

Consultation on Draft Decision Making Guidance for Foster Carers

November 2015



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Introduction

Who this guide is for

This guidance is designed to help foster carers with whom children have been accommodated. It is not applicable where children live at home under a compulsory supervision order or other order, or are accommodated in residential or secure units.

Legislation

This guidance is based on Scottish Law and regulation as at the time of writing. The law in this area is extensive and includes several statutes, together with accompanying regulation, including but not limited to:

- the Children (Scotland) Act 1995
- the Data Protection Act 1998
- the Children's Hearings (Scotland) Act 2011
- the Age of Legal Capacity Act 1991
- the Education (Scotland) Act 1980
- the Children and Young Persons (Scotland) Act 2014
- the Vulnerable Witnesses (Scotland) Act 2004

The purpose of the guidance

This guidance is intended to provide foster carers with an understanding of decision making about children: who can make decisions and why, what decisions a child can make, and the powers of carers to make decisions about the children they are caring for. It is not intended to be a definitive guide to the law and practice. It is a tool to ensure that the rights of children and the rights and responsibilities of parents are respected and supported, while the welfare and wellbeing of children in care is safeguarded and promoted. It is intended to provide carers with the confidence to participate effectively in planning and in the care of the child.

While this guidance is intended to serve as a practical reference point for foster carers, it should not be regarded as exhaustive or exclusive. This guidance does not constitute legal advice. Users may need to consult with others such as the child's local authority, any fostering agency or a source of legal advice.

What children and young people say

Studies and surveys have shown that children in care want to grow up just like everyone else and that means to be able to experience the same things as other children – friendships, activities, holidays and family times. Decision making should support this and not be exercised with such caution and risk-aversion that the child's experiences are restricted and controlled beyond what is reasonable and compatible with their needs.

Who is a Child?

Although the age of majority (full adulthood) in Scotland is 18, for most purposes the legal status of child ends at the 16th birthday. After that age one can make most adult decisions: where one lives, to get married, to work full time (after the school leaving date), but there are limitations. One cannot drink, smoke or get a tattoo, or serve in the front line of the armed forces until age 18. There are limits to entering into contracts, and there are extra protections. For the purposes of being in care, young people aged over 16 but under 18 years of age can be subject to compulsory supervision orders, or can be accommodated by the local authority if their welfare requires it. These young people are children for these purposes, and have rights as former looked after children which can subsist to the age of 25. For other purposes they have the same powers and rights as their contemporaries.

Principles behind making decisions about children

It is very clear in the United Nations Convention on the Rights of the Child that the child must be at the heart of all decision making – not just to have a view – but that those decisions must be in the best interests of the child. Our law is compliant with this – so anyone who must make a decision about a child must make that decision for the benefit of the child – that includes people with parental responsibilities and rights, carers, local authorities, courts and children's hearings.

Important Point

Delegated authority is not a term used in Scottish law. In Scotland, those caring for children, who are not their own, have powers of decision making in their own right. These will be explained in detail in the body of this guidance.

Chapter one The Legal Context

1. Understanding how children come into care

The rights of children to be parented by their parents, the rights of parents to bring up their children, and the right to respect for family life are all very strongly protected in Scottish law. The principle of minimum intervention underpins much of child law, thus the state may only intervene where there is a strong reason, and only if it is in the best interests of the child. Because of this, it takes a decision by a court or a children's hearing to remove a child from the care of their parents, except in an emergency. You should make sure that you know which of the following applies to a child who is being cared for by you, and that you are kept informed of any changes.

Important Point

Before making an order about a child, the court or children's hearing must consider that:

- the order is necessary
- the order is in the best interests of the child
- it is better that the order be made than not
- the child must have the opportunity to say whether they want to express a view, be given the opportunity to do so, and if they do, the view must be taken into account in accordance with the age and maturity of the child (this does not apply in child protection orders)

1.1 Section 25 agreement (Children (Scotland) Act 1995)

A parent or a person with parental responsibilities and rights (PRRS) can agree that the child is to be accommodated by the local authority.

The technicalities of a s.25 agreement include:

- A formal agreement is not always signed by parent/s but it is best practice that it should be to avoid any misunderstandings
- It gives a child looked after status
- It places an obligation on the local authority to safeguard and promote the health, welfare and development of the child
- The parent can remove the child at any time until a period of 6 continuous months has passed
- After the 6 month period a parent can only remove the child after giving the local authority 14 days notice in writing
- If the child is over 16 years of age the parent cannot remove him or her without their consent

1.2 Child Protection Order

A child protection order (CPO) is an emergency order granted where the court is satisfied that a child is at immediate and serious risk. It is an order made by a sheriff. Most CPOs are applied for by local authorities. The CPO can keep a child where they are (i.e. a hospital), or authorise their removal to a place of safety. A place of safety is never the child's usual home. The CPO is very short-lived being only 2 working days if it is not continued by a children's hearing for another 6 working days it will cease to have effect. A child who is subject to a CPO is a looked after child. Parental responsibilities and rights are not removed, but those with PRRS are likely to have their contact with the child strictly regulated or stopped for the duration of the CPO, and cannot exercise their right to decide where the child will live. The parent/s or other people may not be permitted to know the whereabouts of the child.

1.3 Decision of a Children's Hearing

A children's hearing can place a child in the care of someone other than a parent or person with parental responsibilities and rights. This may be through a compulsory supervision order, or an interim (temporary) order such as an interim compulsory supervision order or an interim variation of a compulsory supervision order. A child subject to any of the above orders is a looked after child, even if living at home.

1.4 Permanence Order

Where a child is not likely ever to return home, a permanence order may be applied for at the sheriff court. This order is a very flexible tool which can respond to the child's particular needs and circumstances. Some parents may lose all of their parental responsibilities and rights, many only lose some of them. The local authority always gains the right to decide where the child will live and the parent always loses it. The person or persons who the child is to live with may gain some of the parental responsibilities and rights. Children subject to a permanence order are looked after children.

1.5 Emergency Action other than child protection orders

In an emergency a child may be removed to a place of safety by a police constable (any police officer is considered to be a constable). The child may only be removed for a period of 24 hours, and is considered to be looked after while those measures are in force.

1.6 Order from England, Wales or Northern Ireland

A child living in Scotland may be subject to an order made in England, Wales or Northern Ireland. Under the Children (Reciprocal Enforcement of Prescribed Order) etc. (England and Wales and Northern Ireland)

(Scotland) Regulations 2009 we will recognise these children as being looked after.

Important Point

When a child is subject to any of these, the primary responsibility for their welfare lies with the local authority. Carers' responsibilities include their responsibility to work with the local authority for the benefit of the child.

2. Understanding parental responsibilities and rights (PRRs)

2.1 Who has parental responsibilities and rights?

A person has parental responsibilities and rights if:

- she is the mother of the child (unless removed by a court)
- he is the father of the child and
- he was married to the mother of the child at the time of conception or subsequently or
- he is named as father on the birth certificate of the child and the birth was registered or the registration was amended after the fourth of May 2006. This applies only to children whose births were registered in Scotland. The situation with regard to children who were born and their births registered outside Scotland can be complex.
- both birth parents have signed and registered an agreement under s. 4 of the Children (Scotland) Act 1995
- he or she was granted parental responsibilities and rights by a court.
- he or she has adopted the child
- parental responsibilities and rights were granted by a court. (see permanence orders 1.4).

- he or she was named as guardian in a will by someone who has since died.
- he or she was granted a residence order by a court and the child is still resident with them.

2.2 How are parental responsibilities and rights lost?

Parental responsibilities and rights (PRRs) can only be removed by a court order. Failure to exercise PRRs or having no contact with the child does not mean that PRRs can be lost. The parent's ability to exercise his or her PRRs may be suspended but not removed as the effect of a child protection order or an order by a children's hearing.

2.3 What are parental responsibilities?

Section 1 of the Children (Scotland) Act 1995 states that parental responsibilities are:

- to safeguard and promote the child's health, development and welfare - this means that the duty to make sure that the child is looked after properly, goes to school, eats well, goes to medical and dental appointments and has all the everyday care that he or she needs to grow up healthy and secure.
- to provide, in a manner appropriate to the stage of development of the child – (i) direction; (ii) guidance, to the child - this means providing children with the rules and boundaries that they need, and with the support to make good decisions.
- if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis – this is for the benefit of the child not the parent.
- to act as the child's legal representative - This means to act for the child by entering into transactions on behalf of the child that have legal effect. This means

making decisions for the child in respect of transactions when the child is not able to make that decision (see Chapter one 3). Examples include; managing the child's money, obtaining services for the child.

2.4 What are parental rights?

Section 2 of the Children (Scotland) Act 1995 states that parental rights are:

- to have the child living with them or otherwise to regulate the child's residence - this only applies while the child is under 16 years of age. You will see that it allows a parent to decide that the child should live with someone other than them. (see Chapter one 1 for s. 25 agreements). If the child is subject to a supervision order, the order may suspend that right but not remove it. Only a court can do that. A court may regulate the residence of the child where there is a dispute between parents or where another person has applied for such an order. This is known as a residence order or is sometimes miscalled a section 11 order.
- to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing - this parallels the responsibility above and gives parents the power to carry out their responsibility. As carer you are carrying this out for the parent which is why you are in a subordinate position.
- if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis - this parallels the responsibility above and gives parents the power to carry out their responsibility, but the interests of the child trump the right of the parent. This right is the reason that contact cannot just be

regulated by carers or social workers, but needs a decision by a court or a children's hearing.

- to act as legal representative for the child - this parallels the responsibility above and gives parents the power to carry out their responsibility.

Common Myths

Being on the birth certificate gives all dads parental rights and responsibilities whenever the child was born

If your child is subject to a compulsory supervision order you have lost your parental responsibilities and rights

If you do not or cannot exercise your parental responsibilities and rights they will disappear

The parent of a child under 16 who is a parent has parental responsibilities and rights with respect to that child's child.

If someone has a residence order, it will remove the parental responsibilities from people who do have parental responsibilities and rights.

A person with parental responsibilities and rights can give them to another person by writing a letter to say that the person has them.

Useful links:

For legal advice contact Scottish Child Law Centre, Clan Child Law or the Scottish Family Law Association

<http://www.sclc.org.uk/> or

<http://www.clanchildlaw.org/>

<http://www.familylawassociation.org/index.asp>

Scottish Government Child protection Guidance
<http://www.gov.scot/Resource/0045/00450733.pdf>

3. Understanding capacity – what decisions children can make

3.1 What is capacity?

Put simply, capacity is the understanding to make decisions that have legal consequences. The Age of Legal Capacity (Scotland) Act 1991 says:

s.1 (1) (a) “a person under the age of 16 years shall... have no legal capacity to enter into any transaction.”

But there are exceptions:

s.2 (1) “A person under the age of 16 years shall have legal capacity to enter into a transaction – (a) of a kind commonly entered into by persons of his age and circumstances, and (b) on terms which are not unreasonable.”

3.2 So in practical terms what can children do?

3.2.2 Making purchases

These are small purchases, usually for cash, that are purchases normal for the age and stage of the child - from sweets paid for with pocket money, to the shoes and makeup/video games that are typical teen buys. (Pets are excepted for the protection of the animals)

3.2.3 Obtaining services

Children are entitled to obtain services for themselves when they understand enough about what the service is. It will be up to the service provider to decide whether the child understands enough. Children cannot enter into contract so if the service requires payment it will likely require an adult to enter into the contract under the parental right and responsibility to act as the child's legal representative.

3.3 Typical services available to children are:

3.3.1 Advocacy

Scottish Government guidance on looked after children recommends the use of advocacy services. To require parental or adult permission before allowing a child to have access to advocacy can prevent or delay a child from accessing such services and put them at a disadvantage in meetings and children's hearings. Conversely a child cannot be forced to accept such services if they do not wish to do so. (see Chapter three - confidentiality)

3.3.2 Counselling

Counselling services are frequently offered through schools and children should be able to self-refer where appropriate.

3.3.3 Court support and victim support

Services which support victims and witnesses are also services which a child should be able to decide to use and even to self-refer for help.

3.3.4 Sexual Health Advice

A child has a right to access sexual health services in total confidence. The provider of the service will be responsible for considering whether the child has capacity and whether there are any child protection steps that need to be taken. (see Chapter 3 on confidentiality) If you become aware that the child has used such a service, you may be required to notify social work, depending on the individual circumstances of the child, particularly if the child is known to be putting themselves at risk. You may not, however, know that they have accessed the service. For more information about medical treatment see section two on Medical Decisions.

Important Point

Services which require payment require a contract and children aged under 16 years of age cannot generally enter into such contracts.

Children without capacity may also use services – (see your powers to obtain services in Chapter two 4)

4. Medical, Legal and Educational Legal decisions

The Age of Legal Capacity (Scotland) Act 1991 (the 1991 Act) makes specific provision for medical and legal decisions, and the Education (Scotland) Act 1980 (the 1980 Act) governs decisions about schooling.

4.1 Medical decisions

s. 2 (4) of the 1991 Act states: “A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature of the procedure or treatment.”

Important Point

Over 16 years of age, the young person is an adult and unless he or she has restricted capacity due to learning difficulties or other circumstances which restrict capacity, has full capacity with regard to medical decisions. If the young person is unable to make decisions a welfare guardianship will be needed – or a power of attorney.

Scottish Government Guidance on Looked After Children states that young people should take increasing responsibility for their own health. (See p 21 of guidance)
<http://www.gov.scot/Resource/Doc/344490/0114631.pdf>

A child may choose to leave the decision to adults or prefer to be part of decision making with parents/carers. A child making his or her own medical decisions usually only becomes an issue if the child wants to make a decision that the adults find difficult. This may be when the child is refusing treatment, or when it is to do with being sexually active. Where the child wishes to make a decision without the support or knowledge of parents or carers then the medical professionals will also have to consider whether the child is able to manage all aspects of treatment. For example: the child may be able to decide on treatment, but would not be able to manage medication where there are complex side-effects or where there are interactions between medication and diet.

Important Point

A person with parental responsibilities and rights cannot over-ride the decision of the medical practitioner about capacity.

4.1.1 Who is a qualified medical practitioner?

Qualified medical practitioners do not only doctors, but also nurses, midwives, physiotherapists, clinical psychologists and other medical professionals. Persons such as lay counsellors would not be included in the definition.

4.1.2 What is a medical treatment or procedure?

This has a wide meaning and includes all the medical and dental treatments that you would expect. It does not include donation of organs for transplant, participation in clinical medical trials or storage of gametes. It does include decisions about the use of their cells in medical research.

Where a child has been subject to a medical treatment order (commonly called sectioning), the meaning of medical treatment is very wide and includes many things including habilitation. (assistance for a person with a disability to develop maximum independence and capability).

Important Point

Where a child has the capacity to make medical decisions they have the right to full medical confidentiality. This is, of course, subject to child protection.

4.1.3 Are condoms included in medical treatment?

The provision of Condoms is not medical treatment and therefore it is legal for non-medical practitioners to provide them to children under 16 years of age.

4.1.4 What about the morning after pill?

The law makes specific provision for chemists/pharmacists to prescribe this. The chemist/pharmacist should undertake a child protection assessment.

Useful links:

Action for Sick Children toolkit to support foster carers
<http://www.ascscotland.org.uk/default.asp?page=85>

Scottish Government guidance on sexually active children
<http://www.gov.scot/resource/doc/333495/0108880.pdf>

Scottish Government guidance on health assessments
<http://www.gov.scot/Publications/2014/05/9977>

4.2 Legal decisions, instructing legal representation

A child does not need capacity to have legal representation if they are accused of a criminal offence, but they do need capacity in civil law matters. Once the sixteenth birthday has passed, a young person is an adult with regard to instructing legal representation unless they lack capacity.

s. 2 (4A) of the 1991 Act states: “A person under the age of sixteen years shall have legal capacity to instruct a solicitor, in connection with any civil matter, where that person has a general understanding of what it means to do so; anda person twelve years of age or more shall be presumed to be of sufficient age and maturity to have such an understanding.”

(see Chapter two 13 - criminal matters)

Typical civil law matters that a child might need to consult a solicitor about:

- children's hearings
- human rights
- compensation
- family law disputes
- education

useful links:

Scottish Child Law Centre

<http://www.sclc.org.uk/>

Children and Young People's Commissioner Scotland

<http://www.cypcs.org.uk/>

Scottish Legal Aid Board

<http://www.slab.org.uk/>

Scottish Family Law Association

<http://www.familylawassociation.org/>

4.3 Useful things to know about children and lawyers

- It is the lawyer who decides on the child's capacity.
- The child does not have to be over 12 to have capacity. Children as young as 8 have had legal representation.
- You certainly can arrange the appointment and take the child but the lawyer will see the child without you, at least at the start.
- The parent has no right to know anything about it. They do not have to be told that the child is seeing a lawyer. If a parent contacts the lawyer they will be told very firmly that the case cannot be discussed with them without the permission of the child. The lawyer will not even have to confirm that the child is a client. However a parent's income will be taken into account by the Scottish Legal Aid Board in civil cases unless the parent is the opponent.
- The child may be eligible for help with legal expenses – but unless the matter is to do with a children's hearing, their parents' resources will be taken into account unless the child and parent are on opposite sides. Your resources will not be taken into account.
- If the child is the client they will have total client confidentiality – unless they choose to share with you.
- They do not need the permission of anyone to obtain legal advice – not a parent, you, a children's hearing, social work –anyone!
- The child can stop the process at any time (unless it is a criminal matter), and the lawyer may reassess capacity, if they feel that the child is losing capacity due to stress.

4.3 Education

The Education (Scotland) Act 1980 s. 28 states "children must be educated in accordance with their parent's

wishes” but children also have powers to make decisions. This area of law can be complex, and what follows here and in Chapter 2:3 are only the most common examples. In most cases where problems arise it will generally be essential to obtain specific advice.

4.3.1 Exclusion

A child who has been excluded has the right to appeal the exclusion and should be fully involved in the return to school meetings. You are entitled to support any child who wishes to appeal exclusion.

4.3.2 Restricting information

A child does have the right to make a formal request to the school, in writing, for information to be withheld from someone (usually a parent) if the sharing of that information will cause considerable distress or harm to themselves or another person, and that distress is unwarranted. It will be up to the school or educational authority to decide whether to agree to withhold the information.

4.3.3 Additional Support Needs

A child cannot make a referral to the Additional Support Needs Tribunal for Scotland about themselves, although they may attend children’s hearings and do have a right to a view. There are plans to change this. Young people (age 16 and over) can make referrals.

Useful links:

Scottish Information Commissioner

<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx>

Lets Talk ASN is a free service for the parents of children with additional support needs

http://www.educationscotland.gov.uk/resources/l/genericresource_tcm4646802.asp

Enquire

<http://enquire.org.uk/>

Common Myths

Children get to make decisions only when they get to age 12.

A child cannot make a decision unless it is in the care plan that they can.

A child's decision about exercising their capacity can be over-ruled by the local authority.

A child who has capacity must also have the consent of the parent in decisions.

If a professional assesses a child as having capacity for their service, this can be over-ruled by social workers if they do not agree that the child has capacity.

Capacity should only be assessed by psychologists.

Chapter two

Making Decisions About Other People's Children

What children say:

“My carers should decide about my medical care if I don't know”

“It shouldn't just be my parents as I live with my foster carers”

1. The Law on Decisions by Carers

Scottish law says that if

- you are over 16 years of age and
- have the care and control of a child under 16 years of age who is not your own and
- do not have parental responsibilities with respect to that child then

you do have legal responsibilities towards that child and can make certain decisions regarding them in order to carry out those responsibilities without needing the permission of someone who does have parental responsibilities and rights.

The relevant provision is contained in section 5 of the Children (Scotland) Act 1995:

“...it shall be the responsibility of a person who has ...the care or control of a child under [the age of 16]...to do what is reasonable in all the circumstances to safeguard the child's health, development and welfare;...and in particular...give consent to any surgical, medical or dental treatment or procedure where –

(a) the child is not able to give such consent on his own behalf; and

(b) it is not within the knowledge of the person that a parent of the child would refuse to give the consent in question”

1.1 Who does this apply to?

This applies to anyone who has the care of a child – foster carers, respite carers, kinship carers, even babysitters – but not to schools or residential units. It does not matter if the child is only briefly in the care of the person.

1.2 What does this mean?

This law is to ensure that any child being cared for by another person, other than their parents, gets the necessary care that they need to stay healthy, well and to develop. The wording of section 5 closely resembles section 1 of the Children (Scotland) Act 1995 about parental responsibility. (see Chapter one 2) The word promote is missing.

This means that the big decisions remain with the parent. Carers carry out the parent's responsibilities for them and cannot over-ride them. Section 5 is designed with the welfare of the child as the focus, without threatening the parent's rights to exercise their responsibilities and rights under sections 1 and 2 of the Children (Scotland) Act 1995.

Important Point

The child's plan should be clear about who is taking what decisions, and the supports and services that the child needs.

1.3 What sort of decisions can I make?

- Day by day decisions
- Decisions you know the parent is happy that you make
- Decisions assigned to you in the child's plan

1.4 Where you know that the parent is opposed.

You cannot over-ride the parent. Where you have concerns about the practicability of the parent's choice, or the welfare of the child you should refer this to the child's social worker. (See Chapter One 3 - children's capacity)

1.5 What if the parent cannot be found to ask or doesn't respond to my questions?

You should advise the child's social worker, and all major decisions should be referred to them. Where a child has no-one alive or findable who has parental responsibilities and rights, it will be essential that one of the following happens: someone gets parental responsibilities and rights under s. 11 of the Children (Scotland) Act 1995; a permanence order is obtained; or an adoption order is granted.

Important Point

If the child has the capacity to make the decision then the parent or parents' consent may not necessary (see Section One 3)

1.6 What if I don't know if the parent would agree or not?

It is the best interests of the child that prevails. Common sense is the best approach.

Ask yourself:

- is it the sort of decision that a reasonable parent would disagree with?
- is there anything that you know about the child that would indicate that it is something that a parent would not expect to happen without consultation?

- is it a decision that you would expect a child to make for themselves given their age, stage and capacity? (see Chapter One 3)
- Is there anything in a court order or supervision order which would determine who should make the decision?

1.7 What if those with PRR's disagree with decisions made about the child?

If there is a dispute, then steps will have to be taken to ask either a children's hearing or a court for a decision to be made about what is to happen. In the interim, consideration will have to be given to the effect upon the child of the delay while a court calling or a children's hearing is arranged.

2 Medical Decisions

Important Point

Where young persons are over the age of 16 they and only they have the right to make medical decisions and have full medical confidentiality.

If a person aged over 16 years of age does not have the capacity to make decisions about their own medical care it is essential that a welfare guardianship be obtained or a power of attorney be granted by the young person, to allow medical decisions to be made.

Section 5 of the 95 Act (see Chapter two 1) makes specific provision for the making of medical decisions by those who have the care and control of a child not their own. This does not mean that all medical decisions can be left to a carer – but routine treatment does not require the permission or consent of all of those who have parental responsibilities and rights, unless you are aware

that they would withhold consent. Health care should be addressed in the child's plan.

Important Point

The local authority has the responsibility to safeguard and promote the health welfare and development of a child who is in their care, and must therefore act swiftly when decisions must be made if the person(s) with parental responsibilities and rights are not exercising their decision making in the best interests of the child.

2.1 If I have powers under the law, why are parents asked to sign a consent form for medical and dental treatment? If parent(s) signs a consent form it makes the position very clear to all parties. In an emergency, consent is not needed as medical professionals can act to treat the child (see Section One 3 - children's capacity).

2.2 What sort of medical decisions can I make?

Technically you can make all decisions. In practice however, it is normal that the parent is involved and will be asked to consent. Parents may also wish to be present during any examination/treatment. Where there is no person with parental responsibilities and rights available, or the parent is not allowed contact with the child, you will likely be making most decisions.

Where the decisions may have serious or long term consequences, it is unlikely that you will be left to make decisions alone. In ordinary circumstances you can take the child to all appointments, administer any medicines prescribed for them and consent to medical treatments that are necessary. It is normal for carers consent to be limited to routine health matters and minor ailments, or

routine treatments and procedures for children who have chronic conditions.

Important Point

Even if the child does not have the capacity to make a decision they still has a right to a view

2.3 Are there examples of common decisions by carers?

- Routine medical and dental appointments and treatments
- Administering prescribed medication
- Obtaining and administering over the counter medication for minor ailments
- Discussing concerns about the child's health with medical professionals
- Attending medical appointments/examinations
- Taking the child for treatments or procedures that have been ordered by a court or children's hearing

2.4 Are there examples of decisions carers would not normally be asked to make?

Non-minor procedures or treatment

- Surgery or procedures such as amputation
- End of life decisions
- Experimental procedures or participation in a medical trial
- Aesthetic (cosmetic) plastic surgery treatment

Where the decision/s have been made by others you will be expected to participate in treatment and should be involved in meetings and appointments and given all the information necessary for you to support and care for the child.

2.5 How can I find out what I can do for the child?

The Child's Plan should spell out the health care needs of the child and who has responsibility for what aspect of the child's care. If you are not sure about things, discuss it with the child's social worker.

2.6 What about emergency treatment?

No consent is required for emergency treatment.

2.7 What if the parent refuses consent and medical professionals think it is necessary that the child have the medicine or procedure?

It is likely that the local authority or health trust will need to go to court to have the matter decided by a sheriff, or to a children's hearing, if the child is subject to an order by a children's hearing. Delays should be avoided. If the child has the capacity to consent or refuse the treatment then his or her decision will be sufficient.

2.8 What if the child refuses medical treatment?

(see Chapter one 4 on children's capacity to make medical decisions) Having capacity includes the right to make a decision that others do not agree with.

2.9 May I ask for the child to have a medical assessment?

The more extensive or invasive the proposed assessment is, the less likely that you will be able to make that decision. The child may have the capacity to make that decision, so no other consent would be needed. (see Chapter One 4) This may be a matter that is best dealt with at a review meeting for the child and to be incorporated into the child's plan. You should be included in these discussions because, as the child's carer you are uniquely placed in your knowledge of the child.

The Scottish Government has published 'Guidance on Health Assessments for Looked After Children in Scotland' to assist professionals involved in carrying out health assessments. It sets out the minimum standardised elements of a health care pathway which Health Boards are expected to implement in collaboration with local authorities and other organisations. You may find some of its content helpful.

<http://www.gov.scot/Resource/0045/00450743.pdf>

2.10 May I be with the child when they are examined?

Yes, unless the child objects to your presence. Where the parent is present it may be that your presence would not be helpful, but if you are not present, you should be provided with details of the diagnosis and all the information you require to support the child's treatment.

2.11 May I be with the child in hospital overnight?

Where a parent is unavailable, or is not permitted to stay with the child, there is no reason why you could not be with the child - unless the child objects.

2.12 What if the child has a serious chronic condition?

Children with severe disabilities or chronic conditions require to be monitored and may have a significant number of medical professionals and others involved in their care. There should be good communication between the professionals, the local authority, the parents, and you. You should be provided with clear guidance and support so that you can care for the child.

2.13 May I register the child with a new GP, dentist or optician?

It is normally considered best for the child to stay with their familiar GP, dentist or optician, but if this is not practicable then it may be appropriate for you to register them with local services. This should be considered in discussions about the care plan. All details must be provided to the relevant social workers and to those persons with PRR's unless there are restrictions on what information they may have about the whereabouts of the child.

2.14 What about eye tests?

Arranging and consenting to routine eye tests are well within your powers as a person with the care and control of a child under s. 5 of the 95 Act (see Section two 1). It is not necessary to have the permission of a parent.

Whether the parent should be present will depend entirely on the individual circumstances of the child. Eye care should not be delayed beyond what's reasonable to suit the needs of the parent, as the best interests of the child are paramount. Eye health should be part of the child's plan, and regular testing should be arranged.

2.15 What if the child requires glasses?

If a child requires glasses then their best interests dictate that they have adequate glasses and wear them. Any participation of the parent will be dictated by the individual circumstances of the child. It is the best interests of the child that are paramount. The choice of glasses may be well within the decision making powers of the child. Obtaining glasses should not be unreasonably delayed to allow for the participation of the parent as it is the best interests of the child that are paramount.

2.16 What if the child desires contact lenses?

Some older children will prefer contact lenses, perhaps for cosmetic reasons, or maybe to make sports participation easier. The child who has the capacity to make that decision has the right to do so – although who pays for lenses will probably dictate whether the lenses are obtained.

2.17 Hearing tests/aids

Routine appointments for a child with a hearing impairment should be dealt with in the same way as eye health, and should be addressed in the child's plan.

Be aware that there can be issues concerning a child with a hearing impairment. Deaf parents can be opposed to their children using hearing aids or receiving a cochlear implant. In these cases decisions will not be made by you, but will be the responsibility of the Local Authority and may be the subject of court action.

Useful links:

Action for Sick Children toolkit to support foster carers

<http://www.ascscotland.org.uk/default.asp?page=85>

Scottish Child Law Centre

<http://www.sclc.org.uk/>

Children and Young People's Commissioner Scotland

<http://www.cypcs.org.uk/>

Guidance on looked after children

<http://www.gov.scot/Resource/Doc/344490/0114631.pdf>

3. Education

Children who are looked after should have the same educational opportunities as any child. The care plan should address the child's educational needs throughout their childhood, together with any wider developmental needs.

Parents should be involved as much as possible in decision making, but, as you have the care of the child, you have an important role to play and the law actually gives you a lot of power with regard to education.

3.1 What does the law say about my powers?

Section 135 of the Education (Scotland) Act 1980 defines a parent in this way:

“parent includes guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has care of a child or young person;”

This means that you are a parent for education, and are equal to the parent. Ideally, the parent/s and you will be working together, but where the parent is not fulfilling their responsibilities, in practical terms, it will be you who fulfils that role. You are very well placed to help keep the child's educational needs and development under review.

The local authority has ultimate responsibility for the child in care and should ensure that his or her education needs are included in planning. The local authority should ensure that the school is fully aware of your responsibilities with regard to the child, not just in educational matters.

3.2 What decisions can I make?

3.2.1 Choice of school

Theoretically you have the power to choose a school and register the child; however, government guidance states that children need as much continuity as possible and should remain at their current schools. Where a move is needed this is likely to be discussed with the parent/s and the educational authority, and may form part of the child's plan. A children's hearing can decide which school a child must attend as part of a Compulsory Supervision Order or interim order. Where parents are in dispute, this may be referred to a sheriff under section 11 (specific issue order) of the Children (Scotland) Act 1995.

3.2.2 Placing request/appeal

You can make a placing request but it is not likely that you will be acting unilaterally in this, as the choice of school should form part of the educational planning for the child.

3.2.3 Appeals against exclusion

Exclusion should be a last resort for a looked after child, but if the child is excluded, you are entitled to appeal against that exclusion, to help the child appeal, and to participate in the return to school meeting. Much will depend on how involved the parent of the child is, so you may be acting in concert with the parent. As the child lives with you, your participation in the return planning will be essential.

3.2.4 Additional Support Needs – Assessment of needs

All children who fit the legal definition of a looked after child are deemed to have additional support needs. The education authority must consider whether the child requires a coordinated support plan (CSP). The

education authority should identify these children and conduct an assessment. As a parent your views should be sought. The child's plan should include clarity about your responsibilities with regard to any additional support needs for education.

Under the legislation your powers include:

- Requesting assessments for a coordinated support plan
- If an assessment is refused, asking for mediation or making a Section 70 complaint. This is a complaint to Scottish Ministers where an education authority has not carried out their duties.
- you can write to the education authority and ask for a child to be assessed for a Coordinated Support Plan (CSP)
- If the request is refused, or not dealt with timeously, you can make a referral to the Additional Support Needs Tribunal for Scotland (ASNTS). This also includes referrals on disability discrimination in education.

3.2.5 What about attendance at school events?

School events such as performances, prize giving and sports days form part of the child's education and you are entitled to attend. The attendance of a parent does not mean that you cannot attend. Where a parent is actively opposed to your attendance, you should discuss this with social work. The child is entitled to a view and that should be taken into account. (see Chapter two 11 photographs)

3.3 What decisions can the child make?

(see Chapter One 3 - capacity)

Useful links:

Children and Young People's Commissioner Scotland

<http://www.cypcs.org.uk/>

Scottish Child Law Centre

<http://www.sclc.org.uk/>

Lets Talk ASN

http://www.educationscotland.gov.uk/resources/l/genericresource_tcm4646802.asp

ASN tribunals

<https://www.asntscotland.gov.uk/>

Enquire

<http://enquire.org.uk/>

4. Obtaining Services for the Child

What children say:

“My carers should be able to help me do things like get a lawyer or a counsellor”

4.1 What do we mean by services?

The sort of services that are covered by this section include

- Counselling
- Advocacy
- Legal representation
- Specialist supports
- Criminal Injuries Compensation Award (see 6.4)

4.2 Children with capacity

Children may ask for services, or may have the capacity to access services without reference to anyone (see Chapter One 3 - capacity). Capacity is not limited to teens or children over twelve years of age. The decision

about capacity means determining whether or not the particular child is able to make the particular decision.

If a child has the capacity to access a service, and that service does not involve a contract then they do not require permission to do so. You are entitled to assist the child to make use of the service. If you feel there is any risk to the child because of the nature of the service, then you will be required to take the appropriate child protection steps.

4.3 Children without capacity

Where the child does not have the capacity to make the decision to use a service, it is normally best practice to consult the child's social worker. It will not always be necessary to have the permission of the parent, particularly where the service is designed to help the child form and express a view. Because the child has a right to a view, and a right to express that view, they should not be prevented from doing so because a parent is not available to give permission, or refuses that permission. With younger children, you are more likely to be in the position of proposing services that your knowledge of the child leads you to believe would be in that child's interests.

4.4 Conflict with the local authority

On occasion social workers feel that a child should not access a service, but where the child has capacity (see Chapter one 3) then the child should not be prevented from doing so unless the nature of the service itself is considered to be a risk to the child.

4.5 Conflict with a parent

Where the child is a younger child any dispute should normally be dealt with through the child's social worker.

Where the child has capacity (see Chapter one 3) the parent cannot veto access to the service, particularly if it is advocacy or counselling, and the child will have the full confidentiality (see Chapter three) associated with the service.)

5 Discipline and House Rules

What children say:

“I think carers should be able to make house rules, they make me feel secure and I need boundaries”
“they should be able to ground me, take my phone”
“they should be able to dock my money if I break things deliberately as it gives me a sense of value”

When you are caring for a child in your own home, you are in direct day by day control and are responsible for their care. It is entirely appropriate for you to make decisions about daily behaviour and patterns in the household. You are entitled to set meal times, homework times, rules about going out and about access to computers and other devices and telephone calls.

There may be measures imposed by a children’s hearing or a court which must be adhered to.

When it comes to disciplining a child who is not your own there are undeniable challenges. Children in care can be very upset and distressed, and can be challenging in their behaviour. As a foster carer you are likely to have had training on managing behaviour and are likely to be skilled in dealing with the challenges. This section is intended to give you some guidance as to what decisions you can make and when you should refer to the local authority.

Important Point

You are entitled to set ground rules – but keep them fair and consistent and focussed on the needs of the individual child within the household.

5.1 House rules

It is well within your powers under section 5 of the Children (Scotland) Act 1995 to set rules in your own home. These can include setting out what is and is not acceptable (i.e. swearing), and assigning normal chores (i.e. clearing or setting the table, keeping a tidy bedroom). You are certainly entitled to decide what time the child must be in on a school night, when computers, tablets, and phones should be switched off, and to make the usual decisions that a parent would make on a day to day basis. The parent/s of the child may also have preferences and that information should be provided to you and should, within reason, be followed. You are responsible for the day to day care of the child, and a parent should not be able to undermine the care of the child by insisting unreasonably that their own rules must be followed. It is the interests of the child that matter, not the preferences of the parent. These matters should be included in the child's plan where appropriate.

5.2 Access to computers/tablets/mobile phones

It is well within your powers to make decisions about the child's access to any computer /tablet /television / telephone that they may use, even if it is their own personal property. You can set ground rules such as no access after a certain time, or monitoring access to ensure that the child is using the device safely and appropriately. Your powers under the Act give you the power to make these decisions in the best interests of the child. This is particularly important in situation such as:

- the child has been placing themselves at risk
- where there have been concerns that their parents have been allowing them to place themselves at risk
- Someone is using social media/email to cause distress to the child or to place them or the placement at risk
- where a child has restrictions placed upon their contact with parents or other persons that their access to phone/social media be monitored and if necessary controlled

In the event of disputes about monitoring, it may be appropriate for a children's hearing or a court to attach measures to the compulsory supervision order or interim orders.

5.3 May I restrict the child's liberty?

It is a normal part of childhood to have restrictions and rules. The restriction of liberty is a common tool used by parents, and as long as the restrictions are within the norm for children it is likely to be acceptable. If it is beyond the norm then you would be well advised to discuss this with the child's social worker and restrictions may need to be incorporated into the child's plan. The children's hearing has the power to make an order restricting the liberty of the child up to and including making a movement restriction condition. Use of the order for restrictions that are beyond the norm has a number of advantages.

- The child and relevant persons can appeal the decision to the sheriff
- Full consideration of the circumstances will be made
- You will have the confidence that it is considered to be in the child's best interests that the restriction be made, and that it is not just your opinion.

Important Point

Physical punishment of a child not your own is never acceptable and may result in prosecution for assault

5.4 What if the parent wants the child's liberty to be restricted?

It may be that you agree with the restriction and consider that the parent is being reasonable and sensible. If you are concerned that the parent is not being reasonable, or that the restrictions are not in the child's best interests, you should discuss this with the child's social worker. In the interim you should use your judgement as to what is in the best interests of the child. It is recommended that you document the parent's view and your actions together with your reasons.

5.5 May I withhold contact with family as a punishment?

Contact is too important to a child for it to be used as a means of control whether it is face to face, telephone or by other means. If a sheriff or a children's hearing has ordered that contact take place you do not have the power to prevent that contact unless there is a risk to the child (i.e. parent turns up drunk or the child is too distressed. It may be appropriate to restrict contact with friends as a punishment (grounding).

5.6 May I withhold access to phone/internet as a punishment?

Yes but (see Chapter two 5 and 6) for information about monitoring the use of phone and internet. You should not prevent the child from having contact with a parent or sibling or anyone with whom a children's hearing or court ordered contact.

5.7 May I monitor the child's social media/e-mail/mobile phone?

Restricting the use of a phone or the internet can be an appropriate brief punishment but you should not prevent the child from exercising phone/Skype or other contact that has been ordered by a children's hearing or a court. If you have real concerns that a child is putting themselves or another at risk you should bring this up with the child's social worker as soon as possible.

Restrictions on the use of electronic means of communication and/or constant monitoring can be seen, if long term or very strict, as a breach of the child's human rights. If those sorts of measures are held to be necessary to protect the child or another it is best if the matter is referred to the children's hearing for consideration or to a review meeting if the child is not subject to an order by a children's hearing. A children's hearing or, a sheriff where the child is subject to a permanence order or a child protection order, can make an order concerning contact.

6 Money

Where a child has money or other assets, it is the responsibility of a person who has parental responsibilities and rights (PRRs) to decide how those assets are to be managed until such time as the child reaches adulthood. Where the child is in care and there is no person with PRRs, or the person or persons with PRRs are likely to fail to manage assets for the benefit of the child, or even to steal or dissipate them, then it will be the responsibility of the local authority to take the appropriate legal steps to ensure that the child's property is protected and managed to the child's advantage. This is part of the responsibility of the local authority to safeguard and promote the welfare of the child.

Planning should include consideration of financial advice for the child who is approaching their sixteenth birthday to avoid assets simply being dissipated. Where considerable sums are involved this should be part of planning from the start.

If a foster carer is to be given the responsibility of spending some of the money, or managing a bank account it should be made very clear in the child's plan and the fostering agreement just what the responsibilities are, and careful records should be kept.

6.1 Where the young person is over 16

Where the young person is over 16 years of age and is in a position where they have the capacity to manage funds, whether benefits, self-directed care or otherwise, the support that they may require to do so should be part of planning. Where the young person does not have the capacity to manage their own finances it will be necessary for a financial guardianship to be obtained, or, should the young person have the necessary capacity, for him or her to sign a power of attorney.

6.2 Bank Accounts

There is no reason why you cannot open a bank to manage the child's money either as savings, or managing benefits or self-directed care funds. You will, of course, expect to have to account for those funds properly and to keep proper records. Be aware that a person with parental responsibility and rights can demand to manage the account or accounts as part of their parental responsibility and right of acting as the child's legal representative under the Children (Scotland) Act 1995. If this is the case urgent action may be required on the part of the local authority. Any concerns should be discussed with the local authority and may need to be addressed in planning. Once past his or her

16th birthday the young person can demand the funds so this should also be included in planning for the child's transition to age 16. If an account is in the child's name they will be able to make withdrawals before under the age of 16. It will depend on the bank or building society's rules.

Whether the account is opened in the child's name, your name, or another's will depend upon the age of the child, their circumstances and the bank's or building society's own regulations.

6.3 Inheritance

Where a child inherits under a will, it is to be hoped that the will named trustees with responsibility for the money until the child is an adult. If there are no trustees or if the child has inherited under the law of intestacy (where a parent has left no will and the child receives money by the rights granted by the law) then it will be the responsibility of person/s with parental responsibilities and rights to manage that money or assets. If there are concerns about that person or those persons ability to do so responsibly or there is no one who has parental responsibilities and rights, then the local authority will have to consider what steps to take to insure that the money or assets are managed in a way that is most advantageous to the child. If they fail to do so there is a potential that the child may seek compensation in damages in later life. You are not required to agree to manage the money, but if you do so agree, you will have a duty of care to ensure that the money is properly managed to the advantage of the child. The child's inheritance management should form part of the child's plan.

6.4 Compensation

A child may receive compensation for injury or loss by a number of routes:

- An award in a court action; where a considerable sum is being awarded, and there are concerns about the management of that money, the court can take steps to ensure the money is protected. (this is done by the Accountant of Court)
- Compensation can be awarded by a court as part of a sentence in a criminal case. These are not usually large sums.
- Insurance for bereavement, injury or damage to property
- Criminal Injuries Compensation Award

Where there is no responsible or willing person with parental responsibilities and rights who can manage the money, the local authority will have to take the appropriate steps to ensure that the money is managed properly.

6.5 Self-directed Support

If the child is under 16 years of age, how self-directed care is managed, and who has responsibilities for decision making should all be addressed in the care plan, although you will necessarily be heavily involved in the practicalities. The child's view will require to be taken, and to be taken into account. If the young person is over 16 years of age and has capacity, much of the decision making will be in their hands, although they will likely need support. If the child does not have capacity then the local authority will need to give consideration as to who should obtain a financial and/or welfare guardianship. Planning for this must be in place when the child is approaching 16.

6.6 Pocket money

Having some money to spend as one pleases is one of childhood's pleasures, and a good way of teaching children a number of useful lessons. Children in care are given money for spending, and in some cases money to purchase clothes.

6.7 My own children get less pocket money and are a bit resentful.

That is a matter for you to manage, but the answer does not lie in limiting the money that the foster child is entitled to.

Important Point

A child should not be required to purchase their school uniform using their own funds.

6.8 The child has caused some damage to my possessions or my home; may I withhold some of their money to pay for it?

There is no simple answer to this much depends on the child's circumstances and whether the damage was accidental or deliberate.

Accidental damage is usually just bad luck. Where it is the result of carelessness, it is not unusual for parents to teach a lesson to a child who has caused non-accidental damage by making them contribute all or part of the cost of repair or replacement, therefore it is not unreasonable for carers to take the same approach. If you do feel that this is an appropriate punishment it should be clear from the start of the placement and the child, parents and social work should be clear that it is a something that you feel is appropriate, and the circumstances in which the punishment would be used.

If the damage is non-accidental then it can be more complicated, particularly if the damage is not minor. Where a child has a known history of causing damage, there should be a discussion with the social work department about how damage will be paid for. The local authority does have a duty to warn you of any such history.

Your insurers will expect that you notify them that you are a foster carer.

6.9 The child is using their money to buy drugs or alcohol or inappropriate things.

You will need to notify the child's social worker and it will be acceptable to withhold all or part of the child's money while consideration is being given to the management of the child's behaviour.

6.10 The child has used my cards to order goods, buy games or incur phone or other charges.

Depending on the circumstances – the age of the child, their awareness of what they have done, the amount of money involved – it may be a crime. You will have to report what happened to the child's social worker. You may have some protections under consumer law, particularly if a credit card was used, or even under your home insurance. You do have a responsibility to make sure your cards and passwords are safe.

7: Contact

Family life is strongly protected in Scots law. It is one of our human rights to have respect for our family lives. The United Nations Convention on the Rights of the Child places great importance on children being brought up by their parents. Thus the state can only interfere where it is necessary to do it

for the protection of the child, and it must be a proportionate reaction.

7.1 What is contact?

Contact means any contact that the child has whether it is face to face, supervised or not, by phone, email, letter or any electronic means of communication including text and social media.

7.3 Useful things to know about contact

- Contact is part of the welfare of the child.
- Contact should be regulated only where it is necessary and in the best interests of the child.
- The law is clear that contact is for the benefit of the child, not the parent or other person.
- Only a court or a children's hearing has the power to decide whether contact with a person with parental responsibilities and rights should be prevented or whether conditions need to be applied to contact.
- The local authority has a duty to promote contact between the child and any person with parental responsibilities and rights, but this is subject to the best interests of the child.
- When a child is placed away from home, the child's contact needs must be assessed, and this is not only with persons with parental responsibilities and rights, but also with the people close to the child, which may include other children of the family, and other relatives such as grandparents. It can also include close friends.
- Children need their friends and complain that too often their important friendships are ignored or lost while they are in care.
- The child has a right to a view about contact, and you may be best placed to help that view to be heard.
- Where a child is subject to a compulsory supervision order (CSO) the implementing authority has a strict

duty to carry out the CSO and any measures or conditions contained in it. If the CSO says that the child has to have contact with a parent, it must happen unless there is a good reason e.g. the parent turns up drunk or is abusive.

- In the event that contact is not working for the child the local authority cannot simply stop or restrict contact (except in the interim), they must go back to the children's hearing and ask for the regulating of contact to be changed.
- As the person with the care and control of the child, you have a duty to make the child available for contact, and also to monitor the effect that contact is having on the child. You are probably the person best placed to know the child's views about contact and to understand the impact of contact on the child.

7.4 What if the child wants more contact?

Much depends on whether there is anything in place that regulates contact. If there is nothing then much depends on how manageable that increase in contact is. You should discuss it with the child's social worker. If contact is regulated by court order or the children's hearing then it would need to be reconsidered by the court or children's hearing. Remember that children do have the right to ask for a children's hearing to be held once 3 months have passed since the last one. Children's views should be obtained and considered in any planning or other meeting.

7.5 What if the child refuses to go

This can be very difficult and much depends on finding out why. Once the child's reasons are understood it may be possible for adjustments to be made. No child should be physically forced to have contact with someone. The child's social worker should be contacted immediately.

Important Point

A young person over 16 years of age cannot be forced to have contact. Restricting contact is more complex and may require an order by a court or children's hearing.

If there is a contact order issued by a court there is a strong obligation on the person caring for the child to make the child available for contact. Failure to do so can potentially be contempt of court, which is a criminal offence.

If contact is regulated by a children's hearing the local authority can ask the reporter to arrange a children's hearing at any time. Where a child is refusing contact, and has a good reason, it would be expected and best practice for a children's hearing to be asked to reconsider contact.

7.6 What if I am the person who supervises contact and the parent or other person:**a. arrives in no fit condition for contact**

The welfare of the child is paramount. If the person arrives drunk, under the influence of drugs or otherwise unable to have good contact with the child you are entitled to refuse contact or to end the contact visit as soon as you become aware of the problem. This applies whether contact is ordered by a children's hearing or a court.

b. Becomes abusive to the child or somebody else

This is likely to cause real distress to the child and put them at risk. You would be acting appropriately to end contact and take any appropriate measures to protect the child and yourself including calling the police. This applies whether contact is ordered by a children's hearing or a court.

c. Behaves inappropriately during contact

You are entitled to take the steps you consider appropriate depending on the nature of the behaviour. This can range from stopping the contact visit to speaking to the person.

Important Point

If anything worrying happens during contact, make a clear note of it as soon as you can with as much detail as to what happened and what steps you took as soon you can. Always notify the child's social worker as soon as reasonably practicable, about what happened and what you did.

7.7 What if the child is having contact with a person who is not mentioned in an order?

Who the child has contact with in their family and immediate circle should be addressed in the care plan (see Chapter two 11 - friendships). Much will depend on the individual circumstances of the child and the nature of the contact. You should always check with the child's social worker if you have any concerns.

7.8 What if I find out that the child is having contact with a person who they are not to have contact with?

If there is an order from a court or children's hearing it is your duty to prevent or stop contact. If there is no order and you have concerns you have the power to restrict contact in the first instance and should report this to the child's social worker as soon as possible.

7.9 Can I withdraw contact as a means of disciplining the child?

The simple answer to this one is no. You should not disobey a court order or the terms of an order made by a children's hearing. If the contact is not regulated by a

court or a children's hearing you should use your judgement, but on the whole you should be wary of using contact with a parent or family member as a means of control. Contact is too important for the welfare of the child and the child is entitled to respect for their family life. (see Chapter two 5 - discipline)

Common Myths

If contact is ordered by a children's hearing, a social worker can just stop it if they think that it is not good for the child.

If contact is not good for the child and there are no orders in place, the local authority can just say no to contact.

Where a permanence order is in planning, contact can be reduced just to prepare the child for the change.

Contact is just the face to face stuff.

If contact has been ordered by a court, if the child does not want to go then the child can decide.

8: Religion

Addressing the child's spiritual and moral needs is one of the responsibilities of the local authority. The child's religious practice, if any, should be known and encouraged.

8.1 What are my duties with regard to the religion of the child I am caring for?

The child's plan should address the issue of the child's religion, culture and ethnicity. You should be made fully aware of any cultural or religious requirements including dietary norms, dress and so on.

8.2 What if the parents of the child are in dispute about the religion of the child?

Scottish courts are very reluctant to decide a child should be raised with or without religious beliefs, or specify which religion. You should not be required to make that decision either. Where the child has a view, that view should be respected.

8.3 What if the child no longer wishes to be observant of their religion?

This is a very personal decision and the child should be allowed to make that decision. You may want to discuss it with the child or provide them with the opportunity to discuss it with an independent person.

8.4 What if the child wants to follow a new religion or join a faith based organisation?

This is, again, a very personal decision. The child has a right to make that decision for him or herself.

8.5 What if I have concerns that the child's decision is potentially risky?

If you have any concerns that the particular faith poses a risk e.g. some extreme sects or cults, or that there is a risk of radicalisation you should raise the matter with the child's social worker as a child protection concern.

8.6 What about my own religious observance?

You are free to exercise your own right to practise your own religion, which may differ from that of the child you care for. Your own religious practice must not affect or influence decisions about the child. e.g. a foster carer who would not approve sex education for their own children on religious or moral grounds would not be able to impose that view for a foster child.

9 Social Media

Social media and life on line are part of everyday life now and children are introduced as infants to the world of the computer and the web. The result is that adults need to understand the risks and be alert. Looked after children who can be particularly vulnerable.

There is a need to provide clear guidance to children about the risks, and for carers to be aware of what the children are up to. This is particularly challenging for looked after children because you must be mindful of their privacy as well as the need to protect (see Chapter three - confidentiality)

The use of social media should be considered when the child's plan is being developed or amended. You should be told about any risk taking behaviour before a child comes into your care and you should be prepared to have on-going discussions with the child's social worker.

9.1 May I lay down rules about internet use?

As the carer of the child you can certainly establish rules, (see Chapter two 5 - discipline) how effective these will be against the wiles of the average teenager who will inevitably be more tech savvy than you, is another question. If the restrictions are more than day to day rules, then it may be necessary to refer the matter to a children's hearing for a decision, and/or to a review meeting. If the young person is past their 16th birthday then he or she is an adult and any protection concerns will need to be handled differently.

9.2 May I allow the child to establish an online presence?

Where the child is in their teens when they come to you, they will probably already have one, whether they admit it

or not. If the child has been in your care before reaching that stage, you will have to think very carefully before doing things like establishing a Facebook page. You will need to discuss the risks with the child's social worker, as going online under their own name is a way for the child's family to find them and get into contact without any monitoring.

9.3 What if the parent or birth family is putting pictures of the child on the internet?

As a parent that is their decision, but if any risk is posed to the child, his or her social worker should be alerted quickly. Pictures posted by the birth family should be seen purely in terms of risk (including distress) to the child.

9.4 Can I monitor the child's access to the internet/phone?

Balance must be maintained between protection and privacy. The younger the child the more justifiable the monitoring. Where the child is believed to be at risk from internet or phone contact and is subject to a compulsory supervision order or other orders, then a children's hearing should be asked to make an order regulating the use of internet/phone. The child's rights are protected as judicial oversight is available through appeal. If the child is putting themselves or being put at serious risk then child protection steps must be taken, and as an interim measure the child's phone or internet use can be supervised or stopped. It is irrelevant whether the phone, tablet, or computer was the gift of a parent or other relative.

9.5 What about online gaming?

Many children spend a lot of time playing computer games with other players in online games. There can be risks involved:

- The other players may well be strangers – including adults
- The content of some games may be inappropriate in terms of sexual content or violence
- There may be hidden charges

You are entitled to monitor the child's online gaming if they are aged under 16 years. It may be necessary to notify the child's social worker of any risks that the child's gaming is posing.

Useful links

Children and Young People's Commissioner Scotland

<http://www.cypcs.org.uk/>

Scottish Child Law Centre

<http://www.sclc.org.uk/>

Police Scotland online guide to internet safety

<http://www.scotland.police.uk/keep-safe/advice-for-victims-of-crime/domestic-abuse/safety-online/>

Young Scot

<https://www.youngscot.org/>

Guidance on looked after children

<http://www.gov.scot/Resource/Doc/344490/0114631.pdf>

Scottish Government Child Protection Guidance

<http://www.gov.scot/Resource/0045/00450733.pdf>

10 Haircuts, Tattoos, and Piercings

10.1 Haircuts

Cutting a child's hair is often a source of anxiety and friction when the child is looked after. On the whole a common sense approach is recommended. A radical departure in style or colour may require parental input, but if it is simply a matter of tidiness or grooming it becomes a day to day care issue. If grooming is neglected, it may become a welfare issue. As such, it is well within the powers and duties of a carer to make decisions about routine haircuts. Sensitivities should be

respected; baby's first haircut is a milestone few parents would want to miss – and there may be cultural or religious sensitivities regarding the cutting of hair. One should also respect the wishes of the child. Older children have their own views and are perfectly capable of making their own style decisions. (see Chapter 1.3 capacity)

10.2 Tattoos

It is illegal for a person under the age of 18 to be tattooed (Tattooing of Minors Act 1969). Anyone tattooing a person who is under the age of 18 is committing an offence, unless it is for medical reasons and under supervision. There is nothing in the Act that allows a parent to consent to their child being tattooed. You should be aware that some religions prohibit tattoos so there are particular sensitivities.

10.3 What do I do if the child comes home with a tattoo?

If the child has been tattooed by a professional, that person has committed a criminal offence. It may be possible to have the tattoo removed, but as that is a medical procedure it will require the consent of the child.

10.4 Piercings

Piercings can vary from simple single piercing of earlobes, to fairly extreme or intimate piercings. Professionals are regulated and should not undertake piercings for children under 16 years of age without written permission from a parent or carer. Intimate piercings of a child aged under 16 are not permitted. While you could, theoretically, consent to a child having her or his ears pierced where you know that the parent would not object it is best that the decision be referred to a parent, or where a parent is not available, to the child's social worker.

If you become aware that a child in your care has had piercings, particularly intimate piercings, you should notify the child's social worker.

11: Photographs

Photographing children causes considerable anxiety and there are disproportionate restrictions by some organisations and agencies of the photographing of children even by their own parents.

Every child needs a record of their childhood. It is very sad when young people have no photographs of themselves as children. It is part of being like everyone else to have photographs that record childhood memories, so it is not only allowable to take pictures of the child, for the child, but to be encouraged. Personal photographs of the child will be precious to them in later years and of personal interest to their family. There are things to be wary about and this section is aimed at keeping you aware of what you can do and what you should be cautious about.

Common Myths

Children in care should not be photographed without specific permission from a parent or social worker.

Parents and family members should not take photographs at school events, even if the pictures are for their private use.

If a parent has no contact with the child, they cannot get school photographs

11.1 Can I send copies of pictures to the child's parent or family?

Yes - unless you have been provided with reasons why you shouldn't. The parent or family may be allowed no contact with the child and should therefore not know what the child looks like now in case it enables them to locate the child. A parent who makes inadvertent or damaging use of photographs may need to have access to photographs restricted. This should form part of your discussions with the child's social worker, and depending on the circumstance, may need to form part of the child's care plan.

11.2 Can I put pictures of the child on social media?

You should avoid putting pictures of the child on social media unless the child, parents and the local authority have no objection and your page is private.

Great care should be exercised when it comes to social media. Once pictures are on the internet all control is lost. Some sites have conditions of use that include giving the site full permission to use any photographs as the site sees fit and without permission or notice. Where a parent is not permitted to know the whereabouts of a child photographs should not be published.

11.3 What about formal school photographs?

Having a record of school days is a normal part of growing up and can be an important part of a child's life story work.

As the carer of the child you are a parent for the purposes of education (see Chapter two 3) therefore you have the right to consent to school photographs. Remember that your powers with regard to education are different from those given under section 5 of the Children (Scotland) Act 1995. Remember that the child's

parent(s) has a right to copies of formal school photographs. Where there are concerns about this, the child's social worker and the school will need to take appropriate steps.

11.4 What about taking photographs at school events?

The law allows the taking of photographs of a child for private or family use. Schools should not restrict this without very good cause. (see Chapter two 3)

11.5 What if there is a risk to the child if their whereabouts become known?

The child's plan should address this. It will be necessary to ensure that the school or other organisations are aware of risk and do not put a picture of the child on websites, in local press or other publicity materials. It does not mean that the child may not be photographed. Consideration should be given by the school or other organisations as to how to manage photographs of events at school taken by parents and others where there are children at risk, without revealing to others that the child is at risk or betraying their right to privacy.

11.6 What about photographs that the child takes – can I monitor the child's phone?

When mobile phones became universal and were provided with cameras and the ability to share photographs, parental control became well-nigh impossible. You will be aware of the need to teach the child you care for of the risks, particularly of sexting and cyber-bullying. You certainly can monitor the child's phone if you have reason to believe that they are putting themselves or others at risk, but you should also be aware of the child's right to privacy. It may be necessary for the children's hearing to attach a measure or direction

to a compulsory supervision order allowing the child's phone to be monitored.

11.7 Can I allow the child to put photographs of themselves on social media?

This can be much harder to control. Children should have clear guidance about managing risk on line. If you become aware that the child has done so, and consider that there is a risk, then you will need to take any immediate steps you consider appropriate while you notify the child's social worker.

11.8 What if the child's friends are putting photographs of the child on social media?

You will have no control over this but if you think that it is putting the child at risk you should advise the child's social worker.

11.9 What if you think or know that the child is sexting?

It is important to react proportionately. A surprisingly high percentage of children are sexting. It should be treated in the same way as any behaviour that may carry a risk. Children should be made aware of the dangers.

The criminal law in this area dates from before most phones carried cameras and was written with dangerous adults in mind. Children are potentially both victim and perpetrator. Given the risks, sexting is likely to be a matter to be notified to child's social worker.

Important Point

It is important for young people over 16 years of age to understand that sexting with a child under 16 is a serious matter under the criminal law.

Useful link:

Police Scotland online guide to internet safety

<http://www.scotland.police.uk/keep-safe/advice-for-victims-of-crime/domestic-abuse/safety-online/>

12 Activities and Holidays

One of the over-riding needs of a child is to grow up just like everybody else. This means being able to join clubs, enjoy activities and have a normal childhood circle of friends with all of the activities that entails, and go on holidays. There can be real anxiety about this, but once again a common-sense approach is a good start.

Friendships are an important part of growing up in normal childhood. Just because a child is in care, there should not be unnecessary barriers created by an overly cautious approach to friendships, and the activities that those friendships provide. Children deserve as normal a childhood as possible, rather than being treated as if all aspects of life contain unacceptable risks.

Children should be encouraged to develop any interests and talents that they may have, and the opportunity to participate in activities with their peers. The child's needs should be understood and addressed in the care plan.

12.1 Clubs, sports and group activities

What children say:

"My carers should be able to agree to school trips, clubs etc. as it makes my life easier"

12.1.1 May I sign the permission forms for the child to join a club or take part in a group activity?

If the activities are part of the child's school education then, yes. As you are a parent for the purposes of

education, you are empowered to decide. If the activity is outside of school, then as a carer, your powers do include agreeing that a child can join activities and clubs with the caveat that, where you know that a person with parental responsibilities and rights would not agree, then you cannot over-ride their decision.

The child's needs are paramount and government guidance for looked after children stresses that children must have opportunities to be active and to explore their interests and talents. These opportunities should be explored in planning and addressed in the care plan. It is not necessary for each activity to be in the plan, but the plan should address activities, particularly if the child has any disability, special needs, or particular talents. The views of the child should be respected and listened to, and where a child wants to participate, the care plan should address how best to support them. The child should not, however, have to wait for a planning meeting to take part in activities, unless there is a dispute.

12.1.2 What if the parent is being unreasonable in refusing?

This should be referred to the child's social worker. They are best placed to speak to the parent about this. If the child is subject to a compulsory supervision order (CSO), a children's hearing can be asked to attach a measure to the CSO to allow the child to participate.

12.1.3 What if the activity is a dangerous sport?

All sports involve some risk but some sports have higher risks than others. If it is a risky sport, much will depend on the circumstances, for example:

- is the child already involved in the sport
- does the parent agree
- is there a good reason for the child not participating

If it is not contained in the child's plan it is best practice to discuss this with the parent and/or social worker. The child's view should be influential in the discussion – and remember that the child's views are at the centre of planning.

12.1.4 What if the parent wants the child to participate but the child does not want to?

Children, particularly those who are old enough to form a view, should be able to choose for themselves – something like this should be referred to the child's social worker, but you will be instrumental in getting the child's view and making sure that it is heard.

12.2 Sleep overs and friendships

Scottish Government guidance on sleepovers <http://www.scotland.gov.uk/Resource/Doc/210818/0055724.pdf>

12.2.1 Do I have the right to know where the child is going?

Yes. You should insist on knowing where the child is going and who with. This would be exactly the same information you would expect to have about your own child.

12.2.2 If the child requests a sleepover, do I have the right to veto it?

Yes. You can make the decision in the same way you would make it about your own child. If you think that the arrangement is a bad idea, whether because it is a school night, or because you do not think that the people/place are unsuitable or they are unknown to you, or you have any reasonable concern you can refuse to grant permission. Children in care can be particularly vulnerable and an important part of your role is keeping them safe.

12.2.3 What about last minute arrangements?

You are entitled to use your judgement in the same way as outlined in the paragraph above.

12.2.4 What if they are friends that the child has from before they came to me?

Where the child has positive friendships, these should be encouraged, but you are still entitled to use your judgement.

12.2.5 Do the parents of the child's friends need to be Disclosure checked?

Children have a right to as normal a life as is possible, so common sense should be used. If the child is to stay over regularly or go on holidays, then Disclosure checks will have to be made. However, where the contact is more casual, it can be entirely appropriate for social workers to do a low-key check of the child/family without this being known by the subjects of the check. If the child who is placed with you is from another local authority, there should be arrangements in hand so that you can have these checks undertaken locally when needed.

12.2.6 Do the child's friends need to be Disclosure checked?

It is not necessary for every friendship to be subject to checks, but a low key check may be appropriate, depending on the circumstances. Delaying friendships or activities because of checks must be proportionate.

12.2.7 The child has medical needs or a problem such as bedwetting; Can I tell the host parent?

Yes. The best interests of the child will require it.

12.2.8 The child has behavioural problems, which may pose a risk to other children; Should I share this information?

Yes. This should be considered in the preparation of the child's plan. Use common sense – it is a balance between giving the child as normal a childhood as possible, while protecting them, and protecting other children.

12.3 Holidays

The child may have the chance of holidays with members of their own family, their friends or with you, and these opportunities can enrich their lives. It is part of being just like everyone else. Parents can struggle with the idea of a child on holiday with someone other than themselves, and some parents can withhold permission without considering or caring about the impact on the child.

Social workers will encourage parents to think of the child and not to withhold permission without good cause.

Holidays and breaks should be part of every childhood and should be part of the child's plan. Where permission is unreasonably withheld, it will be necessary to ask a children's hearing or a court for the necessary order.

12.3.1 May I take the child away for a holiday?

While the child is in your care, they are part of your family life. Normal short breaks within Scotland should not require special permission – although the child's social worker must be given all the information. There may be reasons why the child should not go on holiday, but this should be either in the care plan or in the decision of a court or children's hearing. Holidays within the UK are normally also not problematic. A holiday out-with the UK will require the permission of a person with parental responsibilities and rights. Where that permission is unreasonably withheld, a children's hearing or a court can make an order allowing the holiday to take place. A

court can order that the child's passport be handed over to social work.

12.3.2 How can I get a passport for the child?

Passport applications may only be signed by a person with parental responsibilities and rights, or by social work if a permanence order has been granted by the court. A statutory declaration may be sufficient, if a parent does not oppose it. Where a parent refuses, a court may intervene.

12.3.3 Can I take the child for a short visit to our friends or family?

If it is part of family life and there is no court order or condition attached to a compulsory supervision order that would prevent it, it is likely to be acceptable. You should discuss it with the child's social worker at the start of the placement if you have an active family life, and visits are a normal part of the routine. There may be good reasons for restricting or refusing such visits. Otherwise, the child's social worker should always know when you are taking the child away. You should also always record visits to your home. Social work will expect to undertake a check on the friends and family that visit regularly.

12.3.4 What if I am a single foster carer and I want to have someone to stay over?

If you have someone significant in your life who does not live with you, but comes to stay regularly, it is likely that social workers will want to have them checked out. Multiple partners or short-term relationships may cause some concern because of the impact upon the child.

12.3.5 We have a holiday home or caravan in the UK

If that is a normal part of your family life then there is no reason why the child cannot accompany you, unless

there are conditions attached to the compulsory supervision order, or other good reasons, such as health or contact arrangements. The local authority will want to be satisfied that the accommodation is suitable.

12.3.6 Can the child visit a member of my family?

If you are with the child there is not normally a problem as this is part of family life. The same will be true of friends or family who visit you. Social workers may well want to undertake checks. If you are not present, the local authority will have to undertake the usual checks, particularly if your family member is, in effect, providing respite. It may also require consideration by the children's hearing.

12.3.7 Can the child go on holiday with a friend of theirs and their parents?

This is subject to the same requirements as detailed above – that is that the child's social worker will need to know, and if you are not present then social work will have to undertake checks on the adults, and probably the other children. The permission of the parents of the child you are caring for would normally have to be obtained, and if withheld unreasonably it may be decided that they are not suitable to take the child. A holiday out-with the UK will require careful consideration and may require a court or children's hearing to consider the matter.

12.3.8 Does it matter how we travel – do I need special permission for the child to get on an aeroplane?

Foreign travel always requires the permission of a parent, or an order, but the means of travel does not, unless the child has a medical or other condition which would make plane travel inadvisable.

Useful links:

Scottish Information Commissioner

<http://www.itspublicknowledge.info/home/ScottishInformationCommissioner.aspx>

Sports Scotland

http://www.sportscotland.org.uk/schools/our_work/

British Adoption and Fostering

<http://www.baaf.org.uk/>

Children and Young People's Commissioner Scotland

<http://www.cypcs.org.uk/>

Scottish Child Law Centre

<http://www.sclc.org.uk/>

13 Crime and the Police

What children say:

“If the police talk to me and I want to tell anyone, I will”

Children may find themselves being interviewed by the police as victims, witnesses to crime, as suspects or accused. They have special rights in these circumstances and you have a role in supporting them.

13.1 Witnesses

If the child is to be a witness in court there are special protections and options. You can get information on this from www.witnessinscotland.com/wis/102.html. You can certainly obtain support for the child (see Chapter two 4) from organisations such as Victim Support or Assist. It is the child's decision if they wish you to be their supporter at court.

13.1.1 Can I refuse to let the child be interviewed?

No - If the child is to be interviewed as a witness there will be special procedures depending on the nature of the offence. You cannot interfere in a police investigation, but

you can certainly support the child through the process. If the child is showing serious distress, it is unlikely that an interview will take place immediately. Joint interviews are carefully planned and those planning the interview may want information from you about the child's needs and vulnerabilities. Consideration will be given, as to whether the child will need support during interviews, and who is the most appropriate person. It may be judged that you are best placed to provide that support.

13.2 Does the child need a lawyer?

13.2.1 If the child is the victim

If the child is the victim of an offence, they do not need representation when interviewed, but may be entitled to compensation through the Criminal Injury Compensation Award scheme and a lawyer may help with that. You would certainly be within your powers to consult a solicitor with the child, but this should be discussed with social work first. Special arrangements may need to be made to manage any financial compensation paid to the child and it is not likely to be your responsibility (see Chapter two 6 Money).

13.2.2 if the child is a witness

A witness does not need legal representation – but is entitled to support. (see Chapter two 13.1 - witnesses)

13.3 If the child is suspected of a crime

The child is entitled to speak to a solicitor before being interviewed and is entitled to have a solicitor present when questioned. Having legal representation is not an admission of guilt and no child should be questioned without having legal representation or a legal consultation first. Even if you are sure the child is innocent – get legal advice for them. Even if the child tells you they have done something, you should get a

lawyer – what actually happened and what they may be charged with can be radically different. The child will be eligible for help with legal expenses so do not worry about the cost.

Important Points

If the child is suspected of a crime you do not need the permission of the parent to get legal advice for the child.

The child does not need capacity to instruct a criminal lawyer.

Children and young people aged up to 18 are entitled to a supporter during questioning even if they have legal representation. Circumstances will dictate who the most appropriate supporter is, the child can certainly express a preference.

13.4 May I be present when a child is interviewed whether as a victim, witness or accused?

It will depend on the circumstances. ask!

13.4.1 Where will the interview be held?

It depends on the circumstances.

13.4.2 If the child is arrested and taken to the police station, will I be told?

When a person under 18 is taken to a police station, the police are required to notify a parent or carer. If the child gives them your details you should be told.

13.5 Who decides if a child should accept/deny criminal grounds or plead guilty/not guilty in court?

This must be the decision of the child. Accepting grounds or pleading guilty has long term consequences and it is

not a matter of - we bring children up to be honest. Some children agree grounds because it is just easier. Children should be aware of the consequences and when in doubt are wisest to plead not guilty or deny grounds. Their lawyer will take them through this.

13.6 Useful things to know about police investigations

- Victims and witnesses do not need legal advice.
- Children should always get legal advice if suspected of a crime before being interviewed. If the child is interviewed at home a solicitor may not be present – in this way it may be more advantageous for the child to be interviewed at the station. The child can still speak to a solicitor first.
- The child will be eligible for help with legal expenses from the Scottish Legal Aid Board if they are accused of a crime. Getting help from a duty solicitor is free. Parental income is not taken into account.
- Not all police interviews are recorded; often it is only non-uniformed police who record interviews.
- If the child is the victim they may be eligible for compensation from the Criminal Injuries Compensation Scheme.
- There are special measures to help vulnerable witnesses – children do not have to be in court.
- Witness interviews in serious offences are carefully managed - you may be able to support the child at the interview so ask.

Useful links:

Victim Support

<http://www.victimsupportsco.org.uk/>

Witnesses in Scotland

http://www.witnessesinscotland.com/wis/CCC_FirstPage.jsp

Scottish Legal Aid Board

<http://www.slab.org.uk/>

Law Society of Scotland

<http://www.lawscot.org.uk/>

Scottish Child Law Centre

<http://www.sclc.org.uk/>

Young Scot

<https://www.youngscot.org/>

Criminal Injuries compensation Scheme

<https://www.gov.uk/government/organisations/criminal-injuries-compensation-authority>

14 Funerals

When a child who is accommodated away from home dies, it can be very distressing for all concerned. It is the responsibility and right of the persons with parental responsibilities to arrange the funeral unless they delegate it to the local authority, or cannot be found.

Where the parent predeceases the child there may be a guardian who will have the responsibility. It is very distressing for carers who have looked after a child for a considerable period to find that they cannot arrange the funeral, and may not be welcome.

Useful links:

Bereavement support

<http://www.crusescotland.org.uk/>

Chapter three

Confidentiality and Information Sharing

What children say:

“My carers need to know medical things as they need to know if anything is wrong with me”

“I would like to keep some things private...I need a life”

“I didn’t know I have a right to see information about me”

“I want my carers to know about counselling or mental health as they could help me through a rough time”

Children are entitled to the same privacy and confidentiality as adults, but there are limitations. Child protection always trumps confidentiality, but care must be taken that you are sharing only that which must be shared, and are sharing with the right person. Children in care have less privacy than other children, but they still deserve respect and care for their dignity when information is shared. This Chapter is intended to give you some understanding of the complexities and some guidance on the approach to take. All situations cannot be covered here so when faced with a situation that you are unsure about – get advice.

Common Myths

All information about a child or parent, however confidential, must be shared with the named person

All information will be shared with all of the professionals and agencies working with a child or family

Children cannot have information kept private

1 What information can be shared with me about the child?

You have the legal responsibility of safeguarding the health welfare and development of the child while he or she is in your care. Therefore you should be given all the information you need to carry out this great responsibility. When a child is placed with you, you should expect to be provided with information about the child which is sufficient for you to manage their day to day care. In an emergency placement you will inevitably have less information at the start, but you are entitled to expect to be provided with the information you need to care for the child.

Important Point

If you have other children in the house – including your own, you should have any information that you may need to keep them safe. The local authority has a duty of care to you, and other members of your household, as well as to the child who is accommodated with you.

This will include:

- Information about any medical conditions or illnesses, medical or dental treatment that the child is undergoing. This is subject to the child's own capacity (see Chapter one 3). You should know of any medical risk the child may pose to you or any member of your household (i.e. HIV positive or any communicable disease)
- Any behavioural problems including any history of violence or offending that is of current concern, or which may pose a risk to you, your family, other children in the house, or those the child may come into contact with. This will include any sexual offences. It is particularly important that you be aware of any pattern of risk taking behaviour.

- Details of any services the child is working with.
- If you are likely to have any contact with the parents or other family members of the child you should be told of any risk they may pose to the child or you.

Important Point

If you are a relevant person for the children's hearing, you will have full access to the reports, so will see all the information about the child and family (see Chapter four)

2. Information you should be provided with or have access to

- Your foster placement agreement should include any specific requirements of the child.
- A copy of the Child's Plan. This should make clear the responsibilities of the professionals, any person with parental responsibilities, the child, you, and any other person who is relevant.
- Medical information - this should be in the child's plan
- and should include details of any health condition the child may have and any treatment or medicine they are taking – unless the child is old enough to make their own medical decisions and demands confidentiality. Any chronic or serious conditions should be made known to you.
- The name and contact details of the child's medical practice
- Details of any disease or medical condition that may pose a risk to any person living in your home, including you and any other children.
- Information concerning the child's family so that you can manage contact between the child and the family, including, whether it is appropriate for you to have direct contact with the child's parents or family

and what information you can and cannot share with them

- Any other information that is appropriate for you to know so that you can keep the child safe and supported.
- Information concerning any persons who may pose a risk to the child and from whom you may need to keep the child safe.
- Information concerning any risk the child may pose to themselves or any other person – including you and any other child in the house.
- Information concerning any court or children's hearing decisions affecting the child.
- Details of anyone that the child is to have contact with or not to have contact with and when and where that contact is to happen and how it will be supervised or not.
- Details of meetings that the child needs to attend and the professionals involved with the child, the named person, the lead professional.
- Information concerning the child's education, including any additional support for learning.
- Any other information that you require to carry out the child's day by day care.

3. Emergency placements

The local authority is required by regulation 36(5) of the Looked After (Scotland) Regulations 2009 to provide you with information about the child's background, health and emotional development.

www.legislation.gov.uk/ssi/2009/210/made

4. What information will not be shared with me?

If you do not need it to care for the child, then you should not have it. There may be sensitive information that you do not need. Examples may be:

- the child had a pregnancy terminated before coming into your care.
- details of therapeutic work undertaken with a CAMHS team – although you should have a general idea of any mental health problems
- You will only have information about third parties that you need to know – so you may know that a parent is a drug user, but may not know that the parent is a recovered alcoholic.

Important Point

Information sharing is always governed by the Data Protection Act 1998

5. What information must I share?

5.1 Notifiable events

Prior to the placement you should be provided with information as to which events that social work must be told about. These could include:

- specified persons contacting, or being contacted by the child
- specific behaviours by the child
- significant things happening to the child

6. Child Protection

Child protection over-rides considerations of confidentiality, but the Data Protection Act does require that you share only what you need to share and only with the appropriate person. The first call should normally be to the child's social worker. It is not always necessary to call the police yourself unless there is an urgent need – it may be the decision of social work whether to involve the police.

Whether a matter is child protection one or not will depend on the circumstances, it can include disclosures

by the child or others, incidents involving the child or others, or a concerning series of minor incidents.

7. Crime

Where the child has been the victim of a crime, you will need to tell his or her social worker, and you will need to consider reporting it to the police, unless the child is an older child and does not wish to report the offence. The law does not require that all crime be reported to the police. It may be minor and not require reporting as it can be dealt with in a more appropriate manner – particularly if the alleged offender is another child. Serious crime will need to be considered very carefully and the decision may be taken by social workers rather than the child. The child may refuse to cooperate, however, and advice will need to be taken. It is likely to be social workers, rather than you who will notify the parent/s of the child and others.

8. What information can I share about the child and with whom?

This is probably the most challenging part of information sharing. Issues can arise when the child reaches an age and stage where they are able to form a view, and later when they are capable of exercising capacity. When any child asks for a matter to be kept private, that request should be considered seriously and respected as far as is possible – child protection concerns allowing. Many children in care have issues with trust, and you will have a daily balancing act between respecting their dignity and privacy, and sharing necessary information with the other professionals and the parents of the child.

Important Point

Where you have informed permission to share information, you can stop worrying!

9. The named person

Where a child is accommodated, the role of the named person is rather clearer than with other children. The named person has an integrated role with the professionals and will be privy to information as part of that role. You should be clear about whom the named person is and your local area procedures.

10. Medical Information

The responsibilities and rights of parents should be respected, and unless there are restrictions on information sharing imposed by a children's hearing or a court, then it is entirely appropriate for you to share information about any medical decisions you have had to make, or any treatments that the child is receiving where the child is too young to make medical decisions.

Where the child has the capacity to make their own medical decision about their treatment, then you may not be privy to any information about it if that is their choice. If they do chose to share the information with you, you should obtain their permission before you share it with anyone. The medical professionals will be aware of child protection and will always include it in their considerations. The child may have good reason for restricting access to information, or it may just be a matter of trust. Whatever the child's reasons, they are entitled to the protection of the Data Protection Act – so be cautious. You may want to work with them to help them understand the importance of sharing some information, and you can support them to explain their requirement for confidentiality to others, such as social

work, other professionals and family. Remember that if over 16 years of age, the young person is an adult and is entitled to full medical confidentiality unless they lack capacity.

Important Point

Breach of the Data Protection Act can be a serious matter. For more information see the website for the Information Commissioner for Scotland. www.ico.org.uk

11. Sexual health

What children say:

"I don't want my carers to know about my sexual health"

A child has the right to obtain sexual health services where he or she has capacity (see Chapter one 3 - capacity). The service, whether it is from an agency or a qualified medical practitioner, has the responsibility for considering whether child protection steps should be taken. If you become aware that the child is sexually active and he or she is under 13 years of age, you must take child protection steps. If the child is over 13 years of age, then it is a matter for judgement. Any professional who has been consulted by the child about sexual health, will have been required to explore child protection matters. See Scottish Government Guidance on under age sexual activity. <http://www.gov.scot/Resource/Doc/333495/0108880.pdf>

Important Point

Where the child is under 13 years of age, there is always a child protection concern, if the child is sexually active.

12 Offending

12.1 Where the child is under 16 years of age and has been accused of an offence, will I be told?

If you have the care of a child, then you should be told if the child is to be questioned by the police, or has been taken to a police station. You will be the one, in the first instance, who has to ensure that the child has access to legal advice – do not leave this to the police. The law is changing to ensure that young people under 18 years of age also have parents/carers notified if they are arrested and taken in for questioning. Depending on the circumstances the police may notify social work, but you should ensure that the child's social worker is fully aware of the circumstances.

Important Point

A child will be eligible for free legal advice if they are to be questioned by the police concerning and alleged offence.

12.2 Should I tell the child's parents?

Much will depend on the circumstances of the individual child. You will be well aware of the nature of the child's relationship with the parent. In some cases the parent/s will be best placed to support the child, in others it may be that it is best that they are not involved. If unsure refer to the child's social worker.

13 What information may I keep about the child?

You are permitted to keep your own information about the child, and it can be wise to do so. If you are keeping information about the child it should be kept in a place that is secure. You should get help from the local authority if you have written material about the child that

needs to be kept safe. You should also let the local authority (social work) know that you are keeping information. Remember that the child has a right to know and see any information held about them (see next Chapter).

14 What information does the child have a right to see?

The Data Protection Act 1998 s. 66 gives children under the age of 16 years of age, the right to access information held about them when they have a general understanding of what that means. Social workers may withhold information that they feel the child is not ready to see, but should have robust systems to support requests. Information about third parties is restricted by the Act, but may form part of the child's life story work.

15 Can children restrict access to information about themselves?

This depends on the circumstances, but at all times information held about children is governed by the provisions of the Data Protection Act 1998. The sharing of sensitive information, which includes medical (and psychological) treatment, any offending or suspected offending and any information about the child's sexual activity is subject to very strict protections. The child can make a formal request for information to be withheld from particular persons if it is going to cause significant distress or harm to him or herself or to another individual (see Chapter one 3), a children's hearing can be asked to restrict information.

Important Point

When it comes to children's hearings the child may request a pre-hearing panel or a children's hearing for an order restricting access to specified information. For more information on this you should speak to the children's reporter responsible for the child's case.

Useful links:

Children and Young People's Commissioner Scotland

<http://www.cypcs.org.uk/>

Scottish Child Law Centre

<http://www.sclc.org.uk/>

Scottish Legal Aid Board

<http://www.slab.org.uk/>

Scottish Children Reporter Administration

<http://www.scra.gov.uk/home/index.cfm>

Chapter four

Participation in Planning, Meetings and Hearings

What children say:

“I want my carer to be there for me at children’s hearings”

“I don’t know the people at children’s hearings”

“Social workers are too nosey”

“My carers should listen to my parents in case they get more information to help with my care”

1 Planning

As a foster carer you will be expected to attend review meetings and to participate. You have no right to attend, but would normally be expected to.

2 Children’s Hearings

2.1 As carer:

As the carer of the child you will be invited to children’s hearings because you will have information that is useful to the children’s hearing. You may also have a role in supporting the child, if the child does not have a representative such as an advocacy worker (see Chapter one 2:4).

2.2 As representative

If you have a close relationship with the child, they may ask you to be their representative at their children’s hearing. If this is the case, and you do not feel that, as foster parent, you have a conflict of interest, you will have a right to attend the children’s hearing with the child. You should be allowed to speak if the child wants you to. You do not have any other rights as such, your role is to assist the child to understand and participate.

2.3 As relevant person

Should you become a relevant person for the child, you will have considerable rights including:

- to receive all of the papers and reports
- to attend the children's hearing and be heard
- to appeal decisions of a children's hearing, and some decisions by a pre-hearing panel
- to ask for a new children's hearing once three months has passed
- to ask for a pre-hearing panel to excuse the child from attending
- to ask for a pre-hearing panel to consider another person as a relevant person
- to have a representative

To become a relevant person you would have to satisfy a pre-hearing panel or a children's hearing that you have significant involvement in the upbringing of the child.

Useful links:

Scottish Children Reporter Administration

<http://www.scra.gov.uk/home/index.cfm>

Scottish Child Law Centre

<http://www.sccyp.org.uk/>

Useful information

- The Looked After Children (Scotland) Regulations 2009: www.legislation.gov.uk/ssi/2009/210/made
- Guidance on the Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007
<http://www.gov.scot/publications/2010/06/01094202/0>
- Guidance on Overnight Stays for Looked After and Accommodated Children
<http://www.gov.scot/publications/2008/01/31131939/0>
- Guide to Getting it Right for Every Child
<http://www.gov.scot/resource/0039/00394308.pdf>
- Scottish Government Child protection Guidance
<http://www.gov.scot/Resource/0045/00450733.pdf>
- Guidance on sexually active children
<http://www.gov.scot/resource/doc/333495/0108880.pdf>
- Lord Advocates guidelines ON Offences committed by children
http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Lord_Advocates_Guidelines/Lord%20Advocates%20Guidelines%20offences%20committed%20by%20children.pdf
- Protecting children: framework for standards
<http://www.gov.scot/Resource/Doc/1181/0008818.pdf>
- GIRFEC National practice model
<http://www.gov.scot/Topics/People/Young-People/gettingitright/national-practice-model>

- Information sharing between services
<http://scotland.gov.uk?Resource?0041/00418080.pdf>
- Early years framework
<http://www.gov.scot/Resource/Doc/257007/0076309.pdf>
- Delivering a healthy future: an action framework for children and young people's health in Scotland
<http://www.gov.scot/Resource/Doc/165782/0045104.pdf>
- Scottish Legal Aid Board
<http://www.slab.org.uk/>
- Scottish Child Law Centre
<http://www.sccyp.org.uk/>
- British Adoption and Fostering
<http://www.baaf.org.uk>
- ASN tribunals
<https://www.asntscotland.gov.uk>
- Action for Sick Children toolkit to support foster carers
<http://www.ascscotland.org.uk/default.asp?page=85>
- Fosterline Scotland 0141 204 1400
<https://www.fostering.net/scotland>
- Parentline Scotland 0800 028 2233
<http://www.children1st.org.uk/>
- Childline 0800 1111
<http://www.childline.org.uk/Pages/Home.aspx>



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78544-789-1 (web only)

Published by The Scottish Government, November 2015

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS59214 (11/15)

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