

FREQUENTLY ASKED QUESTIONS ABOUT THE IRM

Q *I want to clarify the role of the IRM in the contested deregistration of foster carers and adopters. I understand that the family concerned would now have access to the IRM but I also know, for example that the Adoption Agency Regulations 2005 make no mention of this. Could you clarify the legal position for me please?*

A If an agency or FSP wants to terminate/withdraw approval from a foster carer or adopter – this is a qualifying determination and the individuals concerned have the legal right to and must be offered the option of an independent review by the IRM. Please see our website for more details www.independentreviewmechanism.org.uk and for the link to The Independent Review of Determinations 2009 Regs [SI 395].

Regulation 27 and 29 of the AAR 2005 provides for the IRM in respect of adoption and for foster carers the FSR 2002 Regulation 29 (as amended by the Fostering Services Amendment Regulations 2009 – SI 394]

Q *When a foster carer resigns, the FSP then writes to the foster carer formally de-registering them. Should the IRM be offered at this point?*

A The provider need not formally terminate the approval of a foster carer who resigns - the resignation on its own has the legal effect of ending approval by that provider after 28 days. So no - unless the provider wants to have the support of the IRM review in ensuring the foster carers do not achieve approval by another provider - the provider must start the QD process [by issuing the QD notification] within the 28 days following the resignation. [Only the first annual review must go to panel - every other QD does not need to go to panel first and can be achieved very quickly].The intention of the law is to provide an independent review of a QD by the provider which the foster carers do not accept; a resignation by foster carers is not a QD.

Q *If a foster carer is approved solely to care for a child as a family or friends carer, does the approval 'lapse' if that child is no longer fostered by virtue of a move or a change of order? Or should the FSP take steps to terminate approval?*

A If approval is child specific then it ends when the child is no longer placed - unless the end of the placement is temporary - [respite etc]. In order to formalise the end of

approval you may wish to ask the foster carers to resign, or apply for approval for general fostering

COSTS OF IRM PANELS

Q *Are IRM panels always provided through BAAF or are other routes possible?*

A BAAF has the only contract to operate the IRM.

Q *I have seen a cost of £2,227 suggested for each IRM panel, is this correct?*

A From 1 April 2010 the contribution to be made by agencies/providers whose qualifying determination is reviewed by the Independent Review Mechanism (IRM) will be £2,418. The balance of the cost of the review will continue to be met by The Department. The current contribution of £2,227 has not altered since 2004, when the IRM for adoption was first introduced. The Department will inform adoption agencies and fostering service providers about any changes to the contribution for 2011/12 nearer the time.

Q *If the panel make the same recommendations as the fostering provider panel and provider does the provider still to have to meet the full costs?*

A YES, it is a fixed contribution to the costs and not the full costs. NB: the IRM reviews QDs by the fostering provider's decision maker, not recommendations by the provider's panel

Q *Am I correct in assuming that applicants whose assessments suggest no or minimal grounds to indicate that a different recommendation is at all likely, that they may go to the IRM panel?*

A YES – the making of the QD and notification to the applicants for whatever reason, triggers the legal right to apply to the IRM. The regulations say that if a QD is made by the decision maker that a person is not suitable to foster or adopt or the terms of approval to foster are changed and the individual(s) concerned do not wish to accept the QD they must be given the option of applying to the IRM. This is regardless of what the assessments say. The purpose of the IRM review is to look afresh at the evidence that was in front of the FSP's panel, hear from the applicants and FSP in person and make a recommendation.

FOSTERING ASSESSMENTS

Q *I would appreciate a little clarity please. I am an independent social worker and Form F assessor. If, during the assessment process, the assessor decides to cease due to unsuitability of the applicants, they have obviously not been presented to the fostering panel, and then on to the agency decision maker for a qualifying determination. Do I assume that their opportunity to apply to the IRM will not exist?*

Is this a way that agencies can ensure applicants cannot invoke the IRM? If applicants do not agree with the assessor's decision, do they have any legal right to insist on going to panel, or indeed direct to the agency decision maker? The agencies I work for are clear that it is only if applicants have been to panel first. Has this been challenged at all? It may be that Form F assessors have greater responsibilities with regard to decision making in order to help avoid the IRM.

A Regulation 13 of the Independent Review of Determinations (Adoption and Fostering) Regulations 2009 sets out the functions of the IRM. For the purposes of this issue, the function of the IRM is to review a qualifying determination that the fostering service provider proposes not to approve a person as suitable to act as a foster parent, in accordance with regulation 28(6) of the FSR. Before the fostering service provider can reach this qualifying determination, regulation 28(3) of the FSR states that they must take into account the recommendation of their fostering panel. Before the fostering panel can consider the case, regulation 27(2) sets out the assessment that the provider must have undertaken. So the fostering service provider must have carried out a full assessment in accordance with regulation 27(2) (including having obtained a CRB check and a medical report), and the fostering panel must have made a recommendation, before the IRM can review their determination not to approve a person as a foster carer

The Regulations do not cover assessments which are stopped before completion. There is no equivalent in the Fostering Regulations to the requirement that was introduced in the Adoption Agency Regulations 2005 which requires agencies to complete a brief report once an application has been accepted - if applicants don't agree with an agency's view about their suitability - and take it to panel, which would then enable the applicants to apply to the IRM if turned down. With fostering applications the eligibility to apply to the IRM follows on from an assessment being presented to panel and a decision being made by the Decision Maker which becomes a 'qualifying determination'.

If during the course of the assessment a fostering provider receives information that leads them to conclude the applicants are not suitable I assume the decision not to proceed with an assessment would be made at a team manager level. There would be no recourse to the IRM in that situation for the applicants although they could presumably use the provider's complaints process if they were unhappy with that decision.

The regulations say that the provider must refer to panel for FCs to be approved - .

28. - (2) A fostering service provider shall not approve a person as a foster parent unless -

- (a) it has completed its assessment of his suitability; and
- (b) its fostering panel has considered the application.

If a provider takes an incomplete assessment to panel, the panel cannot recommend approval, or that the assessment continues, and the provider cannot approve until the assessment is complete.

MEDICAL ADVISER

Q *What is the role of the medical adviser in fostering cases? How can an application can be considered de novo if no medical information is provided. I assumed that assessing whether a family has the fitness, mental health and lifestyle needed to cope with caring for a child was an essential part of each application. This would only make sense for brief reports where the medical and lifestyle information has not yet been requested.*

A In the case of an initial application to foster there must be an up to date medical report; it is a legal requirement as part of the assessment [Schedule 3 item 2 FSR 2002] and in those cases I would expect to request an IRM medical report. The MA would advise the IRM whether s/he needed to attend the panel as an adviser.

Many of the fostering cases are about proposed termination of approval or change of terms of approval. In those cases it was agreed with the DCSF that medicals would only be requested for IRM reviews if there was a medical issue. In this situation the MA would be asked for a report and would again advise if they needed to attend panel. If there are no medical issues in relation to the question being considered, then the MA does not have any involvement and there is no medical report. There is no equivalent 'brief report' in fostering cases. In initial suitability cases, applicants can only come to the IRM if there is a full assessment which has been presented to panel and a QD made by the FSP decision maker that they are not suitable to foster.

TIMESCALES

Q *I have a general query in relation an applicant / carer applying to make representation to the Independent Review Panel – please could you tell me if there is a timescale with regard to the IRM advising a service provider that representation has been made. The applicant/carer has 28 days to make written application to the IRM from the date of the QD notification but we do not know how long to monitor for*

applications being made to IRM (it would need to be longer than 28 days but unclear how long to allow).

A The IRD Regulations 2009 Reg 18 says that 'Upon receipt of an applicationthe Secretary of State shall....notify the organisation which made the QD..... In practice we aim to notify the FSP or agency within 2 days of receiving an application - which could be right at the end of the 28 day period. You may wish to allow a further short period of time to allow for weekends or unforeseen delays in acknowledgment

Q *I am writing in response to your query to our office about the time limits for applying to the IRM for review. You wanted to enable a foster carer to apply whom you knew was going away.*

A We are governed by regulations which state that a person who receives a qualifying determination can ask the IRM to review the QD within 28 calendar days of the date of the notice (FSR 2002 Regulations as amended 2009 Reg 28(6) (b) or 29(7) (b)). The time limit commences on the date of the QD notification. We cannot change this time limit. But if you have made a QD, you must issue your QD notification and it is that notification which triggers the foster carer entitlement to apply to the IRM. You decide when to issue the QD.

TERMS OF APPROVAL FOR FOSTERING

Q *When a change of terms is agreed with a foster carer and they are then notified of this by the FSP decision maker; should the option of the IRM be offered at this point?*

A The IRM option should not be offered if the change of terms is agreed with the foster carers because there is no reason or justification for a challenge to be made via the IRM. If the change in terms is not agreed with the foster carers - the IRM option must be offered, as this is a QD

Q *I am the chair of the Fostering Panel and we wanted to get clarification about an issue that has arisen. Foster carers have previously been approved by panel and are deemed suitable as foster carers for their current child and category. They have recently attended panel and requested a change of approval for age and category. Panel members felt that there should be no change in approval and that their current approval category remains the same. Reasons were given and a letter sent stating that the Agency Decision Maker had ratified the Panel's recommendation but they could write to the Agency Decision Maker for the matter to be re-considered within 28 days. In this situation, whereby the approval category remained the same and panel members felt carers were suitable for current category, do you think they should have been advised that they could apply to IRM?*

A The Independent Review of Determinations Regulation 4 states' where the FSP proposes to ...revise the terms of approval...' Therefore, it is only a proposal by the FSP, not a request by the foster carer to the FSP that allows an IRM application. So I do not think they should have been advised that they could apply to the IRM.

Q *You wanted clarification where the applicant has applied to the IRM for a review of the fostering service provider's determination on the terms of approval whether or not the IRM panel can recommend termination of approval if they feel this is appropriate based on the information they have received from the fostering service provider.*

A I have consulted with the DCSF on this point and it would appear that regulation 13(2) of the Independent Review of Determinations (Adoption and Fostering) Regulations 2009 may be slightly ambiguous in what is intended and may be interpreted in two ways.

Firstly, when the IRM Panel is reviewing any determination, the IRM Panel may make a decision that a person is not suitable to be approved as a foster parent, which includes a review of a determination as to the terms of an approval. This interpretation is based on the fact that regulation 13(2) (a) is not limited to determinations relating to the approval as a foster carer and that the opening words in regulation 13(2) (b) are inserted for clarification purposes only and not to limit the powers of the Panel. However, the insertion of those opening words appears to lead to a different interpretation of regulation 13(2) being possible and, accordingly, there is a risk that the applicant may challenge this interpretation.

Having further reflected on regulation 13 of the IRD regulations, the alternative interpretation of regulation 13(2) is that the IRM Panel can only make a recommendation about the subject matter of the determination that has been brought to the IRM for review. That is, if a person made an application to the IRM regarding their terms of approval, then the IRM must make a recommendation relating to the terms of approval and not about whether a person is suitable to act as a foster parent. However, if we assume that this is the interpretation that will be favoured by a court if regulation 13(2) is the subject of a challenge in the future, we are of the view that where the IRM Panel have concerns about the fostering service provider's decision to approve an applicant in a 'terms of approval' case, the IRM Panel may recommend that the terms of approval are not suitable. The IRM Panel will have to give reasons for their recommendation. For example, the IRM Panel may feel that the terms of approval are not restrictive enough to safeguard children and therefore are unable to recommend any terms on which the applicant could foster a child, stating their reasons for this recommendation.

Q *If existing foster carers on a specialist fee paid scheme were at review to have their approval altered to the same age range/number of children but not for the specialist scheme, would this give them access to the IRM?*

A Regulation 28 [5] [a] defines terms of approval - 'for example, whether it is in respect of a particular named child or children, or number and age range of children, or of placements of any particular kind, or in any particular circumstances'; these might refer to specialist schemes.

Existing foster carers have three options in response to a fostering service provider's proposal to amend their terms of approval. They may 1) accept the proposal; 2) submit written representations to the provider within 28 calendar days of the date of the QD notification from the provider (where the provider is required to refer the case back to their fostering panel for a review of that proposal); or 3) apply to the Secretary of State within 28 days of the date of the QD notification for a review of the "qualifying determination" by the IRM.

A determination is a qualifying determination, for the purpose of the IRM, if the notice sent is in accordance with regulations 28(6) or 29(7) of the Fostering Services Regulations 2002 (FSR).

I understand by the "specialist scheme" you mean that the foster carer has experience or specialist training to look after children with difficult or complex needs. In response to your query seeking clarity as to whether an existing foster carer on a specialist fee paid scheme, were to have their terms of approval altered, they would have the option to apply to the IRM. If a qualifying determination has been made and the notice issued under regulation 28(6) or 29(7) of the FSR, individuals seeking approval as a foster carer and existing foster carers have the right to apply to the IRM, as this does not make any distinction between those foster carers who are on a specialist scheme and those who are not.

Q *The situation where a Family and Friends Carer has Approval with Conditions (has been to Panel) and the assessment has subsequently ceased due to concerns. Would the item be presented to Panel and go through the possible IRM route as it had previously been to panel for Approval with Conditions, or would it not go through the IRM route because the Assessment has not been completed? The child is still in placement at present.*

A If the carer is already approved and the provider is seeking to terminate approval then s/he would have recourse to the IRM. Until the IRM had heard the case s/he would remain approved. If she has 'Approval with conditions' this implies that the assessment of suitability was completed and a decision made by the FSP about approval.

If s/he was approved for a specific child only and that child left the placement then I think her approval would lapse and s/he would no longer be approved to foster. S/he would not have recourse to the IRM.

Q *Who should be the provider's liaison officer for the IRM? Would that normally be our Agency Decision Maker, or would my role as Advisor to the Fostering Panel suffice?*

We have assumed that once the recommendation from the IR Panel is known, that it will be sent directly back to our ADM?

A Most providers would usually nominate someone in your position or that of a team manager as they have more direct access to the information we are likely to need during the IRM process. The panel recommendation along with any other correspondence would be sent to the Liaison person for them to pass to the Decision maker.

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15.03.10