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Final.	D.Booth. B. Bath.	28.06.2013
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Circulated:		

### DELEGATION OF AUTHORITY POLICY.

#### 1. INTRODUCTION and CONTEXT.

1.1 From 1 July 2013 the Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 amend the Care Planning, Placement and Case Review Regulations 2010 with respect to the delegation of decision making about looked after children to their carers.

1.2 The DfE has issued guidance section 7 of the Local Authority Social Services Act 1970, which requires local authorities, in exercising their social services functions, to act under the general guidance of the Secretary of State. This guidance should be complied with by local authorities when exercising these functions, unless local circumstances indicate exceptional reasons that justify a variation.

#### 1.3 The DfE guidance is for local authority:

Children's Social Care Services	Commissioners of services for children looked after
Supervising social workers	Independent reviewing officers
Frontline managers with particular responsibilities in relation to children looked after	Director of children's services
Managers of services for children looked after	Lead members

It is also relevant to all providers of services to CLA including:

- Private, voluntary & public sector providers
- **Foster carers**
- **Residential workers**

1.4 Looked after children say that problems obtaining parents' and local authorities' consent to everyday activities make them feel different from their peers and cause them embarrassment and upset.

1.5 Poor planning around delegation of authority can delay decision-making and lead to children missing out on opportunities that enable them to experience a fulfilled childhood and feel part of their foster carer's family or the daily life of their children's

home. Failure to delegate appropriately, or to make clear who has the authority to decide what, can make it more difficult for foster carers and residential workers to carry out their caring role and form appropriate relationships with the children in their care.

## 2. KEY POINTS IN THE GUIDANCE

<ul style="list-style-type: none"><li>• Authority for day-to-day decision making about a looked after child should be delegated to the child's carer(s), unless there is a valid reason not to do so.</li></ul>
<ul style="list-style-type: none"><li>• A looked after 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 carer.</li></ul>
<ul style="list-style-type: none"><li>• Decisions about delegation of authority should take account of the looked after child's views. Consideration should be given as to whether a looked after child is of sufficient age and understanding to take some decisions themselves.</li></ul>
<ul style="list-style-type: none"><li>• Each local authority should have a published policy setting out their approach to the delegation of authority to foster carers and residential workers caring for children the local authority is responsible for.</li></ul>

## 3. DELEGATION OF AUTHORITY.

Managing the relationship between the parents of a child looked after (or other carers with parental responsibility), the local authority, the **foster carer(s) or the registered manager of a children's home (referred to as 'the carer' in the guidance)** is challenging, particularly as those providing the day-to-day care do not hold parental responsibility (unless the child is living at home).

3.1 In fulfilling the local authority's duty to safeguard and promote the child's welfare it is essential that, wherever possible, the most appropriate person to take a decision about the child has the authority to do so, and that there is clarity about who has the authority to decide what.

3.2 Decisions about delegation of authority must be made within the context of –

- **The child's permanence plan**, which sets out the LA's plan for achieving a permanent home for the child; and
- **The legal framework for parental responsibility** (PR) in the Children Act 1989.

## 4. DELEGATION IN THE CONTEXT OF THE PERMANENCE PLAN.

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.

- 4.1 Whatever the permanence plan, the carer should have delegated authority to take day-to-day parenting decisions. This enables them to provide the best possible care for the child.
- 4.2 Where the plan is for long term foster care, the foster carers should have a significant say in the majority of decisions about the child's care, including longer term decisions such as which school the child will attend.
- 4.3 Where the plan is for the child to return home, the child's parents should have a significant role in decision-making.

## 5. DELEGATION IN THE CONTEXT OF THE LAW ON PARENTAL RESPONSIBILITY (PR).

The child's parents do not lose PR when the child is looked after.

Where the child is voluntarily accommodated under section 20 of the Children Act 1989 the local authority does not have PR.

The local authority does have PR where there is a care order or emergency protection order.

The foster carer never has PR.

A local authority cannot restrict a person's exercise of their PR, including their decisions about delegation, unless there is a care order or an emergency protection order in place.

Decisions about delegation 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).

### 5.1 Voluntary Accommodation.

- 5.1.1 The child's care plan, including delegation of authority to the local authority or child's carer, should (where the child is under 16), as far as is reasonably practicable, be agreed with the child's parents and anyone else who has PR.
- 5.1.2 If the young person is 16 or 17 the care plan should be agreed with them.
- 5.1.3 Where the local authority does not have PR they can still do what is reasonable in the circumstances for the purpose of safeguarding and promoting the child's welfare.

### 5.2 Care Order or Emergency Protection Order.

- 5.2.1 The local authority should, wherever possible and appropriate, consult parents and others with PR for the child. The views of parents and others with PR should be complied with unless it is not consistent with the child's welfare.

5.2.2 If the local authority has a care order, then they can exercise their PR without the parent.

5.3 There are some decisions where the **law prevents authority being delegated to a person without PR:**

- Applying for a passport (a young person aged 16 or over who has the mental capacity to do so can apply for their own passport).
- Where there is a care order, a child or young person cannot be removed from the UK for more than a month without the written consent of everyone with PR or the leave of the Court.
- If a child or young person is voluntarily accommodated the necessary consents must be obtained as for a child outside the care system.
- The 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.

## 6. THE CHILD'S ABILITY TO MAKE DECISIONS THEMSELVES.

6.1 Any decision about delegation of authority must consider the views of the child or young person.

6.2 In some cases a child will be of sufficient age and understanding to make decisions themselves. E.g. haircuts.

6.3 The local authority should, where appropriate, consider seeking the child's view on their preferred decision maker.

6.4 When deciding whether a particular child or young person has sufficient understanding to make a decision, the following questions should be considered:

- Does the child or young person understand the question being asked of them?
- Do they appreciate the options available to them?
- Are they able to weigh up the pros and cons of each option?
- Can they provide a clear personal view on the matter, as distinct from repeating what someone else thinks they should do?
- Is the child or young person reasonably consistent in their view on the matter, or are they constantly changing their mind?

6.5 Some decisions cannot be made until a young person reaches a certain age, regardless of their competence. (E.g. tattoos are not allowed for a young person under age 18 and some piercings until age 16).

## 7. TYPES OF DECISION.

Decisions about the care of a child or young person being looked after are likely to fall into three areas – Day to day parenting decisions, routine but longer term decisions and significant events.

### 7.1 Day to day parenting (including routine decisions about health and hygiene, education, leisure activities).

7.1.1 All decisions should be delegated to the child's **carer** (and/or the young person if they can make any of these decisions themselves).

7.1.2 Any exceptions or reasons for not delegating day-to- day parenting decisions to the carers should be set out in the placement plan within the child's care plan.

7.1.3 Decisions about activities that have a risk assessment carried out by the activity's organisers/supervisors (e.g. school trips or activity breaks) should be delegated to the carer. There is no expectation for the LA to duplicate any current risk assessments.

7.1.4 Decisions not to delegate to the carer may include the child's welfare – if their individual needs, past experiences or behaviour are such that some day-to - day decisions may need particular expertise and judgement. (E.g. where a child or young person is especially vulnerable to exploitation and overnight stays are involved, the foster carer or children's home may need the LA to manage this.)

The DfE's expectation is that the assessment and approval , training and caring for their own children will equip them with the skills and competence to undertake day - to – day care and decisions about their foster child's care. Any skills gap should be urgently addressed so that foster carers are able to carry out their parenting role effectively.

### 7.2 Routine longer term decisions. (e.g. School choice)

7.2.1 The child's permanence plan will be an important factor in determining who should be involved in the decision and will need skilled partnership working to involve all relevant people.

- E.g. Where the plan is for long term foster care, or care in a residential unit until age 18, then while the child's parents must be involved (unless there is a care order and the local authority has decided not to involve them), where possible the school choice should fit with the foster carer's family life as well as be appropriate for the child.
- E.g. 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.

### 7.3 Significant events. (e.g. surgery)

This category of decisions is likely to be more serious and far reaching.

7.3.1 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; however such decisions should always take account of the wishes and feelings of the child and their carer.

7.3.2 Where the child is voluntarily accommodated the child's birth parents or others with PR should make these decisions.

## 8. THE PLACEMENT PLAN.

This policy is not intended to take the place of children's placement plans, which should take account of the child's individual circumstances when detailing how authority for decision-making is to be distributed. Children's placement plans should, however, take account of the principles set out in the policy, as well as of the statutory guidance on which the policy is based.

8.1 The Care Planning, Placement and Case Review (England) Regulations 2010 (as amended) require that each looked after child's placement plan must make clear who has the authority to take decisions in key areas of the child's day-to-day life, including:

- medical or dental treatment;
- education;
- leisure and home life;
- faith and religious observance;
- use of social media; and
- any other areas of decision-making considered relevant with respect to the particular child.

8.2 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 should be clearly set out in the placement plan - (e.g. a requirement for the carer to notify the local authority that a particular decision has been made).

8.3 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.

8.4 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.

8.5 In some circumstances it might be expected that the carer will implement decisions that have been made by others.

- e.g. parents or the local authority may agree to the provision of Child and Adolescent Mental Health Services, but ask the carer to take the child to appointments. This is

not delegation of decision making to the carer, as the decision will have been taken by those with PR and a medical professional, but it will enable the delivery of the service to continue without the need for ongoing support from social workers. The child's placement plan should make clear what the expectations of the carer are in such cases.

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

## 9. TIMELINESS.

9.1 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, subject to their age and understanding, children and young people.

## 10. DELEGATION IN THE CONTEXT OF 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 or residential worker is deemed a parent for the purposes of education law.

10.1 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.

10.2 Young people can sometimes apply in their own right for a place at sixth form or FE College. If they are of compulsory school age their application must also be signed by a parent (which in the context of education includes foster carers or residential workers) confirming their approval of the application.

10.3 Once they are over compulsory school age they can apply in their own right without the need for parental consent. Young people can also appeal against the refusal of a sixth form place along these lines.

## 11. DELEGATION IN THE CONTEXT OF THE CHILD'S HEALTH.

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

(<https://www.gov.uk/government/publications/reference-guide-to-consent-for-examination-or-treatment-second-edition> )