

Briefing Note

The use of National Minimum Standards (NMS) in England as a benchmark for deciding on the suitability of foster carers including kinship foster carers¹

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A number of local authorities are in the practice of using the Fostering Services: National Minimum Standards (2011) in England (NMS) as a benchmark for deciding on the suitability of prospective or approved foster carers. This note discusses that practice in the context of what is stated in the NMS, the statutory guidance and case law.

The NMS (2011, p.4) make clear that they are a set of standards that are meant to be applied to fostering services:

Where a standard places an expectation on a foster carer, this should be interpreted as an expectation on their fostering service to support the foster carer to meet the standard.

The statutory guidance for Family and Friends (2011) makes the same point and emphasises that family and friends foster carers should not be treated differently from other foster carers in this regard:

4.48 The National Minimum Standards for Fostering Services cover fostering services' responsibilities with respect to all their foster carers, including those who are family and friends. Fostering services must deliver services in a way which ensures that family and friends foster carers are fully supported to care for children placed with them and are not disadvantaged as a result of their prior relationship with the child.

The National Minimum Standards apply to fostering services responsibilities and not to individual foster carers.

MBC v X & Ors [2018] EWFC considered a case involving Knowsley Council (<http://www.bailii.org/ew/cases/EWFC/HCI/2018/42.html>) where the local authority suggested that the prospective carer was unsuitable because they did not meet the NMS for fostering. The judge in that case held that whether or not the kinship carer could meet the NMS was not the right question to

¹ Within the fostering legal and regulatory frameworks the phrases 'family and friends care' 'connected persons' and 'connected care' are used to refer to the care of children by carers 'known' to the child or their birth family – through blood ties, family connections or friendship. The term 'kinship care' has become important to the reform agenda in forging a defined social identity for families (see the work of the Kinship Care Alliance and the Parliamentary Taskforce on Kinship Care). The term 'kinship care' is now in wide use among social care professionals in the UK. In this document we use the term 'kinship care' as an umbrella term which covers 'family and friends care' 'connected persons' and 'connected care' in the context of the paper's focus which is foster care. Where specific terms, i.e. 'family and friends care', are used in the regulatory or legal framework we cite those. We considered using a singular consistent term in this paper (i.e. kinship care) but have decided that this would be an artificial 'fix' which ignores the multiplicity of terms cited in law and regulations and used in practice. Our guiding principle is that concepts and terms should be precise and contextualised. Language practices change and we endeavour to respond in ways that are helpful and meaningful to our members.



ask. The point was made that NMS are designed to be applied to a fostering service and not individual foster carers, and in considering suitability of individual carers for a particular child, the 12 deciding question should be 'Is the placement [or proposed placement] in the child's welfare interests?'

If the proposed placement is in the child's best interests, the next question to ask is 'Can the carer be supported to meet the NMS?' and where the answer to this question is 'yes', then that support should be made available. In line with the key point made in this judgement, if the carer cannot be supported fully to meet all of the NMS, but the placement is nevertheless still in the child's best interests, then the prospective carer should still be considered for approval to foster that named child.

In some cases, there will be an overlap between meeting the child's welfare interests and compliance with the NMS. NMS 4 covers issues of safeguarding, requiring that:

Children feel safe and are safe. Children understand how to protect themselves and are protected from significant harm, including neglect, abuse, and accident.

It is hard to envisage circumstances where a (prospective) foster carer cannot – with support – keep a child safe but is nevertheless deemed able to meet a child's welfare needs.

However, a (prospective) foster carer might fall short of meeting some other NMS, but it nevertheless remains in the child's best interest to be cared for by that person. For example:

- A carer may not be able to support a child's education due to their own problems with literacy. In this case, with additional support from the local authority and the school, the placement might still meet the child's welfare needs.
- A carer may be unable to provide a child with their own bedroom and so the child has to share a room, for example, with their aunt.

In this scenario, the local authority could help the aunt create a separate space within the room for the child and support formal requests to find more suitable housing. In these examples, it would be wrong and possibly unlawful to deem the carer unsuitable because they did not meet one or more of the NMS. This argument is applicable in relation to family and friends (kinship) foster carers, and in other longterm fostering situations where the foster carer is not a kinship carer. In considering the suitability of individual carers for a particular child, the deciding question should always be 'Is the placement (or proposed placement) in the child's welfare interests?'

Authors

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