



## **Children's Social Care statutory guidance myth busting**

As part of the Department for Education's work with Partner in Practice local authorities, we have asked them to consider whether there are elements of statutory guidance that act as a barrier to good practice and outcomes for children and families.

In some instances, clarification of what is allowed within guidance has highlighted that the proposed new way of working, that was otherwise thought by the local authority to require a dispensation, is already permitted by the guidance. This has shed light on a number of areas of guidance that is either misunderstood or is perceived to limit local authorities from testing new ways of working. Some of this learning has informed revisions in *Working Together to Safeguard Children 2018*, where we have sought to make the guidance clearer, e.g. making it clear that family assessments of risk of harm faced by children are permissible as long as the unique needs of individual children are considered.

We have developed this short guide to clarify the relevant parts of statutory guidance.

Please note that all of the responses below have been agreed by the Department for Education and their lawyers in consultation with Ofsted.

### **Individual child assessments**

*'Can we use whole family assessments rather than individual assessments when there is more than one child referred to children's social care?'*

### **What does the guidance say?**

Working Together to Safeguard Children, 2018:

*'53. Every assessment should reflect the unique characteristics of the child within their family and community context. Each child whose referral has been accepted by children's social care should have their individual needs assessed including an analysis of the parental capacity to meet those needs whether they arise from issues within the family or within the wider community. Frequently more than one child from the same family is referred and siblings within the family should always be considered. Family assessments that include all members of the family should always ensure that the needs of individual children are distinct considerations.'*

### **What does the guidance allow?**

The Department and Ofsted agree a local authority is able to use a whole-family assessment approach. Whilst using a whole-family assessment allows all members of the family to be assessed together as one unit, the assessment must give due



consideration to the circumstances of each child within the family in line with their statutory obligations towards each child concerned. This has been made clear in the Working Together to Safeguard Children 2018.

### **Combining Youth Offending Team and remand assessments**

*'Can we integrate the Youth Offending Team assessments within a looked after child remand assessment?'*

#### **What does the guidance say?**

Working Together to Safeguard Children, 2018:

*'42. Where a child has other assessments, it is important that these are co-ordinated so that the child does not become lost between the different organisational procedures. There should be clear procedures for how these organisations and agencies will communicate with the child and family, and the local protocol for assessment should clarify how organisations and agencies and practitioners undertaking assessments and providing services can make contributions.'*

#### **What does the guidance allow?**

The Department, Ofsted and HMI Probation agree that the guidance does allow the Youth Offending Team assessments to be combined with looked after children remand assessments. A single practitioner of either discipline could lead the combined assessment, but aspects of safeguarding and welfare must be completed by a social worker.

### **Return home interviews:**

*'Do we always have to conduct an independent return home interview?'*

#### **What does the guidance say?**

Statutory guidance on children who run away or go missing from home or care, January 2014:

*'31. When a child is found, they must be offered an independent return interview. Independent return interviews provide an opportunity to uncover information that can help protect children from the risk of going missing again, from risks they may have been exposed to while missing or from risk factors in their home.'*



32. *The interview should be carried out within 72 hours of the child returning to their home or care setting. This should be an in-depth interview and is normally best carried out by an independent person (ie, someone not involved in caring for the child) who is trained to carry out these interviews and is able to follow-up any actions that emerge. Children sometimes need to build up trust with a person before they will discuss in depth the reasons why they ran away.'*

### **What does the guidance allow?**

The Department and Ofsted agree that an independent return home interview should be offered to a child to allow the opportunity to gather information that may help protect the child or prevent them from going missing again. The offer made must be genuine and the young person encouraged to accept, but if the child does not want this interview then it does not have to take place. We would expect good practice to be that the reasons for this are noted and recorded.

The guidance does not prescribe who the independent interviewer should be. This person will vary depending on the scenario and the needs of child. If the child does not want an independent interviewer they can choose who they want to do the interview. It is important that whoever does the interview is sympathetic to the child's perspective whilst also being able to take any necessary follow-up action, for example, sharing information with the right agencies around disclosures of harm, or reasons for patterns of repeat missing episodes.

### **Social workers for foster carers and children with long term foster placements**

*'Can we have one social worker for children and foster carers when a child is in a stable, long term placement?'*

### **What does the guidance and National Minimum Standards say?**

[The NMS, together with Regulations relevant to the placement of children in foster care such as the Fostering Services (England) Regulations 2011 (the 2011 Regulations), form the basis of the regulatory framework under the Care Standards Act 2000 (CSA) for the conduct of fostering services.]

Fostering Services: National Minimum Standards, 2011:

10.5) *'The foster home is inspected annually, without appointment, by the fostering service to make sure that it continues to meet the needs of foster children.'*

The Children Act 1989 Guidance and Regulations Volume 4: Fostering Services, 2015:



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.’*

Fostering Services: National Minimum Standards, 2011:

21.12) *‘There is a good system of communication between the fostering service social workers and the child’s social worker. The fostering service social workers understand the role of the child’s social worker and work effectively with them.’*

### **What does the guidance allow?**

Whilst the regulation states that there needs to be a qualified social worker for the child and the foster carer, it does not explicitly say that they need to have different social workers. In practice, however, it is almost always two different individuals, from different teams with distinctly different functions. This model helps ensure that children’s best interests and foster carer’s interests are not conflated or confused.

In February 2018, the Department published an independent review of foster care, Foster Care in England. The report recommended that authorities should “decide which individual social worker is best placed to offer the support to the foster family in long-term placements”. The current framework does not prevent such flexibility and this approach was trialled as part of the Match Foster Care Innovation Programme, for young people in long term and stable placements.

However, we are aware of the potential risks to children and young people of this approach. The Government response to the Foster Care in England review outlined that oversight and scrutiny in the system should be appropriate, effective, and proportionate and we will explore creative approaches to practice delivery with a small number of local authorities to consider where and how this approach could work. Any alternative model must demonstrate how children’s rights and well-being are promoted and protected at all times.



### **Social workers for children in Staying Put**

*'Can a Personal Adviser take on the role of the supervising social worker for foster carers, where the young person is staying put?'*

#### **What does the guidance say?**

'Staying Put' Arrangements for Care Leavers aged 18 and above to stay on with their former foster carers: DfE, DWP and HMRC Guidance, May 2013:

*'Whilst legislation relating to fostering will no longer apply (if no foster child remains in the household), key standards should continue to govern the expectations of the "Staying Put" arrangement and carer/s when a child/young person reaches the age of eighteen. This should include... regular supervision and support, possibly, from their fostering supervising social worker.'*

#### **What does the guidance allow?**

The Staying Put guidance does not specify who should support the foster carer where a young person is staying put and only provides a recommendation for it to be a supervising social worker. DfE and Ofsted have some reservations about whether the personal advisers will always have the right skills and capacity to take on the extra work, and would welcome details of any proposed new ways of working that would place this sort of responsibility on the Personal Adviser. It is worth noting that this situation would only be the case where there were no other foster children being cared for at the home, otherwise a supervising social worker would already be allocated to support the foster carer.

### **Frequency of visits for supervising social workers**

*'Can supervising social workers visit less frequently in stable and long term placements?'*

#### **What does the guidance and National Minimum Standards say?**

Fostering Services: National Minimum Standards, 2011:

*'21.8) Each approved foster carer is supervised by a named, appropriately qualified social worker who has meetings with the foster carer, including at least one unannounced visit a year. Meetings have a clear purpose and provide the opportunity to supervise the foster carer's work, ensure the foster carer is meeting the child's needs, taking into account the child's wishes and feelings, and offer support and a framework to assess the carer's performance and develop their competencies and skills.'*



### **What does the guidance and National Minimum Standards allow?**

The National Minimum Standards states that there must be at least one unannounced visit each year from the supervising social worker and it does not specify the frequency of any additional visits. A judgement should be made on a case by case basis as to the suitability of the frequency of visit and if the foster carer has the capacity to meet the child's needs with the minimum frequency of a visit once a year.

#### **Frequency of visits for social workers**

*'Can social workers visit less frequently than the normal six weekly basis in stable and long term placements?'*

### **What does the guidance say?**

[The Volume 2: care planning, placement and case review, 2015 guidance and the Care Planning, Placement and Case Review (England) Regulations 2010.]

*Volume 2: care planning, placement and case review guidance:*

*3.234 Where the child is placed in a long-term foster placement, the child should be visited within one week of the start of the placement. Thereafter, the child must be visited at interval of not more than six weeks for the first year of the placement [regulation 28(2)(b)]. Visits during subsequent years must take place at intervals of not more than six months, where the child, being of sufficient age and understanding, has agreed to be visited at this minimum frequency [regulation 28 (3A)].*

### **What does the guidance allow?**

The frequency of visits should always be determined by the circumstances of the case. In the case of a long term placement, which is intended to last until the child is 18, visiting requirements in the Regulations are at intervals of no more than six months. The authority must arrange a visit whenever reasonably requested by a child or foster carer regardless of the status of the placement.

#### **Categories of harm**

*'Are local authorities required to use the categories of neglect in Child Protection conferences and can we add to these categories?'*

### **What does the guidance say?**

There is no reference to 'categories of harm' in Child Protection Conferences in Working together to Safeguard Children, 2018.



### **What does the guidance allow?**

The category list for the DfE data return is fixed. It is not, however, specified in statutory guidance that categories have to be discussed in the Child Protection Conference. While the chair will make a decision about the category that is returned to DfE, during the meeting local authorities are able to discuss the categories that they deem suitable or use an alternative approach. For example, Westminster, Kensington and Chelsea, and Hammersmith and Fulham, use 'danger statements' that will make reference to the key worries.

#### **Fostering and Adoption Panels**

*'Is there flexibility to combine fostering and adoption panels?'*

### **What does the guidance say?**

The Adoption Agencies Regulation 2005:

*'...an adoption agency must establish at least one panel, to be known as an adoption panel, in accordance with this regulation.*

*(2) The adoption agency must appoint to chair the panel a person, not being a disqualified person, who has the skills and experience necessary for chairing an adoption panel.*

The Adoption Agencies and Independent Review of Determinations (Amendment) Regulations 2011 (Amendment of the Adoption Agencies Regulations 2005 regulations 3 to 10):

*The central list*

*3.—(1) Subject to regulation 5, an adoption agency(2) must maintain a list of persons who are considered by it to be suitable to be members of an adoption panel ("the central list"), including—*

*(a) one or more social workers who have at least three years' relevant post-qualifying experience, and*

*(b) the medical adviser to the adoption agency (or at least one if more than one medical adviser is appointed).*

Fostering Services (England) Regulations 2011:

*'(5), the fostering service provider must constitute one or more fostering panels, as necessary, to perform the functions of a fostering panel under these Regulations, and must appoint panel members including—*



- (i) a person to chair the panel who, in the case of any appointment made after 1st October 2011, must be independent of the fostering service provider, and*
- (ii) one or two persons who may act as chair if the person appointed to chair the panel is absent or that office is vacant (“the vice chairs”) from the persons on the central list.’*

Statutory Guidance on Adoption for local authorities, voluntary adoption agencies and adoption support agencies, June 2013:

*‘1.23. Under the Fostering Services Regulations, a fostering panel is required to consider and make a recommendation on the suitability of a person to be a foster carer. There is no requirement for the panel to consider and recommend on either the foster plan for a child or a foster match and placement. However, given the significance of long-term fostering many agencies constitute adoption and permanence panels, which combine knowledge and experience of adoption and fostering and enable these two permanence options to be considered by one panel.’*

### **What does the guidance allow?**

One Panel for fostering and adoption can be used if helpful.

#### **Independent Reviewing Officers**

*‘Does an Independent Reviewing Officer (IRO) have to chair Child Protection conferences where their looked after children’s situation is being assessed?’*

### **What does the guidance say?**

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

*2.13 ‘It is recognised that there are different requirements for the independence of the IRO function compared to the chair of the child protection conference. In addition, it is important to note that the child protection conference is required to be a multi-agency forum, while children for the most part want as few external people as possible at a review meeting where they are present. However it will not be possible for the IRO to carry out his/her statutory function without considering the child’s safety in the context of the care planning process. In this context consideration should be given to the IRO chairing the child protection conference where a looked after child remains subject to a child protection plan. Where this is not possible it will be expected that the IRO will attend the child protection review conference.’*





**What does the guidance allow?**

An IRO does not have to chair Child Protection conferences involving looked after children, but 'consideration' can be given to them chairing. The guidance allows for some flexibility around who chairs these conferences, but the IRO should attend.