommodated, **Section 20 of the Children Act 1989** (voluntarily accommodated) applies. In this case, the local authority does not have PR. Parents retain full PR but will be required to delegate authority for matters such as consent to medical treatment as part of the agreement for the local authority to 'accommodate' their child (See 4.1 for more detail on decisions about health).

Although under section 20 the local authority cannot restrict a person's exercise of their PR, including their decisions about delegation, local authorities and parents should work together in the best interests of the child and reach agreements about who will make decisions about different aspects of the child's life.

If parents do not agree to sign their consent, this should be reported to the Service Manager. For example, some parents are willing to give verbal agreement but not to sign any formal paperwork. In these cases, a decision will need to be made about the legal status of the child; that is, if they can be looked after under section 20 or not.

Where a child is the subject of an emergency protection order or a care order e.g. under **Section 31 of the Children Act 1989**, the Local Authority shares PR with parents. In this case, they have the authority to determine how parents may exercise their PR in relation to the child's care and can delegate directly to foster carers/children's homes. Wherever possible, the local authority should still consult parents and others with PR for the child and comply with their views unless it is inconsistent with the child's welfare.

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 to safeguard and promote the child's welfare.

The foster carer or children's home never has PR.

2.2 Duty to delegate authority

Suffolk County Council has a duty to ensure foster carers/children's homes have authority to make day to day decisions on the child's care but 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/children's homes can take decisions without authority being delegated to protect the child but must notify the local authority about the event immediately after.

For the purposes of the Education Act 1996, "parent" includes anyone who has day to day care for the child so foster carers/residential workers can 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 plan prior to the placement starting or, in the case of emergency placements, as soon as practicable.

There should be a clear record as to what decisions have been delegated to the carer, which decisions have been retained by the parents or Suffolk County Council (where a care order is in place), and by what process foster carers/children's homes should obtain consent on those aspects of care decisions that have not been delegated.

When deciding who should have authority to take decisions, social workers should consider the type of placement and its likely duration and 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 and may be supported to develop their parenting capacity accordingly. Where the foster carer is looking after the child on a permanent basis, they should have a significant say in most decisions about the child's care, including longer term decisions such as which school the child will attend. Delegation should reflect the increased role of the carer in the child's life.

Where it is known that consent for a decision will be needed in the future, consent can be sought in advance.

2.3 Types of Decision

Decisions about the care of a looked after child are likely to fall into three broad categories:

1. Day-to-day parenting, e.g. routine decisions about health/hygiene, education, leisure activities.
2. Routine but longer-term decisions, e.g. school choice.
3. Significant events, e.g. surgery.

The DfE report (2018) stated that it is not reasonably practicable for carers to be asked to parent a child, while simultaneously preventing them from making minor decisions.

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) automatically unless, for exceptional reasons, such delegation is inappropriate. Where day-to-day parenting decisions are not delegated to the foster carers/children's home, any exceptions, and reasons for this should be set out in the child's placement plan within their care plan.

Reasons not to delegate to the carer may include that the child's individual needs, past experiences or behaviour are such that some day-to-day decisions require expertise or professional 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.

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 requirement to duplicate risk assessments. 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.

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 children's home 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), wherever possible and practical, the school choice should fit with the foster carer's family life as well as be appropriate for the child.

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.

2.4 The child's role

When deciding what decision-making authority to delegate to foster carers/children's homes, the **child's views** will be considered i.e. who their preferred decision maker is.

Children may have strong views on some aspects of their lives as it can affect their ability to live a 'normal' life. In some cases, if the child has sufficient understanding, it may be decided that they can make decisions for themselves e.g. about haircuts.

Older children should be encouraged to take responsibility for decision-making if they are considered competent to do so. This helps develop vital life skills needed on leaving care.

When deciding whether a particular child, on a particular occasion, is able to make a decision for themselves, 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.

3 Planning processes

It is vital that the **delegation of authority** for decision making is dealt with within the Child in Care and via the placement planning processes. Delegation should be agreed and

recorded at the placement planning meeting (PPM) and reviewed regularly within the statutory CiC review.

This section should be read in conjunction with the **2023 Placement Planning for Children in Care Guidance**. This resource and the [2023] **Placement Planning Meeting and Delegated Authority Record** on Liquid Logic must be used to guide the discussions and create a working record of the matters agreed at the PPM.

3.1 Roles and responsibilities

Children's social workers should:

- Seek the views of parents and children.
- Ensure parents sign their consent to delegate authority on the placement planning meeting agreement form.
- Record agreements on the delegated authority record which is part of the placement planning form.
- Provide parents, carers and supervising social workers with information on the legal aspects of delegating PR
- Ensure arrangements remain flexible and seek changes where necessary.

Supervising social workers/children's homes should:

- Chair the discussion on delegation of authority in the placement planning meeting.
- Be part of the discussion on delegated authority
- Ensure foster carers/residential child care workers are aware of agreements made and that they have the right skills and training to carry out the agreed tasks.
- Monitor the foster carer's/children's homes use of delegated authority and discuss any difficulties.
- Liaise with the child's social worker around any difficulties or in negotiating any required changes to delegated authority.

The IRO should:

- Be consulted on arrangements for delegated authority where required.
- Review all arrangements for delegating authority at each statutory CiC review.
- Make recommendations on changes to arrangements when 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 Suffolk County Council to meet corporate parenting responsibilities.

3.2 Prior to placement

Social workers should explain clearly to parents the nature of the decisions that need to be delegated to foster carers/children's homes and discuss parental consent to this. This will ensure parents are able to make informed decisions and encourage them to engage with the process.

Where possible, social workers should include the child in any discussion of delegated authority as they may have their own views regarding who should make decisions about their care.

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 carer's 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 delegation of 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 around the child's care and these should be respected where they are consistent with the child's welfare.

3.3 Placement Planning Meeting (PPM)

This meeting should be used to finalise and record agreements on delegated authority. 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 Regulations (as amended 2015) require that each child's placement plan must make clear who has the authority to take decisions in key areas of their 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 area of decision-making considered relevant to a 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/children's home to notify the local authority that a particular decision has been made) should be clearly identified.

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.

For some decisions made by a person other than the child's carer, it may be expected that the carer will implement the decision. For example, the local authority may agree to the provision of Mental Health Services but ask the carer to take the child to appointments. This is not delegation of decision making to the carer, but it will enable the delivery of a 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.

3.4 Statutory review

Who is authorised to make what decisions for a child's care is likely to change over time, as the child matures, and circumstances change; therefore, decisions about delegation of authority should be considered at each review of the care plan.

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/children's home 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.

The IRO should check each agreed delegation to see if it remains relevant or whether changes are needed. Changes to delegated authority that are agreed at the statutory CiC review should be recorded by the IRO in the minutes of the review meeting

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 discussed and agreed at the review meeting.

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

For children living in children's homes, the child's placement plan will be reviewed and updated along with the child's risk assessment at regular intervals between Statutory Reviews. In reviewing the child's placement plan the home will consult with the child, their social worker, education, health, and the child's parent/carer where appropriate.

4 Decisions for delegation

4.1 Health

Foster carers/children's homes should be given a signed consent record from the parents for routine medicals, immunisations, dental, optician and general treatment.

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 children's services.

If the child is accommodated under section 20 (voluntary accommodation), parents must sign their consent so that routine medical checks and treatment can take place. As previously stated, if parents cannot be persuaded to sign their consent, this should be reported to the Service Manager.

Only an Assistant Director can give consent for non-routine treatment for children who require specialist medical interventions and are subject to care orders.

Foster carers/children's homes 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 Suffolk County Council of any consent given, immediately after.

Young people aged 16 and 17 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. If it is thought they do not have the required capacity, the decision should be made by Suffolk County Council 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 in specific relation to contraception.

A guide to these measures can be found at: <https://www.nhs.uk/conditions/consent-to-treatment/children/>

4.2 Education

Foster carers/children's homes should be able to take routine daily decisions in order to make the child's education as normal as possible.

Under the Education Act 1996, a child's foster carer or residential worker is deemed a parent for the purposes of education law. This means that a foster carer should be treated like a parent with respect to involvement with the school and should be able to give consent to decisions regarding school activities.

They 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. School trips abroad or that involve hazardous activities should be discussed with social workers and parents first.

Decisions on what school the child attends and whether they should change schools can only be taken within the statutory care planning process. However, where a child is in a permanent placement, carers should be consulted on choice of school.

Young people who are not of compulsory school age may be able to take some steps around their education, for example applying for a place at college, otherwise foster carers or social workers should counter-sign applications.

4.3 Family Time

Family time arrangements are a key vehicle for developing and maintaining important relationships in the child's life including those that will be essential when the young person becomes an adult and leaves local authority care. Many children return home from care to birth parents and support for those relationships, while the child is in care or being provided with accommodation, is crucial to a successful return home.

At the time of entry into care and throughout a care episode, the child's social worker should ensure that all the people who are significant in a child's life, including their siblings if separated, are identified and their details recorded in the care and placement plan. The Child in Care Plan should set out how family time will be arranged with the young person's parents, siblings, wider family and friends. We encourage all family time to take place in person, however there may be some circumstances where virtual arrangements are required to support, promote and maintain these relationships, such as a participant being ill or living out of county.

Family time for a child in care will be discussed at the placement planning meeting and clear agreements will be reached about what this will look like, how often it will take place, where it will take place and who will be involved.

Decisions about family time for the child is generally the responsibility of the local authority and/or the courts. Where family time is directed by these agencies, the foster carer will not be expected to make these decisions; however, they should be included in discussions and/or informed of the arrangements as soon as possible so that they can make appropriate plans. This is especially important, if they are expected to transport the child to see their family members or to supervise the interaction themselves. This is often the case where the foster carer is a connected person such as a grandparent or other close family member.

Where there are no directions regarding family time and a child has 'open access' to their family network, it may be fitting and helpful for the foster carer to decide with the child's parents and others about contact arrangements.

When requesting a foster carer be involved in facilitating or supporting family time, regard should be given to the foster carers' existing commitments i.e. to other children in placement and their own family's needs.

Whatever is agreed in relation to family time, the Child in Care Review should revisit these arrangements and decide whether there is a need to change them for any reason. In any review of family time, the foster carers must be consulted, and their views should be included alongside the views of the child and their parents.

4.4 General decisions

In order to ensure looked after children enjoy a normal childhood, decisions on **overnight stays** and **visits to friends** should be delegated to foster carers/children's homes where appropriate. This should not be the case where there are specific risk factors relating to individual children. If this is the case, this should be recorded in the placement plan.

Holidays should be discussed with parents and social workers in advance as these may affect arrangements for family time the child already has. Children's services should be notified of any proposed holiday dates and anyone with PR must consent to the child being taken abroad.

Detailed information on decision-making in relation to overnight stays, visits and holidays including the foster carer's authority to delegate care of the fostered child to a nominated '**back-up**' carer, can be found in the *Guidance for Child Care Arrangements under Delegated Authority* (2018).

Foster carers/children's homes should be able to take **photographs** of the child so that there is a record for the child of their time in placement. However, authority needs to be delegated to the foster carer/children's home to consent to school photographs. Consent to photographs/videos etc. for publicity or media activity requires consent from Suffolk County Council as well as parental consent. 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** is discussed and agreed in advance in the context of e-safety and the child's history and presenting problems. Foster carers/children's homes 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/children's homes will be delegated more responsibility to make these decisions for the child.

5. Timeliness

Where a particular decision is not delegated to a child's carer/children's home 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, children's homes and children (subject to age and understanding).

6. Endorsement

As per section 3.222 of the Children Act 1989 Guidance and Regulations, Volume 2: Care Planning, Placement and Case Review June 2015, this policy must be endorsed by the Director of Children's Service and the Lead Member for Children.

Signatures

Sign:



Date: ...15/11/2023.....

El Mayhew

Interim Director Children and Families

Sign:



Date: ...15/11/2023.....

James Reeder

Cabinet Member for Children's Services

References

(2018) Foster Care in England: An Independent Review of the Fostering System in England; authors Sir Martin Narey and Mark Owers; published [online] at: <https://www.gov.uk/government/publications/foster-care-in-england>