



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

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## Preface

1. This guidance sets out the functions and responsibilities of local authorities and their partner agencies in relation to fostering services under Parts 3, 7 and 8 of the Children Act 1989. It also sets out the responsibilities arising from the Children Act 2004 and the Children and Young Persons Act 2008 in relation to fostering services. It is issued as guidance under 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. Local authorities should comply with this when exercising these functions, unless local circumstances indicate exceptional reasons that justify a variation.
2. This guidance is addressed to:
  - children's services social workers;
  - frontline managers with particular responsibilities in relation to looked after children;
  - lead members for children's services in local authorities;
  - directors of children's services;
  - managers of services for looked after children;
  - commissioners of services for looked after children;
  - virtual head teachers, independent reviewing officers and other professionals with responsibilities in relation to looked after children.
3. It will also be relevant to:
  - children's services partner agencies as set out under section 10 of the Children Act 2004;
  - registered fostering agencies;
  - children who are fostered and their families;
  - foster carers and their families.
4. In addition, it gives guidance to independent fostering agencies about their responsibilities under the Care Standards Act 2000. Local authorities, in acting as commissioners of placements with independent fostering agencies, should be aware of and take note of the requirements on those providers under this legislation and reflect it in their commissioning standards and contract specifications. This guidance helps them to do so.
5. This guidance covers fostering services for children who are looked after by local authorities. It does not cover private fostering arrangements, which are the subject of separate statutory guidance.<sup>1</sup>

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<sup>1</sup>Replacement Children Act 1989 Guidance on Private Fostering, DCSF 2005

# Chapter 1 - Introduction

## The purpose of this guidance

- 1.1 Any good parent wants to make sure their children enjoy good emotional and physical health, an excellent education and a wide range of opportunities to enjoy their childhood so that they have every chance to grow up into successful, well rounded and mature adults. Local authorities are responsible for securing this for the children they look after. For the majority of looked after children the quality of the care provided by foster carers is an essential part of that parenting. This guidance contains the requirements set out by Government to support local authorities, working with fostering service providers, in giving the best possible care and support to the children they look after.
- 1.2 These requirements support the local authority in its primary duty, provided for in section 22(3) of the Children Act 1989, to safeguard and promote the welfare of looked after children. This includes a particular duty to promote the child's educational achievement and in acting as good corporate parents to enable each looked after child to achieve their full potential. In order to be satisfied that they are adequately exercising their duties under section 22, local authorities should ensure that any services they commission from fostering agencies comply with the functions, duties and powers of that Act.
- 1.3 The guidance takes into account the requirements set out in the Care Standards Act 2000 and relevant Regulations, especially the Fostering Services (England) Regulations 2011. It directly relates to National Minimum Standards (NMS) for Fostering Services (2011) set by the Government and used by Ofsted in their inspections of fostering services. The text refers to the relevant part of the Fostering Services (England) Regulations 2011, and the relevant NMS.
- 1.4 This guidance has been informed by the views of looked after children and young people, who were asked by the Children's Rights Director to comment on how they feel they should be cared for and the standards there should be for their care. The report that was produced about young people's views was used in preparing this guidance.<sup>2</sup>

## How to use this guidance

- 1.5 This guidance is designed to provide a framework for practice in providing a fostering service, which emphasises the importance of safeguarding and promoting the welfare of individual children. It is not intended to be a detailed guide to good practice but to set out the core things that must be done by those commissioning and providing fostering services, in order to deliver a responsive and quality service for some of our most vulnerable children. Those working with local authorities as providers or partners should follow it. The relationship between legislation, statutory guidance and practice guidance is set out in [Annex A](#).

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<sup>2</sup> *Children's Messages on Care 2010; A report by the Children's Rights Director for England, Ofsted 2010*

1.6 This guidance is part of a suite of revised volumes of Regulations and Guidance issued in relation to the Children Act 1989, and supersedes *The Children Act 1989 Guidance and Regulations Volume 3: Family Placements* issued in 1991. It should be read in conjunction with other statutory guidance, particularly:

- The Children Act 1989 Guidance and Regulations Volume 1: Court Orders (2008).
- The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review (2010).
- The Children Act 1989 Guidance and Regulations Volume 3: Planning Transition to Adulthood for Care Leavers (2010).
- Family and Friends Care: Statutory Guidance for Local Authorities (2011).
- Short Breaks: Statutory guidance on how to promote and safeguard the welfare of disabled children using short breaks (2010).
- Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children (2010).
- Sufficiency Statutory Guidance on Securing Sufficient Accommodation for Looked After Children (2010).

1.7 Volume 1 has direct relevance for those looked after children who are subject to care proceedings or a care order. Volume 2 sets out what must be done in order to comply with the new sections 22A - 22F inserted into the Children Act 1989 by the Children and Young Persons Act 2008, and the Care Planning, Placement and Case Review (England) Regulations 2010. This guidance refers to those requirements but does not repeat them in full.

1.8 Both Volume 2 and this Volume should also be read in conjunction with the National Minimum Standards for Fostering Services 2011. These provide the framework of standards used by Ofsted to inspect local authority fostering services and to register, inspect and regulate fostering agencies. There is no registration requirement for local authority fostering services, and any enforcement action in respect of those services is the responsibility of the Secretary of State.

1.9 Attention should also be paid to the functions of the local authority in relation to the Adoption and Children Act 2002, and the Children Leaving Care Act 2000 and associated guidance, both of which are also relevant to children and young people who are looked after. As providers of fostering services, the local authority must also exercise its functions under the Care Standards Act 2000.

1.10 All the functions of local authorities set out in the primary legislation, Regulations and guidance depend on the exercise of professional judgement by social workers, managers, foster carers and other professionals, informed by their direct care of and engagement with looked after children and young people and their families.

## Key principles and values

- 1.11 Whenever possible, children are best looked after within their families, with their parents playing a full part in their lives. The 1989 Act recognises, in the way it is framed, that the state's role in family life should be limited. The provision of family support to children in need (section 17) is seen as an appropriate role for the state, as is the option of providing alternative care when families would find this supportive or where it is necessary (section 20).
- 1.12 Foster care can play an important role in supporting families to stay together, by providing a placement or a series of short breaks to help families under particular stress and struggling to meet their children's needs. Deciding to use a foster placement can be a valuable choice for a child or young person and their family. However, compulsory intervention in family life is sometimes necessary in order to safeguard a child and promote their welfare.
- 1.13 Every fostering service must compile a statement of purpose which sets out the aims and objectives of the service and the services and facilities provided. (regulation 3, standard 16). This should be child focused and reflect the principles to which the fostering service works. Where the fostering service also offers parent and child arrangements these should be included in the statement of purpose.
- 1.14 The values which should underpin the provision of foster care services are set out in the NMS. They reflect the key principles above. They are not repeated here in full but should be referred to when local authorities provide or commission foster care services. Chapter 2 of Volume 2 sets out the key elements of good care planning and review for looked after children, which support the provision of good foster care.
- 1.15 Volume 2 reflect the intentions and principles of the Children Act 1989 that parents should be encouraged to exercise their responsibility for their child's welfare in a constructive way, including through the agreed voluntary use of placements and that where compulsory intervention in the family is necessary it should, where possible, support rather than undermine the parental role. This applies equally to the local authority as corporate parent and to those providing foster care.
- 1.16 The principle of establishing a child's wishes and feelings is central to the Children Act 1989, which states that these should always be established and taken into account by local authorities when taking decisions in respect of looked after children (section 22(5)). Volumes 1 and 2 set out in detail the local authority's responsibilities with regard to seeking and taking into account a child's wishes and feelings when they are involved in care proceedings or are looked after.

## Definitions

- 1.17 In this guidance:
- "the 1989 Act" means the Children Act 1989

- "the 2000 Act" means the Care Standards Act 2000
- "the 2004 Act" means the Children Act 2004
- "the 2008 Act" means the Children and Young Persons Act 2008
- "the 2010 Regulations" means the Care Planning, Placement and Case Review (England) Regulations 2010
- "the 2011 Regulations" means the Fostering Services (England) Regulations 2011
- "care plan" means the plan for the future care of a looked after child prepared by a local authority under the 2010 Regulations and includes, for example, the placement plan, the health plan, the personal education plan
- "child" means a person under the age of 18. Where the context specifically refers to older children, the term "young person" is used
- "connected person" means a grandparent, brother, sister, uncle or aunt (whether full blood or half blood or by marriage or civil partnership), step-parent or friend of, or other person connected with, a looked after child. A person in the last category may be someone who knows the child in a more professional capacity such as a childminder, a teacher or a youth worker although these are not exclusive categories
- "foster carer" means a person who is approved as a foster parent in accordance with the Fostering Services (England) Regulations 2011, or is temporarily approved as a foster carer under the Care Planning Placement and Case Review (England) Regulations 2010
- "fostering agency" as defined by section 4(4) of the 2000 Act, means (a) an undertaking which consists of or includes discharging functions of local authorities in connection with the placing of children with foster parents, or (b) a voluntary organisation which places children with foster parents under section 59(1) of the 1989 Act
- "fostering service provider" means the local authority in relation to a local authority fostering service, or the registered person in relation to a fostering agency
- "local authority fostering service" means the discharge by a local authority of relevant fostering functions within the meaning of section 43(3)(b) of the 2000 Act. That is, functions under section 22C of the 1989 Act in connection with placements with local authority foster parents, or Regulations made under paragraph 12E(a), (b), (c) or (d) or 12F of Schedule 2 to the 1989 Act (*regulations as to placing of children with foster parents*). The 2011 Regulations and the 2010 Regulations are made under those paragraphs of Schedule 2. Section 43(3) (b) is substituted by section 8(2) of, and paragraph 13 of Schedule 1 to, the 2008 Act
- "Independent Review Mechanism" (IRM) means the mechanism by which, on behalf of the Secretary of State, potential and current foster carers are given the option of an independent review of their fostering service's intention not to approve them as foster carers or to change the terms of their approval
- "local authority foster carer" is the language used in the Regulations to describe a person approved as a foster parent by a local authority or an independent fostering service



- “looked after child” means a child who is (a) in the care of a local authority by reason of a care order; (b) is being provided with accommodation by the local authority in exercise of its social services functions (including under section 20 of the 1989 Act) for more than 24 hours with the agreement of the parents, or of the child if s/he is aged 16 or over; (c) is placed away from home under an emergency protection order or a police protection order, where they are accommodated by or on behalf of the local authority; or (d) is on remand to local authority accommodation, is under supervision with a residence requirement requiring them to live in local authority accommodation or is arrested and at the police’s request accommodated by the local authority (section 21 of the 1989 Act).
- “NMS” means the National Minimum Standards for Fostering Services 2011.
- "parent" in relation to a child includes any person who has parental responsibility for him or her.
- “parent and child arrangements” means arrangements made by a local authority for a parent and their child to live with a foster carer, whether or not the parent or the child is a looked after child placed with the foster parent.
- “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
- “Pathway plan”, under regulation 43 of the Care Planning, Placement and Case Review (England) Regulations 2010, refers to the plan that should record the actions the responsible authority, their partners (which could include the foster carer and the fostering service) and the young person must make to prepare them to make a successful transition to adulthood.
- “personal education plan” or “PEP” means that part of a looked after child’s care plan which records the arrangements made by the local authority to meet the child’s needs in relation to education and training.
- "placing authority" means, in relation to a child, the local authority or voluntary organisation (as the case may be) responsible for the child's placement.
- “placement plan” means that part of a looked after child’s care plan which sets out how the placement will contribute to meeting the child’s needs.
- “responsible authority” means the local authority which is looking after a child
- “short break care” means a series of placements with the same foster carer, provided under section 20, each of which may last for no more than 17 days and in total do not exceed 75 days in a year. At the end of each placement the child returns to their parent, or other person with parental responsibility. The definition of a short break does not include care for a child subject to a care order.
- “supervising social worker” means a social worker with responsibility for the supervision, ongoing assessment and support of a foster carer.
- “Volume 1” means the Children Act 1989 Guidance and Regulations Volume 1: Court Orders.
- “Volume 2” means The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review.

- “Volume 3” means The Children Act 1989 Guidance and Regulations Volume 3: Planning Transition to Adulthood for Care Leavers.

1.18 Whilst the Regulations, NMS and guidance are framed in the singular, reference to a foster carer should also be taken to mean the plural, where a couple are fostering together.

## Chapter 2: Responsibilities of local authorities and foster carers

### Corporate parenting

- 2.1. The responsibility of local authorities to improve outcomes and actively promote the life chances of children they look after is referred to as 'corporate parenting' in recognition that the task must be shared by the whole local authority in partnership with partner agencies along with the parents. The role of the corporate parent is to act as the best possible parent for each child they look after and to take action by speaking out on their behalf, arranging for appropriate services to meet their needs, standing up for them and representing them as needed, to ensure they grow up in the best way possible.
- 2.2. Corporate parents cannot do this without the full co-operation and support of a range of other agencies which provide services to children and their families, such as schools, the NHS, and youth services. All partners share responsibility for ensuring children are not further disadvantaged by the fact of being looked after, and that they are given every possible form of support to ensure they grow up as well rounded, mature adults.
- 2.3. Fostering services must ensure that the welfare, safety and individual needs of looked after children are central to the care provided by foster carers, so that each looked after child is treated as an individual and given personal support tailored to their individual needs, and taking their wishes and feelings fully into account. But, at the same time, foster care provides an opportunity for looked after children to grow up in a family, and to learn to take account of the needs of other family members and to make compromises.

### The fostering task

- 2.4. Foster carers have a challenging and key role to play within a foster care service. They need skill, knowledge, expertise, self awareness, commitment and the ability to work as part of a team, providing a high quality, effective service to vulnerable children. To undertake this role successfully it is essential that their contribution to improving outcomes for looked after children is appropriately recognised and acknowledged, their status respected and their levels of authority clearly defined so that they can give children in their care a full experience of family life, safeguard them and help them to grow and reach their potential.
- 2.5. The values underpinning the NMS require that:
  - foster carers be recognised as a core member of the team around the child with an important contribution to make in planning and decision making about the child, and that
  - the central importance of the child's relationship with their foster carer will be acknowledged and the work of the wider team around the child will be undertaken in a way that strengthens and supports the role of the foster carer.

- 2.6. Fostering services and responsible authorities must value and promote the central role of foster carers as part of the wider team, not just caring for and supporting the child, but also contributing to planning for the child, for example through attending reviews and meetings with other professionals concerned with the child.
- 2.7. Foster care covers a range of types of placements. Children may be placed at short notice when an emergency arises, or for a short time to enable work to be undertaken to return them to their families or to prepare them for a more permanent placement. Long term or “permanent” placements may be arranged to meet the needs of children over a period of years when they are unlikely to return to live with their own families, or until they become an adult. In between the two, intermediate placements may be made to enable planned work to take place to achieve specific goals.
- 2.8. Many foster carers are people with a prior connection to the child (“a connected person”), who have been specifically approved to be that child’s foster carer. They are usually a relative or family friend and are collectively known as family and friends foster carers. Separate statutory guidance relating to family and friends foster carers supplements, but does not replace, this guidance.<sup>3</sup>
- 2.9. Short breaks with foster carers are part of a continuum of services which support children in need within the meaning of section 17 of the 1989 Act (usually disabled children) and their families. They include day, evening, overnight and weekend care or activities. Short breaks can be provided by local authorities through the use of their powers under:
- section 17(6) of the 1989 Act, which grants local authorities a power to provide accommodation as part of a range of services in order to discharge their general duty to safeguard and promote the welfare of children in need; and
  - section 20(4) of the 1989 Act, which grants local authorities a power to provide accommodation ‘for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child’s welfare’.
- 2.10. Local authorities must always be clear about the legal basis on which short break services are provided, as set out in the relevant statutory guidance.<sup>4</sup> Even though a child receiving a short break may be accommodated overnight in a foster carer’s home, the child may not always be a looked after child.
- 2.11. Foster carers are required by their Foster Care Agreement to care for any child placed as if the child was a child of the foster carer’s family (regulation 27(5)(b) paragraph 2(a) of Schedule 5). The default position should be that the foster carer does not treat the child differently to their own children. This obligation may sometimes pose challenges in the context of the expectations of the responsible authority as corporate parent, and means that a flexible approach

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<sup>3</sup> Family and Friends Care: Statutory Guidance for Local Authorities DFE 2011

<sup>4</sup> Short Breaks: Statutory guidance on how to safeguard and promote the welfare of disabled children using short breaks, DCSF 2010

must sometimes be adopted by authorities since many looked after children are sensitive to being treated differently to the foster carer's own children.

- 2.12. This guidance covers mainly what foster carers do in their role as foster carers, and not what they may do for the fostering service (or anybody else) in any other capacity. Fostering households can be a valuable asset to the fostering service, for example in mentoring and training other foster carers. Foster carers can also help to support another foster carer's placement, for example where they know each other and the children they look after they can provide help where one needs to attend training, reviews or may be unexpectedly unwell. It is clearly in the interests of the child to maintain as much stability as possible and pairing/buddying arrangements are one way to do this.
- 2.13. Although such arrangements will not constitute a fostering placement under the Fostering Services Regulations 2011, the fostering service will need to consider the capacity of the carer to undertake this activity in the context of the age, needs and numbers of their foster children and other children in the household. The fostering service should require any foster carer who agrees to care for another foster carer's foster child to agree to promote the child's health and development, educational achievement etc. as they would a foster child placed with them (for further information see Volume 2). These and any other tasks and responsibilities will need to be taken into account by the fostering service when they are considering placing a child with a foster carer.

## **Parent and child arrangements**

- 2.14. When arrangements are made by the local authority for a parent and child to live together with foster carers, for example to enable a parenting assessment to be undertaken, the responsible authority must take particular care to clarify the nature of the arrangement. If both the parent (under the age of 18) and child are looked after children, both will be foster placements, but it is also possible that looked after status will only apply to either the child or the parent. In whichever circumstance, it will be necessary to clarify the respective roles of the foster carer and the parent in relation to the child. If neither the parent nor the child is a looked after child the arrangements will not be covered by the 2011 Regulations, but the fostering service should be mindful of the additional responsibilities of the foster carer, any additional skills, training and support the carer may require, and any additional insurance considerations.
- 2.15. Regulation 26 makes it clear that a person who is living with a foster carer as part of a parent and child arrangement is a member of the foster carer's household for the purposes of these Regulations.
- 2.16. Annex B provides a fuller explanation of matters relating to arrangements for parents and children living with foster carers in different circumstances.

## Chapter 3 – Ensuring the best for children and young people

### Making and ending placements

- 3.1. Children should be matched with an appropriate foster carer capable of meeting their needs. They should feel welcomed into the foster home, treated and valued as a member of the family, and included in the everyday life of the family. They should in due course leave a placement in a planned and sensitive manner which makes them feel valued.
- 3.2. Regulations 22 and 23 of the 2010 Regulations set out the conditions that must be complied with before a child is placed with a foster carer. The responsible authority must be satisfied that placement with foster carers is the best way to meet their duties under section 22C(5) and (6)(a) and (b) of the 1989 Act, and that the specific placement is the most appropriate having regard to all the circumstances. In making placements the responsible authorities should strive to keep siblings together where they wish to be together and this is consistent with their needs. The responsible authority is also under a duty, so far as reasonably practicable in all the circumstances, that the placement does not disrupt the child's education or training (Section 22C(7) and (8)(b)). This will all require careful pre-placement planning, including consideration of the impact on any children already living in the foster home. Consent to such a placement must be given by the fostering service provider and any other responsible authority with a child already placed with the foster carer. This will require consultation with the social worker of any other child placed in the foster home.
- 3.3. Other than in an emergency, a child must only be placed with a foster carer whose terms of approval match the child's circumstances, although in an emergency a child may be placed for up to 6 working days with any foster carer who has been approved under the 2011 Regulations.
- 3.4. Standards 11 and 15 set out the requirements in relation to introductions and the provision of information to the child.
- 3.5. Children and young people should not move to another placement, unless this is by agreement following a statutory review, it is clearly in the child or young person's best interests, the decision has taken into account the child or young person's wishes and feelings, and the move is properly planned. The exception is when remaining in the placement is clearly impractical, or significantly compromises the welfare of others in the household. In some cases placements can break down because people find they are not well matched and do not get on well – it is important not to assume that if a placement breaks down it means the child or foster carer is at fault. When a placement is ending, foster carers and the fostering service should work with the child's social worker and others to help the child to understand why they are moving, and should support the child through their transition to a new living situation whatever that may be.
- 3.6. Fostering services must ensure that the foster carer is given all the information they need about the child to enable them to provide appropriate care, and make sure that this information is kept up to date. This information must

always include the child's up-to-date care plan which has been given to the fostering service provider under regulation 6(3)(d) of the 2010 Regulations, and the placement plan including information regarding arrangements for consent to medical treatment. The information must be provided in advance, other than when a placement is made in an emergency, in which case it should be provided at the time of placement. There may be rare occasions, such as some emergency admissions out of hours, when the information held by the fostering service falls short of the minimum which should be made available to the foster carers upon placement. In such circumstances, the missing information should be supplied as soon as possible and certainly within five working days (regulation 9(2) of the 2010 Regulations and regulation 17 and standard 15).

3.7. The placement plan forms part of the child's care plan and must be drawn up before the child is placed, or if this is not possible, within five days of the start of the placement (regulation 9(2) of the 2010 Regulations). The foster carers should play an active role in agreeing the contents of the child's placement plan and must have a copy of the child's placement plan (standard 31). An effective placement plan will ensure that the foster carer receives essential information about the child, including his health, educational and emotional needs, how these may affect the child day to day, and appropriate strategies for responding to these needs. This will include information about any behaviour which was of concern in a previous placement.

3.8. Schedule 2 of the 2010 Regulations sets out the matters which must be included in the placement plan, and relevant statutory guidance is included in Volume 2. Foster carers should contribute to each review of the placement plan, and each statutory review of the child's care plan (standard 31).

## **Foster carers' delegated authority<sup>5</sup>**

3.9. Delays and missed opportunities for looked children as a result of poor planning around delegation of authority can be a bar to children experiencing a fulfilled childhood and feeling part of the foster carer's family. Looked after children say that problems obtaining parents' and local authorities' consent to everyday activities can make them feel different from their peers, causing them embarrassment and upset. It is therefore very important to agree upfront who can make which decisions about a looked after child, and that this is understood by all key parties and reviewed regularly.

3.10. Foster carers should be given the maximum appropriate flexibility to take decisions relating to children in their care, within the framework of the agreed placement plan and the law governing parental responsibility (PR). Except where there are particular identified factors which dictate to the contrary, foster carers should be given delegated authority to make day to day decisions regarding health, education, leisure, etc.

3.11. Those with PR for a child (the mother will have PR, the father might do too) retain their PR once a child becomes looked after. If a child is placed voluntarily under section 20 of the 1989 Act, the local authority does not have PR and so agreement must be reached about what decision-making the parents will

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<sup>5</sup> This guidance supersedes and replaces LAC (2004)4 'Guidance on the delegation of decision on overnight stays for looked after children'

delegate to the local authority. The local authority should work with the parent(s) as far as possible to help them understand the benefits to their child of appropriate delegation to the local authority and foster carers.

- 3.12. If a child is subject to a care order, interim care order or emergency protection order, the parent(s) share PR with the local authority and the local authority can limit the extent to which the parent(s) can exercise their PR if this is necessary to safeguard or promote the child's welfare. As far as possible, however, parents whose child is subject to a care, interim or emergency protection order should be consulted about their child's care and their views taken into account. Whatever the legal status of a child's placement, parents should be helped to understand the role of foster carers and the relevance of appropriate delegated authority, in order that they can support the foster carers.
- 3.13. It is important that foster carers know what authority they have to make decisions about everyday matters involving the child. Arrangements for delegating authority from the parents to the local authority and/or from the local authority to the foster carers, must be discussed and agreed as part of the care planning process, particularly at placement planning meetings, and agreements should be recorded in the placement plan.
- 3.14. Paragraph 3(4) of Schedule 2 of the 2010 Regulations, as amended by regulation 43(5) of the 2011 Regulations, requires that the placement plan set out any circumstances in which the foster carer must obtain the prior approval of the responsible authority or the parent/s before making decisions in relation to the child or the child's care. More generally, the placement plan should provide clarity about what authority the parents have delegated to the local authority, and how the day to day parenting tasks will be shared between the foster carer(s) and the local authority. 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 foster carer to notify the local authority that a particular decision has been made) should be clearly set out.
- 3.15. Arrangements for delegated authority should be given particular scrutiny when children are confirmed in long term or permanent placements, and attention given to how responsibilities are shared in order to reinforce and support the long terms bonds and attachments which foster carers will be expected to build with the child. In all placements, particularly those that are long term or permanent, what is appropriate to delegate to the foster carer, and what the parent(s) are prepared to delegate to the local authority, may change. Agreements about delegation of authority should therefore be regularly reviewed through care planning and review meetings, taking into account the views of birth parent(s), the child, the foster carer and the legal status of the placement; any changes should be recorded in the placement plan.
- 3.16. Where a child is placed with foster carers approved by a fostering agency or another local authority, the responsible authority should consult the fostering service provider about what authority should be delegated to the foster carer. Where authority for a particular decision or consent lies with the responsible authority, that authority should ensure that decisions are made in the same timely way whether or not the foster carer has been approved by themselves, and the



responsible authority should ensure that any information that may be required to enable a foster carer to take a decision about a child is provided promptly.

- 3.17. Difficulties obtaining permission for sleep-overs is often highlighted as a particular concern by looked after children. Looked after children should as far as possible be granted the same permissions to take part in normal and acceptable age appropriate peer activities as would reasonably be granted by the parents of their peers. It should be normal practice for the responsible authority, in agreement with those with PR, to delegate to the child's foster carer day to day decision making about allowing a looked after child to stay overnight with friends, and to state this in the placement plan. Parents make judgements on whether or not there are known risks to staying in a particular household or visiting relatives, and similar judgements should normally be made for children in foster care by their responsible carers. Judgements should be based on a reasonable assessment of risks. In all cases foster carers should be made urgently aware of any individuals, addresses or areas which may place a child at risk, and this should also be included in the placement plan.
- 3.18. There may sometimes be exceptional reasons to require foster carers to seek the permission of either the responsible authority or a person with parental responsibility for the child, or to place specific restrictions on permitting a child to stay overnight with friends. When this is the situation it should be based on clearly stated reasons which are necessary to safeguard and promote the child's safety or welfare in that child's particular circumstances. In such cases, the restriction should be clearly stated in the child's placement plan. Wherever practicable the child should be consulted over the issue and their views and feelings taken into account in reaching the decision. The restriction and the reasons for it should be fully explained to the child concerned unless, exceptionally, this would not be consistent with the child's welfare. Any restrictions should be reviewed regularly to ensure that they remain relevant.
- 3.19. In making decisions about whether or not to permit a looked after child to stay overnight with a friend or to have a holiday with their friends or with relatives of their foster carers, or to go on a school trip, foster carers and responsible authorities should consider the following factors:
- Whether there are any relevant restrictions contained for exceptional reasons in the child's care plan, including the placement plan;
  - Whether there are any court orders which restrict the child from making a particular overnight stay, visit or holiday;
  - Whether there are any factors in the child's past experiences or behaviour which would preclude the overnight stay, visit or holiday;
  - Whether there are any grounds for concern that the child may be at significant risk in the household concerned or from the activities proposed;
  - The age and level of understanding of the child concerned;
  - What is known about the reasons for the overnight stay, visit or holiday;
  - The length of the stay.

- 3.20. If in doubt about the appropriate decision or if there is reason to consider that a child may be at specific risk in staying in a particular household, the foster carers should consult the responsible authority for advice. The child and their carers should always be told of the criteria that will be used to make decisions about overnight stays, visits and holidays.
- 3.21. Foster carers should always have contact details for the household in which the child will be staying. They should also make contact with the household beforehand, as would any good parent, to assist in assessing the request and to confirm arrangements and to ensure that the household where the child will be staying have, in turn, the contact details of the foster carer(s).
- 3.22. There is no statutory duty for Criminal Records Bureau (CRB) disclosures to be sought in relation to adults in a private household where a child may stay overnight or visit, or who the child may accompany on a holiday or on a school trip. CRB checks should not normally be sought as a precondition.
- 3.23. There is no requirement that where a looked after child visits or spends a holiday with their foster carer's friends or relative that the individual must be approved as a local authority foster carer, as the child will remain formally placed with their usual foster carers.
- 3.24. More detailed guidance about care planning and the placement plan can be found in Chapter 3 of Volume 2.

## **Contact with family and friends**

- 3.25. Children and young people who are looked after often, for a variety of reasons, live away from their family, community and friends. For the majority it is in their best interests to sustain, reinforce or create links with their birth family. The responsibility of the local authority in relation to this are set out in Volume 2.
- 3.26. Subject to any court order and the contents of the placement plan, the fostering service has a duty to promote contact between a child placed with a foster carer and his parents, relatives and friends, unless such contact is not practicable or consistent with the child's welfare. This duty does not apply to children receiving short breaks who are not looked after. However, the short break care plan should address any requirements around a child's contact with their family during a short break, such as phone calls or postcards. (regulations 14 and 42 and standard 9).
- 3.27. Subject to the child's care plan, foster carers and fostering service staff must help to promote, support and encourage children to maintain positive and constructive contact with their parents and wider family, friends and others who are important to them. Foster carers must be clear from the placement plan what delegated authority they have to make day to day decisions about contact arrangements.

## Welfare

- 3.28. The local authority is responsible under section 17 of the 1989 Act for safeguarding and promoting the welfare of children in need generally, and under section 22(3) in particular for those children whom they look after. In making decisions about the child the authority must take into account in particular whether the action will successfully achieve this. This is set out in detail in Volume 2.
- 3.29. Regulation 11 places independent fostering agencies under a duty to secure the welfare of children placed with their foster carers, and local authorities must assure themselves that this will be the case when they commission services from them. Local authority fostering services must also ensure that they discharge these duties under the 1989 Act in an appropriate manner.
- 3.30. Central to the promotion of a child's welfare is an environment in the foster home in which all members of the household respect each other's privacy and dignity. This is achieved primarily through the way in which foster carers model respect for the children they care for. It is supported by the physical environment of the home and the way in which children are given their own private space, and places to keep their own belongings, do homework, see friends and family, manage personal issues and feel safe. Foster children should be able to have free access to the facilities of the foster home as a good parent would allow their child. Standard 10 sets out expectations in relation to the physical environment of the foster home.

## Children's wishes and feelings

- 3.31. The United Nations Convention on the Rights of the Child and the European Convention on Human Rights are both central to working with children and young people (see section 1.7 of Volume 2).
- 3.32. Having regard to the child's age and understanding, their views, wishes and feelings must be known, listened to and acted upon in all aspects of their care in the foster home, unless to do so would be contrary to their interests or adversely affects other members of the foster care household. When this is the case, it is important that children are helped to understand why decisions have been made that are contrary to their wishes and views. The views of their family and others who are significant to them should also be sought and taken into consideration (standard 1).
- 3.33. The particular needs of children and young people with disabilities, special educational needs or complex needs must be fully recognised and taken into account when decisions are made about them, and their wishes and feelings must always be established and taken into account.
- 3.34. Appropriate arrangements should be made to support children and young people for whom English is not their first language (especially refugees and asylum seekers), carefully taking into account the individual child's circumstances. Appropriate arrangements should also be made for children with disabilities which affect their ability to communicate verbally, and foster carers should be supported to respond appropriately using the child's preferred

communication methods.

- 3.35. All children and young people should be given information, appropriate explanations and choices about what happens to them. This requires skilled and confident foster carers who can communicate easily and understand the importance of listening to, involving and responding to the children and young people they care for.
- 3.36. The child's birth family, their social worker, their foster carer and their Independent Reviewing Officer will all have views about how individual children are being cared for and how the fostering service as a whole is run and managed. Fostering services should regularly seek these views and draw on this feedback in improving the care they provide.
- 3.37. Every child or young person in a foster home should be able, without permission or discussing the reason why, to contact their social worker or their Independent Reviewing Officer if they wish. They should be able to do this in private.

## **Representations, complaints, rights and advocacy**

- 3.38. Children who are looked after will sometimes feel, as all children may do, that they have been treated unjustly or that their views, wishes and feelings have not been respected. Their concerns may be minor and easily resolved through a conversation with their foster carers, or be more significant. There are a number of options available to children and young people should they wish to complain more formally or do not believe they have had a proper response to their original concern. These are set out in the Children Act 1989 Representations Procedure (England) Regulations 2006 and related statutory guidance.<sup>6</sup> The fostering service must ensure that it follows these regulations for all the children for whom they provide placements.
- 3.39. Children in foster care must know how to make a complaint or representation to the local authority, be given information by their social worker about how to make a complaint, and be supported to do so if they wish by foster carers and staff of the fostering service, or by any independent person they choose to support them. It is in everyone's best interests if the complaint can be resolved informally, but staff and foster carers should not let their relationship with the local authority prevent them from continuing to support the child to a more formal stage in the complaints process, if the child wishes it.
- 3.40. A child may also wish to make representations or complaints about the fostering service in general, about individual staff, about foster carers or their own care. Local authorities must have a procedure for dealing with complaints about the discharge of their children's social care functions. Fostering agencies are likewise required by regulation 18 to have a representations and complaints procedure.

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<sup>6</sup> *Getting the Best from Complaints; Social Care Complaints and Representations for Children, Young People and Others*, Department for Children, Schools and Families, 2006

- 3.41. Standard 25 sets out the requirements for complaints and representation procedures for fostering services.
- 3.42. Everyone involved with the fostering service, including children in foster care and their families should know about the complaints and representations policy and how to use it. Policies should promote informal resolution of any complaint and no person who is the subject of a complaint should then investigate it. A fostering agency must notify Ofsted and the responsible authority of any serious complaint about a foster carer (regulation 36 and Schedule 7 to the 2011 Regulations). There is no similar duty for a local authority fostering service, but they must keep written records about complaints and review these regularly<sup>7</sup> (regulation 18 and standard 25).

## **Identity and diversity, respect and individuality**

- 3.43. Many looked after children have low self worth and a very poor sense of their own identity. Many come from families that are subject to multiple problems and marginalisation. The Human Rights Act 1998 and the Equalities Act 2010, as well as the 1989 Act all require that every individual child who is looked after should be cared for in a way that respects, recognises, supports and celebrates their identity and provides them all with care, support and opportunities to maximise their individual potential.
- 3.44. Foster carers and fostering services should ensure that full attention is paid to the individual child's gender, faith, ethnic origin, cultural and linguistic background, sexual orientation and any disability they might have. Children should be encouraged and supported to have positive views of themselves and to be proud of their identity and heritage (standard 2).
- 3.45. This requires foster carers, as professionals who care for the child and in many cases are well placed to know the child best, to work in close partnership with the social worker and staff of the fostering service to ensure that children are given individual personal support in line with their needs, their wishes and their feelings, to develop confidence and value their individual personalities and identity. The duties of the responsible authority in this respect are clearly set out in Volume 2.
- 3.46. Foster carers should be informed, trained and confident about dealing with issues relating to gender, religion, ethnic origin, cultural background, linguistic background, nationality, disability or sexual orientation, and be able to involve external professional advice and support as necessary. They also need to be able to balance the individual needs, wishes and preferences of the individual child with those of others in the household. Foster carers should at all times be sensitive to gender issues, especially when caring for children and young people of the opposite sex.
- 3.47. Foster carers should be supported to help individual children and young people cope if they are subject to discrimination, marginalisation or ridicule from

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<sup>7</sup> See Getting the Best from Complaints - Social Care Complaints and Representations for Children, Young People and Others, DCSF 2006. Children Act 1989 and the Representations Procedure (England) Regulations 2006

their peers by virtue of their gender, religion, ethnic origin, cultural background, linguistic background, nationality, disability, sexual orientation or looked after status.

- 3.48. Children should be encouraged and supported to exercise choice and independence in clothes, personal items, toiletries etc. The fostering service, working with the responsible authority and where appropriate their family, should ensure that every child has sufficient good quality clothing to meet their needs. Cultural, racial, faith based or ethnic expectations about their clothing or diet should be met and supported.

## **Achieving healthy outcomes for looked after children**

- 3.49. Promoting the health of children and young people in foster care is very important if they are to grow into mature, stable, well balanced adults. Children often have poor health when they first become looked after, and the fostering service has a duty to promote the health and development of children placed with foster carers (regulation 15 and standard 6). Attention must be paid to both their physical and emotional health. Foster care must provide a healthy environment, where children's good health and wellbeing is promoted, their health needs are identified and services are provided to meet their needs.

- 3.50. The responsible authority, as corporate parent, is required to provide good health care for the child or young person. They exercise this responsibility in part through the standards they apply to commissioning fostering services and in part through their care planning functions. These care planning functions require the local authority to arrange to monitor the health care of children and young people who are looked after. They must arrange for health assessments, at regular intervals, the development of a health plan for each looked after child and the review of those health plans (covered in Volume 2).

- 3.51. The full range of statutory obligations and duties on local authorities and Primary Care Trusts (PCTs) to support and promote the health of looked after children is set out in statutory guidance.<sup>8</sup>

- 3.52. Fostering services must be clear about the way they ensure that foster carers and staff of the fostering service protect and promote the health of children in placement. In particular they must make sure that each child is properly registered with a GP, preferably their own prior to being looked after, or if that is not possible, with a local GP. They must make sure that each child sees a dentist regularly, is referred where necessary to an optician and is provided with any aids or equipment required by particular health needs or disability. These responsibilities should be undertaken in conjunction with the child's social worker.

- 3.53. Foster carers, with support from the fostering service, health professionals and the child's social worker, are responsible for the day to day health of children placed with them. Specific responsibilities of foster carers should be set out in the child's health plan or short break care plan, and the placement plan.

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<sup>8</sup> *Statutory Guidance on Promoting the Health and Wellbeing of Looked After Children*, Department for Children, Schools and Families and Department of Health, 2009

- 3.54. For children receiving short break care with foster carers, responsibility for health care remains with the parents, but foster carers will be responsible for maintaining a child's ongoing health treatment during a short break, and for emergency treatment.
- 3.55. Where children have specific health issues or conditions, they should be supported to manage them and to avoid any potential embarrassments or difficulties. Where a child needs additional input to promote their health, foster carers and staff of the fostering service need to work with the social worker to ensure they have proper and immediate access to other medical, psychological or psychiatric support needed. This should be identified by the health assessment and set out in the health plan.
- 3.56. When a need is identified by the child, the foster carer or the supervising social worker in between scheduled health assessments or looked after child reviews, the carer and social worker must be proactive in ensuring that the need is met appropriately and in a timely way.
- 3.57. As well as identifying and responding to needs, the fostering service should ensure that each foster child is given good advice, support and guidance as necessary on good health and personal care to enhance, inform and supplement that provided by their school through Personal, Health and Social Education (PHSE). This should include advice on alcohol and illegal substance abuse, smoking, sex and relationships, sexually transmitted diseases (including HIV), and protecting oneself from infections such as hepatitis. This requirement does not apply to short breaks, as the provision of guidance, support and advice on health, personal care and health promotion issues remains the responsibility of the child's parents.
- 3.58. Fostering services must ensure that foster carers have the relevant skills and knowledge to be able to meet the health needs of children and young people, administer basic first aid and minor illness treatment, provide advice and support and where necessary meet specific individual health needs arising from a disability, chronic condition or other complex need. Training on health issues should be included in foster carers' core training programme. This should cover basic health and hygiene issues, first aid, health promotion and communicable diseases.
- 3.59. The manager of the fostering service should also ensure that any health care professionals employed, retained or otherwise referred to by the fostering service have appropriate professional qualifications, are accessing continuing professional education and are using properly accredited and professionally validated treatment methods.
- 3.60. Foster carers must be made aware of the policy of the fostering service governing the administration of medication and recording of this. They should make suitable arrangements for the safekeeping of medicines in a place the child cannot access, unless it has been specified in the placement plan that the child is capable of managing their own medication. Whilst children should be supported to keep and administer their own medication, care must be taken to ensure that they are responsible enough to do so, or will be able to do so with adequate

support and oversight. Arrangements should be in line with those that any good parent would make, taking account of the individual needs and capacity of the child (standard 6).

- 3.61. Foster carers must be given, at the time a child is placed with them, written permission from a person with parental responsibility to administer first aid and non-prescription medication, and to consent to any other form of medical or preventive treatment as may be agreed within a scheme of delegated authority. This should be recorded in the placement plan.
- 3.62. Proper care must be taken to ensure prescribed medicines are only administered to the individual for whom they are prescribed. Foster carers should keep a written record of all medication, treatment and first aid given to children during their placement, in accordance with the policy of the fostering service.

## Positive behaviour and taking risks

- 3.63. Making choices, taking risks and learning from failures is part of growing up. Like their peers, looked after children need to be supported to learn through experience. When the choices they make are poor or the risks unacceptable, foster carers should be able to talk to them about their situation and help them to understand and manage their own behaviour differently. Whilst it is normal for foster carers, like parents, to want to avoid unnecessary risks, excessive caution is unhelpful. Children and young people need to be exposed to some risks, proportionate to their age and understanding. They need to be encouraged to make friends, participate in sports and outdoor activities, to be able to stay overnight with friends and explore the world they live in without excessive constraints.
- 3.64. Foster carers should take reasonable precautions in assessing the degree of risk, making informed judgements about when to allow a child or young person to take a particular risk or follow a particular course of action. They should be provided with training to ensure that they are able to assess risks appropriately, within the expectations of the fostering service and the responsible authority.

## Safeguarding looked after children

- 3.65. Children need to feel safe and be safe. They need to understand how to protect themselves, feel protected and be protected from significant harm (standard 4). Part V of the 1989 Act sets out the functions of the local authority with regard to the protection of children. The local authority must exercise these functions in relation to all children, including those for whom they have direct responsibility as looked after children.
- 3.66. The detailed duties and responsibilities of the responsible authority with regard to safeguarding children are clearly set out in the statutory guidance, *Working Together*.<sup>9</sup> Statutory guidance to children's trusts<sup>10</sup> sets out the

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<sup>9</sup> *Working Together to Safeguard Children – A guide to inter-agency working to safeguard and promote the welfare of children*, Department for Children, Schools and Families, 2010



arrangements that are likely to be common to all or most of the partners, including health and education, involved with children. A range of individuals with whom children living in foster care have contact are responsible for identifying concerns about their safety and well being. The specific responsibilities of the child's social worker for safeguarding children who are looked after, acting on behalf of the responsible authority, are set out in Volume 2.

3.67. The fostering service must put in place and implement a written policy to safeguard children placed with foster carers from abuse or neglect, that includes the procedures to be followed in the event of such an allegation (regulation 12 and standard 22). This must be in accordance with the policy and procedures of the Local Safeguarding Children Board (LSCB). The policy must include a statement of measures to be taken to safeguard children placed with foster carers before any arrangements are made for a parent and child to join the household in parent and child arrangements.

## Allegations

3.68. Any allegation made by a child must be taken seriously and investigated, since it is of the utmost importance to keep children and young people safe. However, foster carers do face a risk of being the subject of false allegations and this can be extremely traumatic for those involved and their families. Allegations may result in the removal of the child who made the allegation and potentially other foster children in the household. Unfounded allegations therefore affect not just of the fostering household but also the placement stability of foster children. The 2010 Regulations and Volume 2 must be adhered to when moving a child from their placement.

3.69. In addition to the negative impact on the child's welfare and education of being moved to a new placement, there is the cost and impact on the local authority of having to find a new suitable placement for the child/ren. There are also consequences for the fostering service, as badly handled allegations can lead to carers leaving fostering altogether.

3.70. The fostering service should make support, which is independent of the fostering service, available to the person subject to the allegation and, where this is a foster carer, to their household. This support is to provide:

- a. information and advice about the process;
- b. emotional support; and,
- c. if needed, mediation between the foster carer and the fostering service and/or advocacy (including attendance at meetings and panel hearings).

3.71. In addition, each fostering service should have a designated person, who is a senior manager, responsible for managing allegations. The designated person should keep the subject of the allegation informed of progress during and after the investigation.

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<sup>10</sup> *Statutory guidance on making arrangements to safeguard and promote the welfare of children under section 11 of the Children Act 2004*, Department for Children, Schools and Families, 2007

- 3.72. The fostering service must make a clear distinction between investigations into allegations of harm and discussions over standards of care. An investigation which finds no evidence of harm should not become a procedure to look into poor standards of care, which should be addressed separately.
- 3.73. Foster carers must be given appropriate information about any allegation made against them and the reasons for an unplanned removal of a child. The possible risk of harm to children posed by an accused person needs to be effectively evaluated and managed. Foster carers must not be suspended automatically or without careful thought.
- 3.74. The fostering service must have a clear policy framework which outlines the circumstances in which a foster carer should be removed as one of the fostering service provider's approved foster carers, in the interests of the safety or welfare of children. The fostering service must also have a policy which makes clear what allowances and fee will be paid should the fostering household be subject to an allegation. These policies must be available to foster carers.
- 3.75. The policy and procedures should reflect the requirements of the LSCB of the area where the foster carer lives, and as far as possible those of the responsible authority. Access to the LSCB's procedures and *Working Together* should be easily available to all staff and foster carers. This should include access to procedures and advice in relation to e-safety. A senior manager of the fostering service must be designated to manage allegations and liaise with the Local Authority Designated Officer (LADO).
- 3.76. The safeguarding policy should set out clearly the procedure that staff and foster carers should follow in the event of any allegation or disclosure, including how such matters are to be referred to the LADO. It should also cover the need to liaise and co-operate with any local authority making child protection enquiries about a child placed with a foster carer and any measures that may need to be considered in order to protect children following an allegation. It should also set out the requirement to notify the responsible authority for the child (and in the case of a fostering agency, Ofsted) of any child protection enquiry involving the child.
- 3.77. Every effort must be made to maintain confidentiality and guard against publicity while an allegation is being investigated/considered. In accordance with the Association of Chief Police Officers guidance, the police will not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence. In exceptional cases where the police might depart from that rule, for example, an appeal to trace a suspect, the reasons should be documented and partner agencies consulted beforehand. The system of self-regulation, overseen by the Press Complaints Commission, also provides safeguards against the publication of inaccurate or misleading information.
- 3.78. In accordance with *Working Together*, it is important to keep on the foster carer's record a clear and comprehensive summary of any allegations made, details of how the allegation was followed up and resolved, and details of any action taken and decisions reached, and to make this available to the individual. Notwithstanding the requirements of regulation 32 regarding retention of records,

such information should be retained on file at least until the person concerned reaches normal retirement age, or for 10 years if that is longer. The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where a future CRB Disclosure reveals information from the police that an allegation was made but did not result in a prosecution or a conviction, and will prevent unnecessary re-investigation if allegations re-surface at a later date.

3.79. Malicious allegations should be removed from personnel records and unsubstantiated, unfounded and malicious allegations should not be referred to in references.

3.80. It is in everyone's interest to resolve cases as quickly as possible, consistent with a fair and thorough investigation. All allegations must be investigated with priority so as to manage cases to eradicate any unnecessary delays at every stage of an investigation. Target timescales are shown below for different actions in the summary description of the process. The time taken to investigate and resolve individual cases depends on a variety of factors, including the nature, seriousness and complexity of the allegation, but these targets should be achieved in all but truly exceptional cases. It is expected that 80 per cent of cases should be resolved within one month, 90 per cent within three months, and all but the most exceptional cases should be completed within 12 months.

3.81. For those cases where it is clear immediately that the allegation is unfounded or malicious, it is expected that they should be resolved within one week. Where the initial consideration leads to the decision that the allegation does not involve a possible criminal offence, it will be for the fostering service to deal with it, however, if there are concerns about child protection these should be discussed with the LADO and the child's responsible authority. In such cases, if the nature of the allegation does not require formal action, the fostering service should institute appropriate action within 3 working days. If action is required and can be taken without further investigation, this should be done within 15 working days.

## **A safeguarding culture and ethos**

3.82. The fostering service must have a written health and safety policy, which should be covered in the assessment and training of foster carers. Foster carers should be supported to ensure that their homes are free of avoidable hazards, in keeping with family life. Every foster home must be visited without appointment by a supervising social worker of the fostering service at least once a year, as a check on the standard of care being provided (standard 10).

3.83. The fostering service must ensure that its staff and foster carers are wholly committed to developing positive relationships with children, generate a culture of openness and trust and are aware of and alert to any signs that might indicate a child is in any way at risk of harm. This should lead to children feeling confident about themselves and able to tell someone they trust if they are concerned or worried about what is happening to them. Foster carers should protect children from significant harm, including abuse, accidents, bullying or negative attitudes.

3.84. Where children are listened to, respected and involved positively in family life, conditions that might lead to a family member abusing their position are less

likely to exist. This will be enhanced by an appropriate level of supervision of the foster carers by their supervising social worker. All foster carers should be trained, at a minimum, to the basic level of the LSCB's training programme and should know what constitutes appropriate safe care practice.

- 3.85. Children must be given information about how to report concerns and contact an advocate, and about help lines such as ChildLine. They should be able to make private telephone calls, or access a range of relevant websites, in order to seek advice and help.
- 3.86. The requirements for CRB enhanced disclosure checks for staff of the fostering service, foster carers and other adult members of the fostering household aged 18 and older are set out in regulations 20 and 26 and Schedules 1 and 3. Whilst the fostering legislation does not require any other person to be subject to checks, other individuals involved in caring for, training, supervising, or being in sole charge of a child may be engaged in 'regulated activity' under the Safeguarding Vulnerable Groups Act 2006. The Exceptions Order to the Rehabilitation of Offenders Act 1974 lists the types of work, employment or professions on which a CRB check can be legally obtained. No disclosure check can be carried out on those who simply come into contact with the foster child.
- 3.87. Fostering services should seek to identify, as part of the approval process for a prospective carer, any individuals who may play a significant role in providing support for those carers. These may be back-up carers, regular baby-sitters, or family. There is no requirement to assess or approve these people as foster carers. In some cases, it may be appropriate for checks such as criminal record checks to be carried out, but there is no requirement and professional judgement should be used (see also the section in this guidance on delegated authority). In order for a disclosure check to be requested, the fostering service would need to be aware of such arrangements, and so the individual's involvement would need to be agreed by the fostering service.

## **Children missing from the foster home**

- 3.88. The care provided should minimise the risk that children will go missing and ensure that children feel secure enough to stay in the foster home. Children who return from being missing should be responded to positively. This relies largely on the skills of foster carers, who need to understand the policies of the fostering service and their role in making policies work.
- 3.89. The fostering service must prepare and implement a procedure to be followed if a child goes missing or is absent from a foster home without permission (regulation 13 and standard 5). Foster carers should know when to try to prevent a child or young person leaving the home and should do so through dialogue, but they should not try to restrain the child should they be intent on leaving, or in any other circumstances, unless it is necessary to prevent injury to the child or others, or serious damage to property. No measure of restraint may be excessive or unreasonable (regulation 13(2)).
- 3.90. If there is a risk that a child or young person may run away or go missing, foster carers and staff of the fostering service should do their best to help them

understand the risks and dangers involved and how they can seek help if they find themselves in those circumstances.

- 3.91. Each local authority must ensure that a strategy is in place to minimise the risk of children and young people they look after going missing (generally and as part of individual care plans). When commissioning placements from fostering agencies, local authorities must ensure that the agency's policy is compatible with that of the responsible authority.
- 3.92. Every LSCB, together with the relevant local authority and police force, must have in place a locally agreed 'Runaway and Missing from Home and Care' (RMFHC) protocol.<sup>11</sup> The fostering service must ensure that foster carers and staff comply with the RMFHC protocol of the local authority where the foster carer lives (and also of the local authority which placed the child if that is different).
- 3.93. Where an individual goes missing for a long period of time or very regularly, the child, responsible authority, fostering service staff and foster carers should meet together to decide what further action should be taken to help and protect the child.
- 3.94. Written records should be kept detailing every individual incident of a child going missing and the fostering service should share these with the responsible authority and the child's parents where appropriate.

## **Bullying**

- 3.95. The culture of the service should reinforce a clear expectation that any form of bullying is totally unacceptable. Foster carers and staff should be able to recognise and deal with any indications or incidents of bullying, act proactively and intervene positively, engaging with those bullying as well as those being bullied. Children who are bullied should be supported and those who bully given help and guidance to prevent them continuing to do so.

## **Behaviour management, discipline, control and restraint**

- 3.96. Being able to promote positive behaviour and manage children's behaviour well is central to the quality of care provided in any foster home. Negative behaviour should usually be managed through building positive relationships with children. Foster carers need to be able to respond positively to each child or young person's individual behaviour and to be skilled at both diffusing difficult situations and avoiding situations escalating. The child's placement plan must set out any specific behavioural issues that need to be addressed or approaches to be used.
- 3.97. Every fostering service must prepare and implement a clear written policy about acceptable measures of control, restraint and discipline of children placed with foster carers (regulation 13 and standard 3). All foster carers should be made aware of the policy and apply it at all times. The service must ensure that no form of corporal punishment is used on any child by a foster carer or a

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<sup>11</sup> *Statutory guidance on children who run away and go missing from home or care, DCSF 2009*

member of their household, and that no foster child is subject to any excessive or unreasonable measure of control, restraint or discipline.

- 3.98. The policy should make it clear that restraint should only be used in exceptional circumstances where it is the only appropriate means to prevent likely injury to the child or other people, or likely serious damage to property, and in a manner consistent with the actions of any good parent. Sanctions for poor behaviour must be clear, reasonable and fair and must not include restraint or corporal punishment.
- 3.99. Wherever possible foster carers should use constructive dialogue with the child or guide them away from a confrontational situation. They should also have an understanding of their own emotional response to a confrontation or threat, and know when to withdraw, concede or seek help.

## Educational achievement

- 3.100. Although some do well, looked after children as a group are at greater risk of poor experiences of education and low educational attainment than their peers. As corporate parents, local authorities should demonstrate the strongest commitment to helping every child they look after, wherever the child is placed, to achieve the highest educational standards he or she possibly can. This includes supporting their aspirations to achieve in further and higher education.
- 3.101. The 1989 Act places a duty on local authorities to promote the educational achievement of looked after children. This duty is set out in statutory guidance.<sup>12</sup> The authority must give particular attention to the educational implications of any decision about the welfare of a looked after child. (The duty to promote educational achievement does not apply to children receiving short breaks, as in those cases the responsibility rests with the parent (regulation 42)).
- 3.102. Continuity of education through avoiding changes of school can be a major factor in ensuring that children have the best opportunities to achieve. When placing a child the responsible authority is under a duty to ensure, so far as reasonably practicable in all the circumstances, that the placement does not disrupt the child's education or training.<sup>13</sup> Local authority fostering services therefore need to ensure that they recruit sufficient foster carers in locations which mean that school placements can be maintained wherever possible, unless the responsible authority has commissioned suitable placements from fostering agencies to meet such needs.
- 3.103. Fostering services must promote the educational achievement of children placed with foster carers (regulation 16 and standard 8). Whilst this duty does not apply in respect of children in short break care, foster carers should be mindful of the need to support parents in this task. Fostering services must have written education policies which set out how foster carers are supported to help ensure that children reach their full educational potential throughout their childhood and

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<sup>12</sup> Promoting the Educational Achievement of Looked After Children: statutory guidance for local authorities, DCSF March 2010

<sup>13</sup> Children Act 1989 s.22C(7) and (8)(b), inserted by the Children and Young Persons Act 2008

the transition to adulthood.

- 3.104. Foster carers and staff of the fostering service must be provided with the information and training necessary to ensure that they understand the particular challenges which looked after children face in fulfilling their maximum educational potential, and their role in helping to overcome these. They will require sufficient understanding of the education system to advocate on behalf of a child, to be the “pushy parent” where the child may be experiencing difficulties in their educational setting.
- 3.105. Foster carers should understand that supporting looked after children to attend school regularly and succeed in education are primary tasks. Such support includes, for example, helping the child with their homework and attending parent meetings where appropriate. They should be fully involved in educational planning, and consulted to establish what help they need in supporting the educational success of the children and young people for whom they care.
- 3.106. The child’s care plan, through the Personal Education Plan (PEP), will identify what needs to happen for a looked after child to enable them to fulfil their potential, and should reflect any other education plans such as a statement of special educational needs or Individual Education Plan (IEP). Foster carers must be given a clear understanding of the local authority’s educational aspirations for the child and of the child’s own aspirations, and be a source of regular support to encourage the child’s success in and out of school. They should be fully involved in educational planning for the children they foster, where appropriate alongside the child’s own parents. This will include attending any meeting held to draw up or review a PEP, or otherwise ensuring that their views are taken into account.
- 3.107. The governing bodies of all maintained schools and academies are required to appoint a designated teacher to promote the educational achievement of looked after children who are on the school roll.<sup>14</sup> The role of the designated teacher is set out in statutory guidance.<sup>15</sup> The designated teacher will ensure that there is a central point of initial contact within the school in relation to the education of looked after children, and that the school works closely with foster carers, social workers and other professionals to promote the child’s educational achievement. This includes making sure that school policies, such as timekeeping, homework and parents’ meetings, are communicated to foster carers. In this way, foster carers will be able to participate fully in supporting the school to meet the child’s educational needs.
- 3.108. Foster carers should be clear, in relation to each placement, what level of decision making has been delegated to them in relation to the child’s education, such as whether or not they are authorised to sign permission slips for school trips and activities (see also section on delegated authority).
- 3.109. The fostering service must support the responsible authority, in partnership with the foster carer, to draw up a placement plan for the child which identifies the foster carer’s role in supporting educational achievement. This will usually include day to day liaison with the child’s school, including attendance at parents’

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<sup>14</sup> The Designated Teacher (Looked After Pupils etc) (England) Regulations 2009

<sup>15</sup> The role and responsibilities of the designated teacher for looked after children: Statutory guidance for school governing bodies, DCSF 2009

meetings and responding to routine matters in accordance with arrangements for delegated authority to foster carers. In essence responsible authorities, fostering services and foster carers should so far as possible do everything to support a looked after child's education that they would if the child were their own.

- 3.110. Fostering services and foster carers must work with the responsible authority to ensure that suitable arrangements are in place for monitoring school attendance and educational progress and achievement. Foster carers should be expected to notify the child's school of the reasons for any absences on the first day of such absence and, as with any child, should avoid taking a looked after child out of school during term time for holidays unless there are exceptional reasons for doing so. This must always be in consultation with the child's social worker and head teacher.
- 3.111. Fostering services must ensure that foster carers are provided with all the information, support and equipment they need to fulfil their role in promoting educational achievement. Policies covering the payment of fostering allowances must make clear which costs carers are expected to meet from the allowance and any additional payments which may be available, such as for specialist equipment or extra-curricular activities.<sup>16</sup>
- 3.112. Fostering services must ensure that foster homes provide suitable facilities for completion of homework, and that private study and reading support is valued by foster carers. Children should have access to a computer which may be used to support their education.
- 3.113. Early years provision can play an important part in helping young children to develop normal skills, and foster carers should be given maximum support to take advantage of a pre-school place where this is identified in the care plan or early years PEP.
- 3.114. For young people making the transition to adulthood, the PEP will be maintained as part of the preparation and review of the pathway plan, and will identify the foster carer's role in supporting them through further or higher education, training or employment. This may include arrangements to fund a bed for the young person to return to during vacations if they are being educated away from the area of their foster home. The fostering service may support former foster carers to enable them to continue to work with young people beyond the age of 18.

## **Leisure activity**

- 3.115. Looked after children, like all children, need access to a wide range of positive activities to help them to achieve success. Foster carers should be encouraged and supported to enable children to take part in activities such as sports, cubs and scouts, brownies and guides, drama groups, youth clubs and volunteering. The activities from which children will derive enjoyment and satisfaction will vary with the individual, but such experiences will be important in giving children a personal sense of achievement (standard 7).

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<sup>16</sup> See also section on 'supporting foster carers'



3.116. Fostering services should work with other local authority departments and organisations to maximise opportunities for looked after children to make use of local facilities, such as negotiating free or subsidised passes to leisure centres for foster families, including foster children and foster carers' own children.

3.117. Fostering services should encourage staff and foster carers to recognise the wide range of personal achievements of looked after children, and to celebrate these achievements individually and collectively.

## **Promoting independence and the transition to adulthood**

3.118. As part of their duties towards looked after children under the 1989 Act, local authorities, like any reasonable parent, should ensure that they support their young people as they move towards adult life and prepare to move into independence and, when the time is right, leave care. Children and young people should be cared for in a way which helps them to do this, so they can reach their potential and achieve economic wellbeing.

3.119. Volume 2 sets out the requirements that responsible authorities must follow to ensure that looked after children are properly prepared and ready for the time when they are no longer looked after. Foster carers play a key part in this. The primary expectation is that the transition into adulthood of a looked after young person is fully supported, practically, financially and emotionally (standard 12). One of the ways in which some local authorities demonstrate their corporate parenting responsibility in this respect is for looked after children to have savings accounts in the same way that many parents save for their child.

3.120. The Children (Leaving Care) Act 2000, as amended by the 2008 Act, sets out the local authority's duties in relation to supporting young people through the transition to adulthood and this is accompanied by the Care Leavers (England) Regulations 2010. Volume 3 provides statutory guidance relating to these duties.<sup>17</sup>

3.121. Under that guidance young people who are looked after must, as they move towards adulthood, be provided with a personal adviser (PA) who should act as a focal point for planning the transition to adulthood so that they are encouraged to develop the skills and resilience they will need to achieve their aspirations. Whilst it is the local authority's responsibility to appoint a PA they feel has the abilities necessary to undertake this role to it may be that the young person would rather aspects of the role be undertaken by their foster carer or former foster carer. It would then be for the local authority to decide the suitability of an individual for the PA role and any appropriate remuneration for this role.

3.122. The individual transition process will be set out in the young person's pathway plan, and the person drawing this up must consult with the foster carer where the young person is in foster care. The foster carer should also liaise with the young person's social worker and the Independent Reviewing Officer about the young person's progress and readiness to move on into greater

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<sup>17</sup> *The Children Act 1989 Guidance and Regulations Volume 3: Planning Transition to Adulthood for Care Leavers, 2010*

independence.

- 3.123. Throughout their time with foster carers, children and young people should be given age appropriate opportunities to learn the skills that they need to ensure they develop self-esteem and a positive sense of their personal identity, and are prepared for adult life. As young people approach adulthood, foster carers should increasingly help to prepare them for moving into the world of work, further and higher education and training, and to develop their financial skills, capability and knowledge. They should be supported to understand how to manage the practicalities of a home and personal care, as well as understanding their sexuality and forming positive social and sexual relationships and developing responsible behaviour.
- 3.124. No young person under 18 should have to leave care before they feel ready to do so. When they do leave the foster home for greater independence, it will usually be appropriate for the foster carer to remain in contact with the young person for a period of time and to offer appropriate support, as would a good parent. This will help the young person to feel valued and avoid feeling isolated.
- 3.125. For young people with a stable foster placement, continuing to live in their former foster home under a “Staying Put” arrangement can offer a transition to independence closer to that experienced by most other young people. Local authorities should develop Staying Put policies that provide foster carers and young people with information and guidance regarding all aspects of continuing living arrangements beyond the young person’s 18<sup>th</sup> birthday, including criteria for continuing these arrangements beyond 18 and financial and support arrangements. Such arrangements are not covered by the 2011 Regulations but fostering services should have a policy covering Staying Put arrangements and the assessment process for foster carers should prepare them for the possibility of continuing to provide support to young people beyond the age of 18. Additional information is set out in the relevant statutory guidance.<sup>18</sup>

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<sup>18</sup> Volume 3, paragraphs 7.19 – 7.22

## **Chapter 4 - Management and staffing of the fostering service**

### **Statement of purpose and children's guide**

- 4.1. The fostering service must compile a Statement of Purpose, which sets out the aims and objectives of the service as a whole, and the services, and facilities which are provided (including the provision of any “parent and child arrangements”). The statement must be reviewed and updated as necessary, but at least annually and published on the provider's website (if they have one), with a copy provided to Ofsted. Copies must also be made available upon request to anyone working for the purposes of the fostering service, any foster carer or potential foster carer of the service, and to any child placed with one of the service's foster carers and their parents (regulations 3 and 4 and standard 16).
- 4.2. The Statement of Purpose is a key document which sets a framework for all of the business of the fostering service. It must be consistent with relevant legislation, Regulations, NMS and statutory guidance, be child focused and show how the fostering service will help children achieve positive outcomes. The manager of the fostering service must ensure that the service is at all times conducted in a manner consistent with the Statement of Purpose.
- 4.3. The fostering service must also compile a Children's Guide to the fostering service, the details of which are set out in standard 16. It must be produced in a format which is appropriate to the age, understanding and communication needs of children who may be fostered by the service. In practice this means that it may be necessary to produce several versions of the guide, aimed at different age groups and including formats accessible to those with learning or communication difficulties.
- 4.4. The Children's Guide must also be reviewed annually. Subject to age and understanding, a copy of the appropriate Guide must be sent to every child placed by the fostering service. A copy of the Children's Guide must be sent to Ofsted, and to all of the service's foster carers.

### **The manager of the service**

- 4.5. A local authority must appoint one of its officers to manage its fostering service, and notify Ofsted of the appointment and any subsequent changes of manager (regulation 10 and standard 17). Unlike the registered manager of a fostering agency, the manager of a local authority fostering service does not have to go through a registration process with Ofsted under the 2000 Act. However, the same conditions apply in relation to the

- 4.6. Regulations 7-10 set out the requirements relating to the manager of the fostering service. He or she must be fit to do so, which means being of integrity and good character and physically and mentally fit, and possessing the qualifications, skills and experience necessary for managing the service. The person will not be judged as fit in this context unless full and satisfactory information regarding them is kept on file, and available for inspection by Ofsted, including the information set out in Schedule 1 to the Regulations. The NMS set out the skills, experience and qualifications expected of managers of fostering services (standard 17).
- 4.7. The manager must run the fostering service ethically, effectively and efficiently to ensure delivery of a good quality service which meets the needs of children and foster carers, and ensures that children placed are safeguarded and their welfare is promoted (standard 25). The manager must undertake training to ensure that he or she acquires and retains the necessary skills and experience to carry out the job.
- 4.8. Regulation 35 requires the registered manager of a fostering agency to have systems in place to monitor the quality of care provided and to improve the quality of care. Whilst this duty does not apply to local authority fostering services, the manager of such a service will nevertheless need to use information about the quality of care they provide to drive service improvements. Regulation 36 and schedule 7 identify occurrences which a fostering agency must notify to Ofsted, the responsible authority or other bodies. Similarly, these are matters of which the manager of a local authority fostering service will need to be aware and notify others as appropriate (standard 29).
- 4.9. If the manager is convicted of any criminal offence, wherever it is committed, Ofsted must be informed in writing of the date and place of the conviction, the offence of which he was convicted and the penalty imposed. A motoring offence dealt with by way of a fixed penalty notice does not need to be notified to Ofsted, for example if someone commits a minor traffic offence, e.g. not wearing a seatbelt, they can be given a fixed penalty notice and if they pay the fine there is no prosecution and no record of the offence (regulations 9 and 10).

## **Employment of staff**

- 4.10. The fostering service must be staffed with sufficient numbers of suitably qualified, competent and experienced people, taking account of the size of the service and the needs of the children placed. All staff must be fit to work in the fostering service, and the same conditions apply, including the information to be kept regarding members of staff, as outlined in the previous section in relation to service managers (regulations 19 and 20 and standard 19).

- 4.11. The fostering service must not allow a person who is employed by somebody other than the fostering service, but who in the course of their duties may have regular access to children placed by the fostering service, to work for the fostering service unless they are fit to do so according to the criteria applicable to staff directly employed by the service. Reasonable steps must be taken to ensure that any other person working for the fostering service, but not employed by the service, is appropriately supervised during the course of their duties.
- 4.12. Fostering services will wish to make full use of the talents, skills and experiences of their foster carers and members of the fostering household, for instance in delivering training or mentoring or otherwise supporting other foster carers. In considering the suitability of one of its approved foster carers or a member of their household to also work for the fostering service, care must be taken to avoid any actual or perceived conflict of interest or negative impact on foster children, in the same way that any employer needs to be mindful of a conflict of interest within their organisation. For instance, the person may have access to records or may be in a position to influence a placement or approval decision. A conflict may also arise when employing a foster carer elsewhere within the wider organisation if they might have inappropriate influence over matters relating to their fostering task.
- 4.13. Staff of the fostering service are subject to CRB checks and any requirements under the Safeguarding Vulnerable Groups Act 2006.
- 4.14. All employees must be given a job description outlining their duties, and appointments must be made subject to satisfactory completion of a probationary period. The fostering service's disciplinary procedure must address situations when staff place the safety or welfare of children at risk, or fail to promptly refer any concerns of actual or suspected abuse of a child living with a foster carer to an appropriate person, as defined by regulation 21.
- 4.15. All staff of the fostering service must receive appropriate training, supervision and appraisal, and be able from time to time to obtain further qualifications appropriate to their role set out in regulation 21 and standards 23 and 24. The service must have a good quality and comprehensive learning and development programme for staff, volunteers and panel members, including the Children's Workforce Development Council's induction standards. The details are set out in standard 23.

## Chapter 5 – Approving and supporting foster carers

### Constituting fostering panels

- 5.1. A fostering service must constitute one or more fostering panels, as needed, with sufficient capacity to undertake the required duties of such panels.<sup>19</sup> A fostering panel may be constituted jointly by any two or more fostering service providers, whether local authority or independent. Constitution and membership of panels are set out in regulations 23 and 24 and standard 14.
- 5.2. Fostering panels are intended as multi-disciplinary bodies with a considerable element of independence from the fostering service. This independence means that they cannot themselves make decisions, which are the responsibility of the fostering service, but instead make recommendations in relation to their statutory functions listed below. Decisions are made by the fostering service, through its decision-maker, after taking into account the panel's recommendations (and any recommendation by the independent review mechanism (IRM) – section below on IRM). Panels thereby play an important quality assurance role, providing objectivity and having the ability to challenge practice which is felt to fall short of the Regulations or NMS, or not to be in the interests of children. Panels are required to give regular feedback to the fostering service.
- 5.3. The statutory functions of a fostering panel, found in regulation 25, are to:
- consider applications for approval and to recommend whether or not a person is suitable to act as a foster carer, and if so the terms on which they should be approved (e.g. number and age of children to be placed);
  - consider the first review of newly approved foster carers, and any subsequent reviews referred to it by the fostering service, and recommend whether or not the foster carers remain suitable to act as such, and if the terms of their approval remain appropriate;
  - oversee the conduct of assessments carried out by the fostering service;
  - advise on, and monitor the effectiveness of, the procedures for undertaking reviews of foster carers; and

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<sup>19</sup> Regulation 45 provides that a fostering panel established under the Fostering Services Regulations 2002, which is carrying out the functions of a fostering panel on 1 April 2011 (when the 2011 Regulations come into force), may continue to carry out the functions of a panel under the 2011 Regulations in relation to any case referred to it before that date.

- give advice and make recommendations on any other matters or cases referred to the panel by the fostering service.
- 5.4. There is no requirement for a fostering panel to have a fixed membership, although the ability of the panel to function cohesively and with a level of consistency must be taken into account. This may best be achieved by having at least a core membership. Panel members must however be drawn from a central list maintained by the fostering service of people who have the appropriate qualifications and/or experience to serve as panel members. There is no limit on the number of people who may be included on the list. Having a pool of people with different skills, experience and qualifications allows for the most appropriate members to be drawn upon to consider individual cases and reduces the likelihood of panel meetings having to be postponed, whilst retaining knowledgeable and experienced members without the need to wait for a vacancy to occur to appoint a new member to the list.
- 5.5. In the case of a joint panel, appointment of members must be by agreement between all the providers who constituted the panel.
- 5.6. Subject to each meeting being quorum, it is for the fostering service to decide how many panel members should be present at each panel meeting. There is no limit set on the number of people who may be appointed to a panel, but a panel should not be so large as to make it difficult to chair a meeting of the panel or intimidating to prospective foster carers or anyone else attending the meeting.
- 5.7. The central list of potential panel members must include at least one social worker with a minimum of three years relevant post qualifying experience. Relevant experience should be in child care social work, including direct experience of fostering either within a fostering service or in placing and supervising children in foster care. Given the nature of the work of the panel, a social worker member would be expected to demonstrate an understanding of current legislation, policy and good practice in relation to fostering matters, and to advise the panel accordingly. Subject to the proviso that a member of a fostering panel must not also be involved in making the decision about a foster carer's approval, there is no requirement that a social worker who is a member of a fostering panel must, or must not, be employed by the fostering service.
- 5.8. The fostering service must ensure that the fostering panel has sufficient members, and that individual members have between them the experience and expertise necessary to effectively discharge the functions of the panel. As far as is practicable, panel membership should reflect the issues under consideration, and so should as appropriate include people with experience of fostering, education, short break care and family and friends care, be gender balanced and reflect the diversity of the local community. People who are, or have previously been, foster carers in

circumstances relevant to the matters being considered by the panel are likely to make a valuable contribution to the panel's discussion, as are their sons and daughters and people with experience of being in foster care themselves. The education and health of looked after children are also matters which are likely to feature in panel discussion, and where the panel will benefit from the contribution of people with particular expertise in these areas. Elected members, as representatives of the corporate parent, may also make a valuable contribution as panel members.

5.9. The fostering service must appoint one of the panel members to act as chair of the panel. Anyone appointed after 1 October 2011 as a panel chair must be someone who is independent of the fostering service, as defined by regulation 23(10)(a). In the case of a local authority fostering service this means that they must not be an elected member of the local authority, or someone who is employed within the fostering service or any other part of the authority in connection with making or providing placements or protection of children.<sup>20</sup> This would, for example, rule out one of the authority's residential care workers or social workers responsible for care planning, but not necessarily somebody employed within the education service. In the case of a fostering agency, the person is not independent if they are employed by, or are a trustee of, that fostering agency. In addition, for both local authority fostering services and fostering agencies, an individual is not independent if they are a foster carer approved by the fostering service.

5.10. The purpose of the requirement for an independent chair is to ensure that the panel may be seen to fulfil its quality assurance functions free of undue influence by the fostering service itself. Regulation 45 provides for transitional arrangements between the Fostering Services Regulations 2002 and the 2011 Regulations. If a panel exists before 1 April 2011, they can continue as they are, as if operating under the Fostering Services Regulations 2002, until cases referred to it prior to this date are concluded. If a panel is set up on or after 1 April 2011 it has to comply with the 2011 Regulations, except that a non-independent chair can be appointed in the period 1 April 2011 to 30 September 2011. In the case of a panel chair who was appointed during this period and who is not independent, as defined by regulation 23(10)(a), the service should make plans to introduce independent chairing arrangements at an appropriate opportunity.

5.11. The panel chair should have:

- a sound understanding of the fostering process;
- the authority and competence to chair the panel;
- the ability to analyse and explain complex information;
- the ability to identify key issues, problems and solutions;
- excellent interpersonal, oral and written communication skills.

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<sup>20</sup> However, relatives or household members of such persons may still be regarded as independent members unless disqualified in their own right.



- 5.12. The fostering service must also appoint either one or two vice chairs, being members of the fostering panel, who can act as chair if the regular chair is unable to chair a meeting or the office is vacant. There is no requirement to appoint a second vice chair, but this may sometimes assist to manage any unexpected absences of both the chair and vice chair. The Regulations do not allow for the appointment of more than two vice chairs. Unlike the panel chair, there is no requirement for the vice chair to be independent of the fostering service, though this would be preferable where feasible.
- 5.13. There is no prescribed maximum or minimum tenure, although the fostering service should plan and manage turnover in such a way that it avoids the need to replace a large proportion of the members in any one year. This may best be achieved through establishing clarity of role and reviewing appointments to panel and those who are included on the central list regularly. Equally the fostering service will need to be mindful of the need to have a certain level of turnover to provide for a fresh perspective.
- 5.14. Before appointing any panel member or including them on the central list, the fostering service should inform them in writing of their performance objectives, which should include participation in induction and training, and safeguarding the confidentiality of records and information submitted to the panel. Panel members should sign an acceptance form to record their agreement to these objectives.
- 5.15. Each panel member's performance, including that of the chair, should be reviewed annually against agreed performance objectives. The service's decision-maker should review the performance of the panel chair, and for this purpose may attend a proportion of panel meetings but only as an observer. Views about the chair's performance should be sought from other panel members and from those who attend panel meetings, such as prospective foster carers and social workers who present reports to the panel. For all other panel members, the panel chair should conduct the performance review.
- 5.16. Where a fostering service identifies that a panel member is not performing to the required standard, perhaps as part of the review process, it should ensure that this is discussed promptly with the panel member with the aim of addressing any development needs through advice and training. If, however, the panel member's performance remains below the required standard and the service considers that they are unsuitable to remain a panel member, they should be informed that their services are no longer required. The panel member must be given written notice of termination and should be provided with the reasons for this decision. In the case of a joint panel, the termination should be with the agreement of all the fostering service providers who established the panel.
- 5.17. A panel member or a person included on the central list may resign at any time by giving one month's notice in writing, although they should be

encouraged to give as much notice as possible. The fostering service provider may remove the person's name from the central list by giving one month's notice where they are of the opinion the person is unsuitable or unable to remain on the list. Where the service provider believes a current panel member is unsuitable or unable to continue as a panel member they may terminate the appointment at any time by giving the member notice in writing (this does not have to be one month's notice).

5.18. A fostering service may pay any member of its fostering panel a fee that it considers is a reasonable amount, as well as any expenses they incur in connection with attending panel meetings and related activity. Fees may be paid either as an annual fee or in proportion to the number of panel meetings that the member attends, and may take account of preparation time for panel meetings. Payment of a reasonable fee to the chair or any other member of a fostering panel does not in itself compromise independence.

## **Conduct of fostering panels**

5.19. Regulation 24 prescribes a quorum which must be met for a fostering panel to conduct any business. The quorum must always include:

- the chair or a vice chair;
- a social worker with three years relevant post-qualifying experience;
- at least three other members, or four in the case of a panel set up jointly by one or more service providers;
- in the event that the chair is not present, a member (who could be one of the people listed above) who is independent of the fostering service.

5.20. The person chairing the meeting should ensure that each member of the fostering panel is able to contribute meaningfully to discussion of panel business.

5.21. In considering whether or not a person is suitable to become or continue to be a foster carer, the fostering panel is required to take account of all the information passed to it, and may request any further information which it feels may assist in making a recommendation, including taking legal or medical advice. The fostering service must obtain any information which the panel feels necessary, and provide any other assistance the panel requests, so far as is reasonably practicable.

5.22. Applicants should be given the opportunity to be heard in person at a panel meeting which is considering their approval, and approved foster carers should be given the same opportunity to be heard when a panel is considering a review of their approval or other matter concerning their approval. Subject to the need to protect children and deal sensitively with third party information they should be able to read in advance any reports

concerning them which are being presented to the panel, and to make any further written submission themselves.

- 5.23. The panel must pass its recommendations on to the decision maker for a decision to be made on behalf of the fostering service. Since no member of the fostering panel is permitted to take part in deciding to approve a person as a foster carer, the panel chair will not be in a position to discuss the case with the decision maker and the recommendations should be passed on by way of the written minutes of the panel meeting, setting out the main points of discussion and reasons for the recommendation. Staff of the fostering service who are involved in decision making about approval of carers, such as supervising social workers and team managers, can not be involved in a decision to approve a foster carer if they are on a panel.
- 5.24. A fostering panel may obtain any legal or medical advice it considers necessary in relation to its business, so far as this is reasonably practicable. This is best provided by the identification of a named medical adviser and legal adviser to the panel, who might also be shared with an adoption panel or another fostering panel. Such advisers are not required to be members of the fostering panel (although they may be) and may supply information either in writing or by attending panel meetings, as required.
- 5.25. The panel must keep written minutes of its business, including the reasons for recommendations made. It is important that these are full and accurate so that the fostering service is clear about matters discussed and the reasoning behind recommendations, as they will form the basis of decision making by the fostering service.

## **Recruitment, assessment and approval of foster carers**

- 5.26. The local authority fostering service will wish primarily to recruit foster carers who live within the area of the local authority. Responsible authorities are required to provide accommodation for looked after children within the local authority's area unless that is not practically possible.<sup>21</sup> A local authority is required under section 22G of the 1989 Act<sup>22</sup> to take steps to secure, so far as is reasonably practicable, sufficient accommodation to meet the needs of looked after children in their local authority area, otherwise known as the 'sufficiency duty'. Statutory guidance<sup>23</sup> has been issued which explains the sufficiency duty.

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<sup>21</sup> Children Act 1989 section 22C(9), as inserted by the Children and Young Person's Act 2008

<sup>22</sup> Children Act 1989 section 22G, as inserted by Section 9 of the Children and Young Person's Act 2008

<sup>23</sup> *Securing Sufficient Accommodation for Looked After Children*, DCSF 2010

- 5.27. These requirements are designed to ensure that the majority of looked after children are placed in or close to their own families, schools and communities, although this may not be appropriate for some children and young people for a range of reasons including safeguarding considerations. This requires a strategic approach to delivering sufficient placements based on a sound analysis of the needs of children and young people who are, or who might become, looked after.
- 5.28. The fostering service must aim to recruit sufficient foster carers to meet the needs of the children for whom they provide care. Local authorities will differ in the arrangements they make for commissioning foster care services from a range of providers. The manager of the local authority fostering service must be proactive in assessing the current and likely future needs of the children for whom placements are requested. This will inform the recruitment strategy of the service (standard 13).
- 5.29. No one has a right to be a foster carer, and fostering decisions must focus on the interests of the child. Where an assessment is undertaken of a person who applies to become a foster carer, regulation 26 prescribes how the assessment must be carried out and requires the fostering service to:
- obtain the information specified in Schedule 3 of the Regulations;
  - interview at least two personal referees, and prepare written reports of the interviews; and
  - consult the local authority in whose area the applicant lives, if this is different to the fostering service.
- 5.30. This information must be taken into account in considering the suitability of the applicant to become a foster carer and the suitability of their household, and be included in the report to panel along with the recommendations regarding approval. There are no specific requirements regarding the way this information must be collected. Where someone who has previously been approved as a foster carer wishes to become approved by another service provider, the new provider may take account of information obtained by the original provider so long as they are satisfied as to its quality and continuing relevance. For instance, if previous partners or past employers have been interviewed in the past to verify facts and the new service is satisfied with the records in respect of these interviews, it should not be necessary to repeat the interviews if no further information is required.
- 5.31. The Regulations refer only to approval of individuals. Where two people will be sharing the care of a child, whether they be a couple or any other partnership, they should be jointly assessed and approved as foster carers. Where a single foster carer takes a partner who will be sharing the care of any foster children, they must discuss this with their supervising social worker so that agreement can be reached about the best way to update their assessment and to assess the partner for approval as a foster

carer within an appropriate timescale.

- 5.32. The assessment must be completed and a written report presented to the fostering panel before approving anyone as a foster carer. This should be undertaken within a timescale which allows the fostering panel to make a recommendation on approval within eight months of the application to be assessed.
- 5.33. Subject to the next paragraph, nobody may be approved as a foster carer if they have been cautioned for, or convicted of, a specified offence, unless they were under the age of 18 at the time of the offence. Regulation 26 explains what is meant by a specified offence.
- 5.34. Regulation 26(8) allows the fostering service to consider the approval or continuing suitability of a foster carer for a particular child, even though they would have been debarred by regulation 26(5) or (7), if they or a member of their household are related to the child, or they are already acting as a foster carer for the child, providing the responsible authority is satisfied that the child's welfare requires it.
- 5.35. In considering an application by someone (or a member of their household) who is employed by the fostering service or the wider organisation, care must be taken to avoid a conflict of interest.
- 5.36. In considering whether a relative, friend or other connected person should be approved as a foster carer, account must be taken of the needs of the child who would be placed with them and the capacity of the carer to meet those particular needs (standard 30). When a foster carer is being approved for a specific child only, there is no need to consider their suitability to care for other children. This is explained further in the statutory guidance on family and friends care.<sup>24</sup>
- 5.37. Once a foster carer has been approved by a fostering service or fostering agency, they cannot be approved by another service or agency until their original approval has been terminated.
- 5.38. Upon approval, foster carers should be issued with an agreed form of identity by the fostering service to enable their role as a foster carer to be verified.

## **The decision maker**

- 5.39. The fostering service must identify a senior member of staff (usually referred to as the decision maker) who will receive the panel's recommendations and make decisions as required. More than one decision maker may be appointed, but they may not delegate their authority to another person. Standard 23 sets out the qualifications,

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<sup>24</sup> Family and Friends Care: Statutory Guidance for Local Authorities 2011

knowledge and experience required of the decision maker. Regulation 27 requires that the decision maker must take account of the fostering panel's recommendation and any recommendation by the IRM before deciding whether or not to approve a person as a foster carer, and on what terms. Their decision must be made within seven working days of receipt of the panel's recommendation via the minutes (standard 14).

5.40. In reaching a decision or making a qualifying determination, the decision maker should consider *Hofstetter v LB Barnet and IRM* [2009] EWCA 328 (Admin), in which the court set out guidance for the way in which an adoption agency decision maker should approach a case, whether it is a decision based on the agency panel's recommendation or the independent review panel's recommendation. This applies equally to fostering decision makers. The court said that it would be good discipline and appropriate for the decision maker to:

- list the material taken into account in reaching the decision;
- identify key arguments;
- consider whether they agree with the process and approach of the relevant panel(s) and are satisfied as to its fairness and that the panel(s) has properly addressed the arguments;
- consider whether any additional information now available to them that was not before the panel has an impact on its reasons or recommendation;
- identify the reasons given for the relevant recommendation that they do or do not wish to adopt; and
- state (a) the adopted reasons by cross reference or otherwise and (b) any further reasons for their decision.

5.41. Once a foster carer is approved, they must be notified in writing of this fact and of any terms of the approval. Terms may specify, for instance, that they may foster only a specific named child or children, or may identify a maximum number of placements which may be made at any one time or an age range for children fostered. Terms may also include factors such as short term or long term placements, short break care, or inclusion in a particular fostering scheme. Foster carers must also enter into a foster care agreement, covering the matters set out in Schedule 5 to the Regulations (regulation 2 and standard 14).

## **Independent Review Mechanism**

5.42. Particular requirements apply in circumstances where the fostering service considers that an applicant is unsuitable to be a foster carer or that the foster carer's terms of approval should be changed. The applicant must be given a written determination - a notice that the decision maker proposes not to approve them as a foster carer or to amend their terms of approval, together with the reasons for this and, where the fostering panel

made a recommendation, a copy of this. This is defined as a qualifying determination by section 4 of the Independent Review of Determinations (Adoption and Fostering) Regulations 2009. The applicant must be advised that they may, within 28 days of the date of the notice, either submit written representations to the decision maker, or apply to the Secretary of State for a review of the determination by the Independent Review Mechanism (IRM). The option to apply to the IRM does not apply if the applicant is considered unsuitable in accordance with regulation 27(6).

5.43. If within 28 days no representations are received and no application is made to the IRM, the decision maker is free to determine whether or not to approve the applicant as a foster carer. If however representations are received, the matter must be referred back to the fostering panel, and a decision then made taking account of the panel's further recommendations.

5.44. If the application is referred to the IRM, the fostering service must, within 10 days of notification of this, supply the IRM with the documentation submitted to the fostering panel and any relevant information received subsequently, along with copies of the notices of determination (regulation 29). The decision maker must take account of the recommendation of the IRM, as well as that of the original fostering panel, in reaching a decision about approval.

## **Approval of people living overseas**

5.45. In the event that a fostering service approves a person living outside of England and Wales as a foster carer, the responsible authority must take steps to ensure, as far as is practicable, that the requirements imposed on the placement mirror those that would have applied if the child or young person had been placed in England.<sup>25</sup> Such circumstances will be exceptional, but may arise if a "connected person" to a looked after child comes forward as a potential foster carer.

## **The usual fostering limit**

5.46. Schedule 7 to the Children Act 1989 limits the number of children who may be fostered by a foster carer. The "usual fostering limit" is set at three. This means that no one may foster more than three children unless:

- the foster children are all siblings in relation to each other (in which case there is no upper limit), or
- the local authority within whose area the foster carer lives exempts the foster carer from the usual fostering limit in relation to specific placements (in which case they must set out the terms as detailed below).

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<sup>25</sup> Regulation 12 of the 2010 Regulations

- 5.47. A local authority cannot grant an exemption to the usual fostering limit to a foster carer living outside of its area.
- 5.48. In considering whether to exempt a person from the usual fostering limit, a local authority must have regard, in particular, to:
- the number of children whom the person proposes to foster;
  - the arrangements which the person proposes for the care and accommodation of the fostered children;
  - the intended and likely relationship between the person and the fostered children;
  - the period of time for which s/he proposes to foster the children; and
  - whether the welfare of the fostered children (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted.
- 5.49. Where a local authority exempts a person from the usual fostering limit, it must inform the foster carer by notice in writing:
- that s/he is exempted;
  - of the children, described by name, whom s/he may foster; and
  - of any condition to which the exemption is subject.
- 5.50. A local authority may at any time, by notice in writing, vary or cancel an exemption or impose, vary or cancel a condition to which the exemption is subject. In considering whether to do so, it must have regard in particular to the considerations in relation to granting an exemption, as set out above. It should also consider how it will review any exemption to the usual fostering limit. Local authorities are required to have a representations and complaints procedure in place in respect of these functions.
- 5.51. The local authority should nominate an officer with delegated powers to grant exemptions from the usual fostering limit, and ensure that fostering services and agencies operating within the area are aware of the procedures to be followed in requesting such exemptions. Since the consequences of decisions in relation to exemptions from the usual fostering limit may be for children who are looked after by other local authorities and foster carers who are approved by fostering agencies, it is particularly important that decision-making should be both transparent and consistent. Local authorities may find it helpful to develop decision-making protocols between themselves and fostering agencies.
- 5.52. A person who either exceeds the usual fostering limit, or if exempted from the limit fosters a child who is not named in the exemption, is regarded as carrying on a children's home for the purposes of the 1989 Act and the Care Standards Act 2000, and so needs to be registered as



such with Ofsted.

- 5.53. A child who is not looked after does not count towards the usual fostering limit. Nevertheless the needs of all children within the household must be taken into account in deciding whether to grant an exemption from the usual fostering limit. This will be pertinent, for instance, if the foster carer is also offering parent and child arrangements.

## **Temporary approval of a connected person as a foster carer**

- 5.54. There will be circumstances where the most appropriate placement for a child is with a relative, friend or other person with a prior connection to the child, in accordance with regulations 24 and 25 of the 2010 Regulations. A 'connected person' means a relative (defined in section 105 of the 1989 Act, as a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent), friend or other person connected with the looked after child. If the need for such a placement is urgent and it is not possible to fulfil all the requirements of the 2011 Regulations in approving the connected person as a foster carer before placing the child, regulations 24 and 25 of the 2010 Regulations set out the arrangements for the temporary approval of a connected person as a foster carer to allow an immediate placement. Guidance on temporary approvals as foster carers is given in the related statutory guidance.<sup>26</sup> A connected person who is approved as a foster carer is often referred to as a family and friends foster carer<sup>27</sup>.
- 5.55. Regulation 24(1) of the 2010 Regulations makes clear that, subject to the successful completion of the assessment/checks set out in regulation 24(2), the connected person may be approved as a local authority foster carer for a period not exceeding 16 weeks. This period has been set to allow a sufficient time for the full approval process to be undertaken, including any criminal record checks required.
- 5.56. Regulation 25 of the 2010 Regulations sets out the circumstances in which, exceptionally, the period of temporary approval may be extended. These circumstances are either where the approval process has taken longer than anticipated, and in these circumstances the temporary approval may be extended for a further 8 weeks, or where the connected person has not been approved following the assessment process and seeks a review of the decision through the IRM. In the latter circumstances the temporary approval will continue until the outcome of the review is known.

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<sup>26</sup> Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review, DCSF 2010.

<sup>27</sup> Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review, DCSF 2010.

5.57. There is no right to review by the IRM of a person who is temporarily approved under the 2010 Regulations if the fostering service decides not to undertake a full assessment under the 2011 Regulations and the child's placement is ended.

5.58. These regulations are intended to be used exceptionally and in circumstances which could not easily have been foreseen, when it is not possible to undertake a full foster carer assessment prior to placement. The power is to be used most usefully where it is clearly in the child's interest to be placed with or remain in the care of a familiar figure in reassuring surroundings. Before making such a placement, the authority should satisfy itself as to the reasons for the carers coming forward to offer a placement, and that there is no obvious barrier to undertaking a foster carer assessment under the 2011 Regulations.

## **Reviews and terminations of approval of foster carers**

5.59. A foster carer may at any point give written notice that they wish to resign from the role, in which case their approval is automatically terminated 28 days after receipt of the notice by the fostering service (regulation 28(13)). The decision-maker does not have the power to decline a resignation as this takes effect automatically after 28 days, but this need not prevent the fostering service from forming a view about the person's future suitability to be a foster carer. Once a foster carer has resigned the fostering service has no responsibility to confirm resignation through panel, although it may be helpful to notify the panel to inform its monitoring role.

5.60. Approval of all foster carers must be reviewed within a year of approval, and thereafter whenever felt necessary, but at least annually. The review must consider whether the foster carer and their household continue to be suitable. The fostering service must make whatever enquiries it considers necessary to inform this judgement which may include checks in relation to any new members of the household. Specifically, it must take into account the views of the foster carer, any child placed and the responsible authority for any child who has been in placement during the previous year. In practice, the latter will mean obtaining the views of the social worker for any child in placement since the last review (regulation 28).

5.61. A written report of the review must be prepared, and in the case of the first review this must be presented to the fostering panel for a recommendation. If it is decided, taking account of any recommendation from the fostering panel if applicable, that the foster carer and their household continue to be suitable, then the foster carer must be notified in writing.

5.62. If the fostering service is of the view that the foster carer and their household are no longer suitable, or that the terms of approval should be amended, he must issue a determination and follow the procedures

referred to in the section on the Independent Review Mechanism, above, before making a decision.

- 5.63. If a foster carer's approval is terminated, a copy of the notice must be sent to the responsible authority for any child placed by another local authority and to the relevant local authority if the foster carer lives outside the area of the fostering service.

## **Supporting foster carers**

- 5.64. Given the central role that foster carers play, as members of a wider team, in helping to safeguard vulnerable children and promoting good outcomes for them, it is essential that all foster carers receive high quality supervision and support. Regulation 17 requires the fostering service to provide foster carers with such training, advice, information and support (including support outside office hours), as appears necessary in the interests of children placed with them (standards 20 and 21).
- 5.65. Support which is effective in helping foster carers to meet the needs of children in placement includes practical, financial and emotional support, as well as training and the provision of information. The fostering service should provide support groups for foster carers and encourage participation in these, as well as in foster care associations and peer mentoring.
- 5.66. The service should have a policy setting out the way in which it supports foster carers by providing practical support such as additional support within the home or breaks from caring to enable placements to continue.
- 5.67. Every foster carer should be allocated an appropriately qualified social worker from the fostering service (the supervising social worker) who is responsible for overseeing the support they receive. It is the supervising social worker's role to supervise the foster carer's work, to ensure that they are meeting the child's needs, and to offer support and a framework to assess the foster carer's performance and develop their skills. They must make regular visits to the foster carer, including at least one unannounced visit a year.
- 5.68. The fostering service should also provide support to the sons and daughters of foster carers and other people living in the foster carer's household who play an important part in supporting children in placement.
- 5.69. Foster carers must be provided with comprehensive information about the policies and procedures of the fostering service, including those relating to the handling of allegations, and about the support which will be offered to them in their role.
- 5.70. Foster carers should be supported to maintain an ongoing training and development portfolio which demonstrates how they are meeting the skills

required of them. The foster carer must be able to evidence the Children's Workforce Development Council's Training, Support and Development Standards for Foster Care, within the timescales specified in standard 20. Fostering couples may evidence the Standards in one workbook.

- 5.71. It is essential that all foster carers are given clear information about the criteria for making financial payments to them, including allowances, fees and other expenses. Allowances must be sufficient to cover the full cost of caring for each child placed with them, and must be reviewed annually. The Government has put in place a National Minimum Fostering Allowance (adjusted annually) which is the very minimum that should be provided to a foster carer for each child placed. Criteria for calculating allowances must apply equally to all foster carers, whether or not they are related to the child or the placement is long or short term (standard 28).
- 5.72. The Government has published a good practice guide to foster carer payments systems which gives helpful guidance about financial support to foster carers.<sup>28</sup>
- 5.73. Fees are in addition to allowances and may be paid by fostering services to reflect the expertise and the nature of the tasks undertaken by a range of foster carers. Where fees are paid by a fostering service these must be payable to those on their register of foster carers who meet the criteria set out for the scheme, including short and long term carers and family and friends carers.

## Closure of fostering agencies

- 5.74. In the event that a fostering agency ceases to operate, and does not make an arrangement for another fostering agency or a local authority to take over its fostering service, then the local authority fostering service in whose area the closing agency is situated ("the new fostering service") will by default take over responsibility for the agency's approved foster carers. The new fostering service must, within 16 weeks of the date on which the old agency closes, carry out a new assessment of any foster carer for whom it has assumed responsibility, or else their approval will be terminated. In the event that the new fostering service undertakes an assessment but makes a qualifying determination regarding approval, the foster carers would have the right to make representations to the provider or apply to the IRM for a review (regulations 33 and 34).

## Record keeping

- 5.75. There should be explicit policies in place to enable foster carers and staff to keep clear records about children in placement and the work of foster carers with those children. Information recorded should be non-stigmatising and distinguish between fact and opinion. Children must be

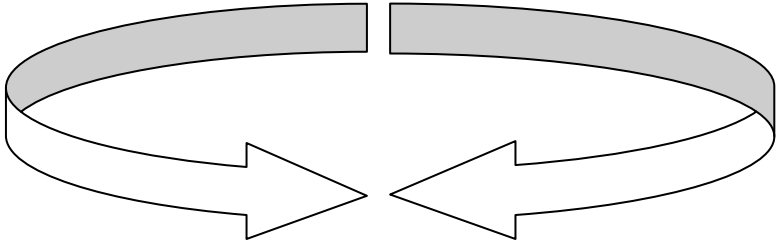
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<sup>28</sup> The National Minimum Allowance and Fostering Payment Systems: Good Practice Guidance, DfES July 2006

made aware of policies regarding their access to all records kept about them, whether by the foster carer or the fostering service itself.

- 5.76. A record must be kept in relation to each foster carer, covering the carer's assessment and approval, children placed, and other matters as set out in regulation 30. This includes foster carers who are temporarily approved under the 2010 Regulations. The records must be kept for at least 10 years after the foster carer's approval ends. There is also a requirement to keep records relating to people who do not go on to be approved as foster carers, and to retain these records for 3 years (regulation 32).
- 5.77. The fostering service must keep a register of foster carers, containing the information set out in regulation 31, and retain on this register information about foster carers for at least 10 years after their approval has ended. It must also keep a register of children placed with foster carers and include in it the information set out in Schedule 2 of the Regulations, and keep this for 15 years after the date of the last entry (regulation 22). They must also keep a register of foster carers, containing the information set out in regulation 31.
- 5.78. All records of the service must be kept under conditions of confidential and secure storage so as to prevent their loss or destruction (standards 26 and 27). Premises must be suitable to enable secure storage of records, both paper and electronic.
- 5.79. If a person who has previously been approved as a foster carer but has had their approval terminated (which includes as a result of their resignation) applies to another fostering service to become a foster carer, they may consent to that fostering service inspecting their previous fostering record (regulation 26). In such circumstances the service holding the record must comply with the request within 28 days (regulation 32(6)).

## Annex A: Relationship between legislation, guidance, standards and other material

<b>Primary legislation: (must do)</b>				
<b>Secondary legislation: (must do)</b>				
 <p style="text-align: center;"><b>Statutory Guidance (including local authority circulars) (must be complied with unless exceptional local reasons justify a variation)</b></p>				
<b>Volumes of Departmental and other Government practice advice (advisory 'may do' material)</b>		<b>Volumes of good practice guidance, (sector led) (available for practitioners to access or use as they wish)</b>		<b>National Minimum Standards (inform inspection of fostering services and regulation of independent fostering agencies)</b>
<b>Other forms of material that support good practice and high standards are set out below</b>				
<b>Local authority guidance and procedural manuals available for practitioners</b>	<b>Pilots and project evaluation reports and practice information available for practitioners</b>	<b>Research material and evidence base available for practitioners</b>	<b>Guidance material for children and young people to use available for practitioners</b>	<b>Validated case studies and good practice examples (sector led) available for practitioners</b>

# Key Definitions

## Regulations

1. These are also referred to as 'secondary legislation'. They are made under powers in primary legislation and include detailed requirements and statutory duties. They have the same status as the legislation under which they are made and contain legal requirements.
2. Those responsible for a specific service must comply with the Regulations relating to that specific service.
3. For those service providers who are registered to provide the services, breaches are punishable in law, including by being barred from providing the service in future.

## National minimum standards

4. These set out and describe the absolute minimum standards that govern the state's expectations about how a specific service should be provided. They describe physical standards, the level of quality of service and the way in which systems and processes should be organised. They also sometimes describe the way in which the staff providing the service should behave and what qualifications they should have. The NMS are underpinned by the 2011 Regulations and they help to flesh out the regulatory requirement. They are a minimum standard for providers, commissioners and users to judge the quality of a service. Inspectors must take them into account and use them as accurate descriptors when judging whether providers are compliant with regulations.
5. In addition, those subject to them and their staff may use the standards in the self-assessment of their services, to provide a basis for the induction and training of staff and as guidance on what is required when setting up a specific service.

## Statutory Guidance

6. This is guidance issued by the Government under a power in statute, for example under 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. The guidance must be complied with by local authorities when exercising these functions, unless local circumstances indicate exceptional reasons that justify a variation from them. If the latter is the case there should be clear records locally establishing what advice was sought and what the local circumstances that create exceptional circumstances are.
7. Statutory guidance should be seen as what a local authority '**must do**' over and above their compliance with primary and secondary legislation,

when they are delivering (or commissioning) specific functions or services relating to the specific type of statutory guidance.

## Non Statutory Government Advice

8. This is advice which is provided by the Government to assist local authorities and service providers to ensure they deliver services that are of a high quality. It covers things local authorities and service providers **'should do'**, as it is designed to help in meeting primary legislation, Regulations and guidance and to help ensure services are broadly consistent across the country. It allows for some flexibility of approach so that local circumstances can be taken into account when providing services.
9. It is intended to give useful advice and to answer the many questions that people have about how to interpret a particular regulation or piece of statutory guidance and how it should be applied.
10. Government practice guidance is also used to convey the policy intent of Government, so that the Government's desired outcomes can be understood and achieved for a specific service.
11. It is usually developed by the Government on the basis of advice from stakeholders in the specific field the guidance relates to, as well as legal advice. It often uses information from practice in the sector that is regarded as being of good quality, from evaluated or 'evidence based' practice and from research evidence.

## Practice Guidance

12. This is guidance produced by a wide range of organisations, agencies or professionals in a specific field to help those providing services to develop effective services that are both compliant and which deliver high quality outcomes for children, young people, their parents and carers.
13. This sort of guidance takes a very wide range of formats and styles and is designed for a wide range of purposes. It is sometimes based on research, or on evidence based practice.



## **Annex B: Parent and child arrangements**

### **Introduction**

1. A local authority sometimes wishes to commission an assessment of a parent's ability to safeguard and promote the welfare of his or her child, to inform its decision making about the provision of support services or intervention through care proceedings. Sometimes the court will request such an assessment within the framework of care proceedings. Most commonly these are arrangements for mothers and their babies.
2. Residential assessments may take place in residential family centres. A residential family centre is regulated under the Care Standards Act 2000 and the Residential Family Centres Regulations 2002. They are required to register with Ofsted and are subject to inspection by Ofsted, and to meet the National Minimum Standards for Residential Family Centres published by the Department of Health.
3. Residential family centres are defined as establishments where accommodation is provided for a child and their parents, the parents' capacity to respond to the child's needs and safeguard their welfare is monitored and assessed, and parents are given such advice, guidance or counselling as is considered necessary.
4. An increasingly common alternative to assessment in a residential family centre is the arrangement whereby children and their parents live with foster carers for the purposes of assessment. A foster carer's household is not an establishment, and so cannot be regarded as a residential family centre.
5. The sections below set out the different scenarios whereby arrangements may be made for a parent (or parents) and their child (or children) to live with foster carers for the purposes of an assessment. A foster carer is a person who has undergone checks and an assessment and has been approved as a foster parent by a local authority or an independent fostering provider.

### **A voluntary arrangement by the local authority where the child is not looked after**

6. Where a local authority wish to assess a parent's parenting capacity in the context of support provided to the child/family under section 17 of the Children Act 1989 or pre care proceedings, this would need to be with the agreement of the parent. The local authority may decide to make an arrangement with the family to live with a local authority foster carer to make the assessment, rather than to make use of a residential family centre.

7. Since in this case the child is not looked after by the local authority, none of the provisions of the Children Act 1989 relating to looked after children will apply, and the foster carer will not be acting in their capacity as a foster carer under the Fostering Services (England) Regulations 2011. In such a case the local authority will need to be satisfied that the arrangement is appropriate, in the sense that the foster carers have the necessary skills to participate in the assessment, and will not place at risk the welfare of any foster child who is placed in the household.

## **A voluntary placement by the local authority where the child is looked after**

8. In a situation where the child is looked after and the parents are 18 or older, the provisions relating to looked after children will apply in relation to the child only. The child will be placed with the foster carer under section 22 of the Children Act 1989, and the responsible authority will be under a duty to make the most appropriate placement available for both the parent and child. In making the placement it will therefore need to consider the skills and capacity of the foster carer, notwithstanding that the assessment of the parent's ability is not covered by the 2011 Regulations.
9. Although the child will be fostered by the foster carer, the child's parent or parents will also be living with the child in the foster carer's household. As the parent will not be a looked after child, the provisions in respect of looked after children will not apply to them, regardless of whether the parent is under 18 or is older or has previously been a looked after child.
10. In these circumstances the parent will still hold parental responsibility in respect of their child, and be living in the same household as the child's foster carer. It will therefore be vital that respective roles and arrangements for delegated authority are clarified when the arrangements are being made. These must be set out in the placement plan. The foster carer's task in relation to undertaking an assessment of the parent's capabilities will not be governed by the 2011 Regulations, but will be closely aligned with their responsibilities towards the looked after child.
11. The fostering service and the responsible authority will need to satisfy themselves that the proposed arrangements will not impact unduly on the foster carer's responsibilities towards other children. Any necessary support should be provided to enable the arrangements to succeed. As with any placement when another child is already placed with the foster carer, the responsible authority for that child would need to agree to the new arrangements.
12. For the purposes of the 2011 Regulations, a parent living with a foster carer in the above circumstances is a member of the foster carer's household. The fostering service's safeguarding policy must include a statement of measures to be taken to safeguard children placed with foster carers before any arrangements are made for a parent and child to join the household. The 2011 Regulations allow for CRB checks to be obtained but

there is no requirement for these to be undertaken as a prerequisite to the individual joining the household (regulation 26 and 28(3)).

## **A voluntary placement by the local authority where both the child and parent are looked after**

13. Where both the child and the parent are looked after the provisions relating to looked after children will apply to both. The duties in relation to section 22 of the 1989 Act, as outlined in paragraph 8, will apply in respect of the placements of both the child and the parent.

## **An arrangement directed by the courts where the child is looked after**

14. Where care proceedings are in progress, the court may require an assessment of the child and their parents.
15. If the child is subject to an interim care order under section 38(6) and the court directs a parenting assessment but leaves it up to the local authority how that assessment is organised, the local authority may decide that the parent and child will live with a foster carer for the purpose. This will be a placement of a looked after child by the local authority and so the placement will be governed by the 2011 Regulations.
16. Even if the court directs that an assessment be made by a foster carer, the placement will still be a local authority placement and the 2011 Regulations will apply.

## **Placement with Parents**

17. Children who are in care may also be placed with their parents (or someone else who has parental responsibility for them) under regulations 15 - 20 of the 2010 Regulations. While such children are looked after children and fall within the 2010 Regulations, they do not fall within the 2011 Regulations as they are not fostered children. This includes where a child is placed with their parents and the parents and that child then live with foster carers.

## **The usual fostering limit**

18. The usual fostering limit applies to the placement of looked after children, and so a parent who is living in a parent and child arrangement with a foster carer does not count towards that limit unless he or she is themselves a looked after child. However, the impact of the parent being within the household must be taken into account in considering the placement of any looked after children.

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