

The usual fostering limit, exemptions, and terms of approval of foster carers (England)

From enquiries to CoramBAAF's members' Advice Line it has become apparent that there is currently some confusion among fostering services in England about the usual fostering limit (the number of children carers can foster at the same time), exemptions to this, and the terms of foster carers' approval. To provide guidance to members on these issues, we have produced the following information setting out the current position.

The usual fostering limit

[Schedule 7 of the Children Act 1989](#) sets a limit of three on the number of children that a foster carer may foster at any one time. This may only be exceeded if the children are all siblings of each other, or (if not all siblings of each other) if an exemption is granted by the local authority where the foster carer resides. The exemption names the specific children that the foster carer may foster, and sets out any conditions which apply to the exemption.

Foster carers' terms of approval

When a foster carer is approved, [Reg 27 of the Fostering Services \(England\) Regulations 2011](#) requires that:

27 (5) "If a fostering service provider decide to approve X as a foster parent they must—
(a) give X notice in writing specifying any terms on which the approval is given,"

There is no requirement to set any terms of approval (however this good practice and must be considered, certainly if the foster carer is not suitable to foster beyond certain limits, see 'Note on terms of approval' below). Terms of approval may be set for more than three children, for example if the fostering service is satisfied that a foster carer/couple are that rare resource that genuinely has the capacity (accommodation and capability) to care for four (or more) children.

Exemptions to the usual fostering limit

Regardless of the foster carer's terms of approval, if more than three children are placed with a foster carer and the children are not all siblings of each other, this requires an exemption to the usual fostering limit (Sch. 7 CA1989) as above. A local authority cannot grant an exemption to a foster carer living outside the local authority area.

When considering whether to grant an exemption, the local authority in whose area the foster carer lives must have regard to (Sch. 7(4)(2) CA1989):

- a. the number of children whom the person proposes to foster;
- b. the arrangements which the person proposes for the care and accommodation of the fostered children;

- c. the intended and likely relationship between the person and the fostered children;
- d. the period of time for which he proposes to foster the children; and
- e. whether the welfare of the fostered children (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted.

The exemption must be notified in writing, naming each of the children who may be fostered and any conditions to which the exemption is subject. Exemptions may be varied or cancelled by the local authority that has granted the exemption.

Placements outside foster carer's terms of approval

If the placement of a further child or children with a foster carer would mean making a placement outside a foster carer's terms of approval then:

- The placement may be made in an emergency with any carer outside their terms of approval for a maximum of six working days under [Reg 23\(1\) of the The Care Planning, Placement and Case Review \(England\) Regulations 2010](#).
- An exemption to the usual fostering will also be required, if the placement means that more than three children will be placed and they are not all siblings of each other.
- After six working days the placement must be terminated unless the terms of approval have been changed.

Changes to terms of approval

In order to change a foster carer's approval, the requirement is to carry out a review of the foster carer's approval, and for the Decision Maker to issue a qualifying determination setting out the proposed change – with or without a recommendation from panel (it is good practice to seek a panel recommendation, but not a legal requirement unless this is the first annual review). The decision to change terms of approval would then be implemented at the end of 28 days from the date of the qualifying determination.

The Fostering Services Regulations 2011 were amended in [2013](#), so that in cases where the only change is to the terms of approval, as well as a determination notifying the foster carer of the proposed change, the fostering provider must also:

“(i) provide a statement setting out whether the fostering service provider considers that the foster parent or members of the foster parent's household (including any children placed there) may have additional support needs as a result of the proposed revision and, if so, how those needs will be met, and

(ii) request the foster parent's agreement in writing to the proposed revision of terms,”

If the foster carer agrees to the change it is then possible to 'waive' the 28 days' waiting period and implement the decision immediately, in which case the decision is not a qualifying determination.

This written agreement must be freely given by the foster carer. If the foster carer does not agree to the change to the terms of their approval, the decision cannot be implemented until 28 days from the date of the qualifying determination. The foster carer may make representations to the fostering service or apply to the Secretary of State for a review of the qualifying determination (by applying to the Independent Review Mechanism) within the 28 day period.

Note on terms of approval

[The Care Planning, Placement and Case Review guidance](#) (3.92) states that “Foster carer assessments are designed to identify the ages, number or needs of the children to whom the foster carer is most likely to offer the best care”.

Regulation 25(1)(b) of the Fostering Services (England) Regulations 2011 (as amended) states that where the fostering panel makes a recommendation about a person’s suitability to foster, it must also “recommend any terms on which the approval is to be given”, and guidance clarifies that this might be in terms of the number of children and their ages.

Regulation 25(2)(a) states that the panel “must consider and take into account all the information passed to it”, so if that information suggests to the panel that foster carers are suitable for a particular number of children, or children of a particular age range, then Panel’s function is to make a recommendation accordingly.

Regulation 27(3) requires the Decision Maker to take account of the fostering panel’s recommendation and any recommended terms for the approval. The decision maker would not be compliant with this regulation if they disregarded panel recommendations regarding terms of approval as a matter of routine, without being able to justify that in each individual case and setting out the reasons.

It is not consistent with the Regulations or the guidance for the fostering service provider to introduce a policy that seeks to restrict the fostering panel from exercising its duties and functions to consider the individual circumstances in each case, as required by regulation 25(1)(b). In other words, it is not acceptable to either ignore the requirement to consider terms of approval, or to routinely approve foster carers for the age range 0-18 without evidencing in each individual case how they will be able to meet the needs of that whole age range. If it is clear that applicants are suitable to care for babies and infants, but not older children or teenagers, then this must be stipulated in their terms of approval.

Authors

This note was agreed by the following CoramBAAF staff: Pippa Bow (Advice and Information Team Manager) and Paul Adams (Fostering Consultant) October 2017.