

# Adoption and Fostering: tackling delay Consultation Response Form

## Fostering for Adoption" – Chapter 2

12 Do you agree that the "Fostering for Adoption" practice will enable children to be placed with their likely adoptive families more easily, and has potential to secure better adoption outcomes for more children than at present? If no, please explain why not.

Yes

X No

Not Sure

There is a real danger that the 'Foster for Adoption' policy is both unrealistic and may militate against the best interests of looked after children because:

1. It creates a ***fast track to adoption which undermines due legal process, making it vulnerable to challenge under the Human Rights Act 1998***. Specifically:
  - a. This policy will be applied to all children who are looked after, (including by voluntary arrangement under s.20 CA 1989 and under interim care orders or emergency protection orders). It provides that a local authority can decide that a looked after child 'ought to be placed for adoption' and then go on to place them with prospective adopters (who have been approved as temporary foster carers), even though there has yet not been any consideration, or decision, by a court that the threshold for removing a child from their parents has been established and/or that they may be placed for adoption. In accommodation cases, this is particularly worrying, since the parents' consent may not be sufficiently robust to be relied upon for such a draconian and potentially irreversible placement to be made, for example:
    - i. where the parent has felt coerced into agreeing to s.20 accommodation of their child – see for example the case of Re CA (A Baby)<sup>1</sup> in which the baby was removed immediately after birth under a s20 agreement. The mother knew of the local authority's plan beforehand and had "demonstrated submission but not consent to it" (para 11 of the judgement). She had initially refused to consent to s.20 accommodation, but when approached again, after being medicated with morphine, she consented.
    - ii. where a new born baby is placed with prospective adopters on a temporary foster care basis, the mother is being asked to consent, even though her formal consent to placement for

<sup>1</sup> [2012] EWHC 2190 (Fam)

adoption cannot lawfully be given until her baby is 6 weeks old.<sup>2</sup> Moreover consent is only valid if it is witnessed by a CAF/CASS officer, who is required to encourage the mother to take independent legal advice before signing; but this process does not apply when the mother is being asked to consent to s.20 accommodation.

In our view, a 'foster for adoption' placement made in such circumstances is very likely to be challengeable for breach of the child's and parents' right to respect for family life and to a fair hearing;

- b. The ***court's final decision will be pre-empted*** by the child being placed with such carers and forming attachments to them. Any court which later considers an application for a placement order will be faced with the status quo argument i.e. it is asked to make a placement order, ratifying the status quo and dispensing with the parents' consent under s.52(1)(b) ACA 2002, because by then it would be contrary to the child's welfare to break those attachments.

In such circumstances, it is very difficult in practice for parents (or wider family members who are offering to care for the child) with a meritorious case, to effectively argue against a placement order. Thus the child's permanence plan could be distorted by this policy, rather than being determined exclusively by the court's analysis of what is in the individual child's best interests, following an assessment of their needs and the welfare principle in s.1 CA 1989 & s.1 ACA 2002.

By way of example, a baby could be placed with potential adopters (on a temporary foster care basis) under an interim care order **before** the court has made a decision at the final hearing in care proceedings that the threshold for permanently removing the child from their parents, and the grounds for a placement order are established. If there was a viable family and friends care arrangement identified in such a case, a court would have to weigh up the advantages to the child of remaining with their existing carers (i.e. the prospective adopters) with whom they have formed a strong relationship, against the risks associated with breaking such attachments in order to place the child with otherwise suitable family members who could provide excellent care **and** meet the child's long term identity needs. In such circumstances the court would almost certainly favour maintaining the status quo, hence the child's opportunity to be raised by their extended family would have been prejudged by this early 'foster to adopt' placement.

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<sup>2</sup> S.19 & s.52(3) ACA 2002

See para 3 below where this is discussed further.

2. **Placement orders will become more or less redundant.** They were originally introduced by the Adoption Act 2002 to ensure that parents had a real opportunity to oppose the adoption plan before the child was placed for adoption because it was then recognised<sup>3</sup> that when courts heard adoption applications on children who had been placed with adopters for some time, they were being asked to ratify the status quo (as outlined in 1(b) above). There is no evidence that placement orders have not been successful in achieving their original purpose, yet this policy renders them effectively obsolete because the application for a placement order will be heard after the child has actually been placed with adopters for some time, albeit on a different legal footing.
3. This policy will, in many cases, **squeeze out potentially suitable carers within the family** because they may not be identified before the 'foster for adoption placement' is made and, thereafter, the status quo argument militates against moving them from the prospective adopters to a relative's home. This will not only undermine the child and family's right to respect for their family life, but may also deprive them of the optimal placement available to them.

Family and friends care has positive outcomes for children when compared with unrelated care. Research<sup>4</sup> shows, for example, that in comparison to children in unrelated foster care, children in family and friends care are as safe<sup>5</sup>, and are doing as well if not better in relation to their health, school attendance and performance, self-esteem and social and personal relationships. Moreover, there is a marked improvement in their emotional health and behaviour following placement and their carers are more likely to match their ethnicity and be highly committed to them, leading to more stable placements. This is despite these children suffering from similar adversities to children in the care system and their carers often having multiple problems of their own including severe financial hardship and isolation yet receiving little or no support.

Whilst not only promoting positive outcomes for children, **family and friends care also has the advantage of being able to provide the same short and long term care as prospective adopters under the Foster for Adoption model**, with the associated advantages of early attachment and stability which can continue long term if the child cannot return to their parents.

4. There are currently **insufficient adopters (and foster carers) available**

<sup>3</sup> DoH & Welsh Office, Review of adoption law : report to Ministers of an interdepartmental working group : a consultation document.

<sup>4</sup> Farmer E and Moyers S (2008) Kinship Care: Fostering Effective Family and Friends Placements (Jessica Kingsley); and Hunt, J., Waterhouse, S., and Lutman, E (2008) Keeping them in the Family: Outcomes for children placed in kinship care through care proceedings. London: BAAF

<sup>5</sup> This research shows that only 6% of family and friends carers failed to protect the children in their care which is the same figure as for unrelated foster carers

for children who are currently authorised, and waiting to be placed, for adoption. Record levels of care proceedings are currently leading to an increase in the numbers of children entering the care system for whom permanent placements are needed. If the numbers of looked after children who are subject to a plan for adoption is increased under this policy, without a corresponding increase in the number of potential adopters, many more children will be left waiting in a legal limbo without achieving permanence yet in most cases cut off from their family, as in the case of A and S (Children) v Lancashire CC.<sup>6</sup>

5. The foster for adoption **policy may deter adopters** because:
  - a. many adopters want certainty that they will be able to adopt a child that joins their family which this policy does not offer; and
  - b. many who hope to adopt a child may find it very **difficult to promote and manage contact arrangements** with the birth family. When a child is placed with adopters on a temporary foster care basis, such contact should be ongoing to meet the child's welfare needs unless this would place the child at direct risk of harm, because the court would not yet have made a final care order authorising removal of the child from their family. If the adopter/foster carers undermined, rather than promoted, such contact, the child would be deprived of key relationships when their future is still uncertain and the court's decision will be pre-empted (see para 2 above).
  
6. There are also real problems with the way that the new foster to adopt clause is drafted. It only applies where the local authority has decided that a child 'ought be placed for adoption'. Since the removal of panel scrutiny of adoption plans for looked after children on 1.9.12,<sup>7</sup> the agency decision-maker (a senior officer in the local authority) can now decide whether or not a child 'ought to be adopted' on the basis of reports submitted to them by the social worker and any other involved professionals. This decision-making process does not
  - involve any external scrutiny;
  - follow **clear criteria about when an adoption plan meets the child's needs**, other than the general duty to promote the welfare of looked after children; and
  - allow the **child or parent to make representations or provide a forum for immediate challenge** before the placement is made.

Thus the child may already be placed (with the associated growth of attachments to their carers) by the time the parent could challenge this in court whereupon the status quo argument described above would win.<sup>8</sup>

### **Our proposals:**

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<sup>6</sup> [2012] EWHC 1689

<sup>7</sup> Adoption Agencies (Panel & Consequential amendments) Regulations 2012

<sup>8</sup> See for example case Re: P (Adoption: Breach of Care Plan) [2004] 2 FLR 1109

7. Whilst we entirely agree that every child needs to achieve permanence as soon as possible, so that they can form strong attachments and stability in the early months of their life, this must be balanced against their other welfare needs including being able to be raised by their family where this is safe and in their interests to do so which meets both their care and identity needs. In our view, it is therefore essential that any 'foster for adoption' policy is only implemented once full consideration of the child's options to be raised by members of their family network have been thoroughly assessed and considered as this may well be the best outcome for them.
8. Exploration and assessment of potential carers within the child's family needs to be undertaken immediately that the child's need to enter the care system becomes a possibility and **before any court proceedings are issued** because otherwise it is likely to be too late. Yet this stage of the process (i.e. during child protection and pre-proceedings stages of the case) is largely unregulated.<sup>9</sup> Furthermore, it will become even more unregulated when the forthcoming revised safeguarding guidance<sup>10</sup> is issued, hence the extent to which families are engaged before court proceedings start, will depend on individual social work practice.
9. We therefore suggest that the following critical safeguards are put in place:
  - a. There needs to be a new **legal duty on local authorities to identify safe family options for the child** the moment there is any possibility of the child being removed from their parents, especially where a foster for adoption placement is being considered;
  - b. There needs to be a **pre-proceedings protocol** issued as statutory guidance to local authorities under s.7 LASSA 1970 on how to effectively engage parents and the wider family in identifying safe family options for the child the moment there is any possibility of a foster for adoption placement being required;
  - c. the **proposed s22C(9B) should be amended** so the words 'in their opinion it would be more appropriate' are replaced by words to the effect that the **local authority is satisfied that placement with parents relatives or connected others would not be in the child's best interests**. This would tie in with their duty in s.22 (3) to promote the individual welfare of any looked after child. Thus the decision would be welfare rather than policy based; and

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<sup>9</sup> There is limited statutory guidance on pre-proceedings work with families in chapter 3, Volume 1 Court Orders (2008) and Working Together 2010)

<sup>10</sup> Consultation draft of the new safeguarding guidance which will replace Working Together 2010 proposes a dramatic reduction in guidance to social workers on safeguarding practice, proposes to remove the timescales for carrying out assessments and fails to mention working in partnership with families even though 93% of children on a child protection plan are still living at home.  
<http://www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/protection/a00210235/consultation>

- d. the **approval criteria for prospective adopters who want to be approved as temporary foster carers should include a thorough assessment of their ability to support the child having contact** with their family pending a decision of the court **and a return home** to their parents or wider family where the local authority or a court has decided that this is in the child's best interests or the threshold criteria for removing the child from home have not been established.
- e. **support is put in place** to support the contact arrangements and return home where appropriate.

13 Do you consider that there are any barriers to "Fostering for Adoption" working successfully, and if so what are they?

Yes

No

Not Sure

Comments:

See answer to Q 12 above

## Adoption and Fostering

Sharing of case records between fostering services and adoption agencies - Chapter 4

Allowing a foster carer's case records to be shared with a new fostering service before the carer's approval with their old service is terminated - Chapter 4 paragraphs 10.1.1 – 10.2.1

Allowing fostering and adoption services to share case records for assessment purposes - Chapter 4 paragraphs 10.3.1 – 10.3.6

To facilitate a streamlined assessment process for applicants who have fostered or adopted before, it is proposed that legislation should be amended

to remove barriers to fostering services and adoption agencies giving access to a foster carer's/adopter's case records for the purpose of another service/agency assessing their suitability to foster or adopt. The proposed amendments will (a) allow a fostering service to whom a foster carer is moving to have access to the carer's records before the carer's approval with their current service is terminated (though, as now, the foster carer's approval with their first fostering service must have been terminated before they can be approved by the second fostering service - a person cannot be approved as a foster carer by two fostering services at the same time); and (b) allow fostering services and adoption agencies to provide each other with access to an approved foster carer's/prospective foster carer's or adopter's/prospective adopter's records for the purpose of assessing suitability to foster/adopt.

Where case records include information about a fostered child or a person mentioned in the records who has not given consent to their information being shared, the case records would need to be redacted in line with data protection requirements prior to them being seen by another fostering service/adoption agency.

It is proposed that the fostering service or adoption agency holding the records should be required to provide access to these within:

- - 10 working days if the information is being provided to a fostering service;
- - five working days if the information is being provided to an adoption agency.

The shorter timeframe for providing access to an adoption agency is to accommodate the proposed fast track assessment process for previous adopters or approved foster carers.

14 Do you agree with the revised point (i.e. prior to termination of approval) at which fostering services would be required to comply with a request for access to a foster carer's case records by a service the carer is moving to? If no, please explain why.

Yes

No

Not Sure

17 Do you agree that provision should be made for a fostering service to have access to an adopter's/prospective adopter's records, and for an adoption agency to have access to a foster carer's/prospective foster carer's/adopter's/prospective adopter's case records in order to inform an assessment of their suitability to adopt or foster? If no, please explain why.

Yes

No

Not Sure

## Fostering

### Approval process for foster carers - Chapter 5 paragraphs 11.1 - 11.4.3

It is proposed that a fostering service should be able to collect certain information specified in the Fostering Services (England) Regulations 2011 (including CRB checks, health check and references), before deciding whether to proceed to a formal assessment of an applicant's suitability to foster.

18 Do you agree with the proposed start point of the assessment?

Yes

No

Not Sure

Comments:

19 Do you think that applicants deemed unsuitable to foster before the start of the assessment who are unhappy with this decision should have the option of:

19 a) making representations to the fostering service (which would be considered by the service's fostering panel, whose recommendation would be taken into account by the decision maker in coming to a final decision about whether to start an assessment)

Yes

No

Not Sure

Comments:

19 b) complaining via the fostering service's complaints procedure which would consider whether there had been maladministration in coming to the decision not to proceed to assessment

Yes

No

Not Sure

Comments:

19 c) neither of the above (please provide comments).

Yes

No

Not Sure

Comments:

Introducing brief reports for prospective foster carers - Chapter 5, paragraphs 11.5.1 - 11.5.3

Once an assessment has been started, it is proposed that the fostering service should be able to terminate it via a brief report if their decision maker considers there is sufficient evidence that the prospective foster carer is unsuitable to foster. A prospective foster carer who disagrees can make representations to either the fostering service or seek an independent review from the Independent Review Mechanism.

20 Do you agree with the proposal to introduce brief reports for prospective foster carers?

Yes

No X

Not Sure

Comments: If this was applied to family and friends carers who were being assessed to be foster carers during care proceedings, then the chances of keeping the child within the family could be lost, with very little explanation, since although the proposal does allow the potential carer to make representations, any delay in this process could lead to the proposed six month time limit for proceedings being exceeded.

While the aim of this proposal may be to prevent fostering services from wasting their time assessing plainly unsuitable fostering applicants, it could mean family and friends carers not being given adequate consideration, if they were deemed not to meet the standards expected of unrelated foster carers, and the fostering service had not made sufficient allowance for the different type of care offered by family and friends.

If this proposal is to be introduced, it should be limited to apply only to full foster carers assessments, not to temporary approval of family and friends carers procedure under regulation 24 Care Planning, Placement and Case Review (England) Regulations 2010.

Removing the requirement to interview two personal referees if there is a reference from a service the applicant has fostered for in the last year - Chapter 5, paragraphs 11.6.1 - 11.6.3

21 Do you agree that the requirement to interview two personal referees should be removed where (a) the applicant has been an approved foster carer in the last year (whether or not a child was placed); and (b) there is a written reference from their current or previous fostering service?

Yes

No X

Not Sure

Comments: If the fostering applicants were foster carers who were being assessed to be 'foster to adopt' carers, we would suggest that new references should still be taken up, since the assessment will be for a different task. It would be useful to know the views of personal referees on the applicants' capacity to

- i) Support the child to have contact with their family whilst proceedings are still pending and possibly to return to the care of their parents or relatives, even though they had been hoping they would adopt them themselves, where this was the decision either of the local authority or the court; and
- i) offer a child lifetime membership of their family, and not just a short-term place with them.

This should not only apply in relation to what is being asked of referees but

should also be core to the criteria for approval for adopters who seek to be approved as temporary foster carers. This is discussed further in answer to Q 30

Changing a foster carer's terms of approval - Chapter 5, paragraphs 11.7.1 - 11.7.6

There is currently a requirement to wait 28 calendar days before implementing a change to a foster carer's terms of approval, regardless of whether the change has the foster carer's agreement or was requested by the foster carer. It is proposed to remove this requirement where the carer agrees to the change and there is a statement of how any additional support needs will be met.

22 Do you agree that the requirement to wait 28 calendar days to change a foster carer's terms of approval should be removed if the foster carer has given written agreement to the change and there is a written statement on whether the foster family has any additional support needs as a result of the change and if so how these will be met?

Yes

No

Not Sure

Comments:

Transitional arrangements - fostering assessment - Chapter 5 paragraph 11.8.1

It is proposed that the amendments proposed above to the fostering assessment process should be implemented immediately upon the coming into force of the Care Planning, Placement and Case Review and Fostering Services (England) (Miscellaneous Amendments) Regulations 2013.

23 Do you foresee any problems with the proposed implementation? If yes, please explain why.

Yes

No

Not Sure

Comments:

Alignment of the fostering and adoption approval process - Chapter 5 paragraph 11.9.1

Changes being consulted on in this document align the fostering and adoption approval processes in a number of respects, e.g. aligning the start of the fostering assessment stage with the start of Stage Two of the adoption

process and introducing a brief report for fostering. However, there remain elements of the two processes which are not aligned.

24 Are there any elements of the adoption approval process described in Chapter 1 (paragraphs 7.1 - 7.12.3) that we should consider applying to the fostering assessment and approval process? If yes, please state which elements we should consider applying to the fostering assessment and approval process.

Yes

No

Not Sure

Comments:

### **Delegated authority – Chapter 6**

#### **Requiring the placement plan to cover specified areas of decision making**

It is proposed that legislation should require a placement plan to specify who has authority to take decisions in the following areas of decision making:

- medical or dental treatment
- education
- leisure and home life
- faith and religious observance,
- use of social media,
- any other matters considered relevant.

25 Do you agree that these are the right areas of decision making to specify in the Care Planning, Placement and Case Review and Fostering Services (England) (Miscellaneous Amendments) Regulations 2013? If no, please explain why not.

Yes

x No

Not Sure

Comments:

Medical and dental treatment, education and faith/religious observance are all key issues which have a major impact on the child's care and upbringing, hence they pertain to the exercise of parental responsibility.

Parental responsibility lies with the parents (or others who have obtained it by court order) and where a care order has been made, the local authority.

Since the delegated authority requirement in the placement plan will apply to children who are accommodated by voluntary agreement under s.20 CA as well as those under a care order, it is important that the parents' exercise of their parental responsibility is respected and the provisions of s.22(4)&(5) CA to consult with the parents about all decisions concerning the upbringing of their child whilst they're looked after are observed.

Whilst we have no objection to matters relating to the child's leisure, home life and social media being within the remit of new delegated authority to the foster carer, we think it is entirely inappropriate to extend delegated authority to the first 3 categories discussed. Some parents have very strong views about medical treatment and the religious faith of their children; they should continue to have a say on these issues rather than decisions being made by the foster carer who does not have parental responsibility.

26 Do you agree that statutory guidance should be amended to provide additional detail about what is covered by these areas of decision making, who might be expected to make particular decisions and what factors might lead to a decision to depart from that expectation?

x Yes

No

Not Sure

Comments:

Statutory guidance is always useful to amplify new requirements, provided it is limited to leisure, home life and use of social media only for the reasons explained in no 25 above.

We propose that the amendments relating to requiring the placement plan to cover specified areas of decision making should be implemented at the next review of the child's care plan following the amending Regulations coming into force.

27 Do you foresee any problems with the proposed implementation? If yes, please explain why.

Yes       No       Not Sure

Comments:  
Since the parents exercise of their parental responsibility is affected by this change, it is essential that they are directly involved in, or consulted about, the review and any proposed changes to delegated authority, as best practice would require.

Requiring each local authority to publish a policy on delegation of authority - Chapter 6, paragraph 12.7.1

28 Do you agree that there should be a requirement in statutory guidance for local authorities to publish a policy on delegation of authority to foster carers and residential workers?

Yes      X No       Not Sure

Comments:  
The way delegated authority (DA) is applied in each case should be set out in the child's placement and care plans so that the parents are fully informed. It is not appropriate to have a blanket policy on DA when its application in each case will vary according to the child's individual needs and the circumstances of the case.

### **Adoption and Fostering Panels – Chapter 3**

29 We are concerned that some adoption agencies have large adoption panels and that this may be leading to delay and be intimidating to prospective adopters. We consider that these issues may also apply to fostering panels. We are therefore minded to restrict the size of adoption and fostering panels to a maximum of five members with a quorum of three (or four for joint panels). We are also minded to limit participating non-panel members to two. We would appreciate your views on this.

**Comments:**

We think that a quorum of 3 is too small and would be little more than a rubber stamp. Instead we suggest that a quorum of 5 would be more appropriate.

We also think that sound decision-making in the panel is enhanced if some of the panel membership is independent. We would therefore suggest that the quorum of 5 should include at least one independent member.

Moreover, when considering the approval of family and friends carers, the panel should ensure it has an understanding of the nature and role of such carers, where possible including a member with personal experience of family and friends care.<sup>11</sup>

### **General - any other comments**

30 There may be other areas for revision that you think should be considered; we would be interested in hearing your views on what these might be and how these might reduce delay and bureaucracy whilst continuing to help ensure the welfare and safety of looked after children. Please use the box below to make your comments.

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<sup>11</sup> DfE (2011) *Family and Friends Care: Statutory Guidance for Local Authorities* para. 5.40

Comments:

**Tailored assessment of family and friends carers:**

It is important to ensure that children do not miss out on opportunities for safe permanent placements with family, friends or connected persons, by ensuring that the assessment process does not discriminate against these carers.

An assessment that focuses on the capacity of potential foster carers/adopters to meet the needs of a range of children risks overlooking the strengths of placing the child with a family member or friend who is already known to the child and with whom the child has an existing emotional bond. The security for the child of moving to a carer with whom they already have a loving relationship, rather than to a stranger with whom these bonds need to be built up, can more than compensate for deficiencies that may exist in some other respects, e.g. if the carers struggle with keeping written records, or would struggle to manage problematic behaviour which this particular child does not exhibit.

The assessment process therefore needs to be tailored to address the specific circumstances of family and friends carers.

**Criteria for assessing foster to adopt carers:**

Assessments of potential foster-to-adopt carers must also take full account of their capacity to act as short-term or permanent carers for the child, when the outcome of the placement in this respect is unknown at the time of the child's arrival with them. This should include an assessment of their capacity to:

- manage the child's contact with their parents and others, and
- facilitate the child's return to their parents or placement with family, friends or connected person carers.

It is therefore essential for children's emotional welfare that carers should be able to manage this process, in the context of their own very likely feelings of disappointment that a child they had hoped to raise as their own is leaving them.

Currently, short-term foster carers can adopt a neutral stance if they are involved in parents' contact with their children, and in some instances they are able to assist parents (for example those with a learning disability) with learning aspects of the caring task. For carers whose hope is that a child will stay on with them as a permanent family member, remaining neutral and assisting parents would present a challenge, and it would be essential that their capacity to rise to this challenge should be covered by their assessment.