



## Guidance on Checks and References in Adoption

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### Management of Information Obtained

#### Legal Basis for Checks, References and Assessment by Adopt North East

Under Regulations 25, 26 and 30 of the Adoption Agencies Regulations 2005, an adoption agency is required to obtain a range of information about a prospective adopter. Additionally, Part 3(21) of Schedule 4 of the Adoption Agencies Regulations 2005 provides a legal basis for an Adoption Agency to require any other relevant information which might assist it to come to an informed decision about the suitability of an adopter.

#### Storage, Use and Sharing of Information obtained.

Adopt North East acknowledges that the information it requires can sometimes feel intrusive to applicants. Recognising this, the Agency is committed to ensuring it is open and transparent about how personal sensitive information is processed and managed by the Agency throughout the adoption process.

The Agency is committed to ensuring that its approach to data processing is compliant with the General Data Protection Regulations (GDPR) and the Equality Act 2010. This legal framework requires the Agency to safeguard the confidentiality of sensitive personal data securely and safely and to process information lawfully, fairly, and without discrimination.

Adopt North East has specific responsibilities for special category data such as health information. The Agency acknowledges the additional

responsibility for managing the information of applicants who have additional protections under the Gender Recognition Act 2004.

### Consent-Based Information Gathering and Sharing

The Agency will not undertake checks, seek references or assess without the signed consent of an applicant to do so. Furthermore, information gathered by the Agency will not be shared without the applicant's consent, unless there is an overriding legal requirement to do so for safeguarding purposes.

Where an applicant has changed their name or gender, certain checks may require information relating to an applicant's previous identity. The Agency will seek informed consent to do so. All checks and references by the Agency will have a lawful justification. The Agency will ensure that they are conducted appropriately, fairly and inclusively for all applicants.

Some organisations have processes for applicants who have changed their identity. For example, applicants are able to use the DBS Sensitive Applications Route, which enables previous identities to remain confidential. Nevertheless, due to the nature of the adoption assessment process, it is important for applicants to note that the Agency will need to be made aware of other identities of an applicant to ensure robust, holistic assessment.

All staff at ANE receive training on anti-discriminatory practice and unconscious bias. The agency encourages applicants to share any concerns they may have around the process with our staff so they can provide effective support.

Once an applicant informs the Agency of their preferred name and pronouns, staff will respect and use these preferences throughout the adoption process.

Applicants will also have the opportunity to discuss how information about their life story and identity is represented within their Adoption Assessment Report (AAR). The AAR is a key document that must provide full information to decision-makers in relation to an applicant's suitability to adopt and

ability to care for a child. All those with whom the AAR is shared are required to manage the information shared lawfully, fairly, and without discrimination. Some applicants may be comfortable with their allocated Social Worker exercising discretion in sharing their AAR, whilst others may wish to give verbal or written consent each time their report is shared.

### Inclusive Information Gathering

Where it is necessary to do so, either at the request of an applicant or at the judgment of the Agency, translation and interpretation or other accessibility arrangements will be offered by the Agency to ensure the effective gathering of relevant information.

## **Information Required by the Agency**

### **1. Checking residence in the UK**

An individual or couple cannot apply to the Agency for an assessment of their suitability to adopt unless the prospective adopter or one of the prospective adopters has been habitually resident in the UK, the Channel Islands or the Isle of Man, **for at least the last 12 months**. Accordingly, UK citizens living abroad cannot adopt from the UK.

The Agency will require evidence to support that the applicant adopters have been habitually resident in the UK, the Channel Islands or the Isle of Man for at least the last 12 months prior to the Registration of Interest. The evidence required by the Agency will depend upon all the circumstances and facts of an individual case. However, the Agency is likely to look to a number of factors that may be indicative of habitual residence, including bringing possessions to the UK, having the right to work and reside, seeking to bring family and the establishment of “durable ties” within the UK. Where residency is in doubt, the Agency will seek legal advice.

### **2. Checking Criminal Records**

Under Regulation 25 of the Adoption Agency Regulations the Agency is required to conduct a **UK Disclosure and Barring Service (DBS) enhanced criminal record check on a prospective adopter or any other adult member of their household.**

The Agency will make it clear that the prospective adopters will not be able to proceed to Stage Two where criminal record checks identify them or an adult member of their household as having been convicted of a specified offence or police caution in respect of a specified offence.

The Agency will not consider a prospective adopter suitable to adopt a child if they or any adult member of their household has been convicted of a specified offence committed at 18 or over or has received a police caution in respect of a specified offence which they admitted at the time the caution was given. In such circumstances the Agency will notify the prospective adopter in writing, with reasons.

Where the criminal record checks disclose previous convictions or cautions for non-specified offences, the Agency Decision Maker will decide by resolution whether the previous conviction or caution that the prospective adopter is not suitable to adopt. In such circumstances, the Agency must exercise its discretion and decide whether to continue with Stage One. If it decides not to proceed, it must notify the prospective adopter in writing, with reasons, without delay.

In circumstances where the application is a joint application, the agency will only inform the prospective adopter who is the convicted or cautioned individual of the specific reason for deciding that they are not suitable to adopt. The social worker should explain to that person that the agency will not inform the other person of the specific conviction or caution but will inform them that because of information obtained from the checks the joint application cannot proceed.

Likewise, where the checks reveal information about another adult member of the household that indicates that the agency must decide that the prospective adopter is not suitable to adopt, the agency is restricted from disclosing information about that conviction or caution which prevents the

application from proceeding. It may inform that individual and suggest that they inform the prospective adopter but it may not do so itself. In such a case, the agency should counsel the prospective adopter that its checks indicate that they are not suitable to adopt a child and cannot continue to Stage Two of the process.

#### Overseas Criminal Records Checks and other checks on Applicant Adopters or Adult Members of their Household

Under Regulation 25 of the Adoption Agency Regulations the Agency is required to conduct a UK Disclosure and Barring Service (DBS) enhanced criminal record check on a prospective adopter or any other adult member of their household. However, there are occasions where an applicant (or member of their household) will have spent a significant period of time outside of the United Kingdom working and/or residing in one or more other countries.

Whilst there is no specific legal requirement placed upon the Agency to undertake **overseas checks**, within the Statutory Guidance on Adoption (2013) paragraph 3.26 states that where an agency will not learn the full history by conducting a criminal record check and other background checks on the prospective adopter, for example, where they have lived abroad for an extended period, it should decide whether it should carry out any other checks or take up additional references.

Accordingly, it is the policy of Adopt North East that it will undertake checks in the following circumstances:

- a. The applicant has:
  - i. lived at an address outside of the United Kingdom for more than one year (365 Days) in duration; or
  - ii. Spends or has spent a significant amount of time (at the discretion of the Agency) each year at an address outside of the United Kingdom; and
- b. The applicant has done so as an adult (over the age of eighteen).

- c. The country in question the country in question has a sufficiently developed legal and administrative system to make it likely that a check might be considered valid and reliable;
- d. The check/s will not unreasonably delay the progress of assessment (at the discretion of the Agency).

### **3. Checking with Former Partners**

#### Why are checks are carried out on former partners?

Regulation 26(d) of the Adoption Agencies Regulations 2005 (England) requires, where the adoption agency considers it necessary, a personal reference from the prospective adopter's former spouse, civil partner or partner.

Adopt North East follows evidence-informed best practice that **an assessment of a prospective adopter should include contact with relevant former partners** to ask about their views and perspective of an applicant's suitability to adopt save in exceptional circumstances. Adopt North East will request written consent of the applicant adopter to do so.

#### Which former partners will be checked?

Checks will always be undertaken on all former partners of an applicant during the last ten years prior to the date of the Registration of Interest where the relationship was significant. Adopt North East will do so because a former partner is uniquely placed to provide insight into an applicant's ability and suitability to be an adoptive parent.

A relationship will be deemed significant by the Agency if:

- i. at any time the applicant and the former partner jointly cared or parented a child; or
- ii. the applicant and the former partner co-habited for any period of time or;
- iii. a non-cohabiting relationship endured for six months or longer.

Checks of former partners will commence during Stage 1 of the assessment process and must be concluded before the completion of the Stage 2 assessment.

Can an applicant adopter refuse to consent to Adopt North East contacting a former partner?

No, an applicant cannot refuse to consent to Adopt North East contacting a former partner. To do so would end the assessment process. However, there may be legitimate reasons why Adopt North East decides not to contact the former partner of an applicant.

Some applicant adopters will be understandably anxious about Adopt North East contacting a former partner. For example, applicant's may feel their decision to adopt should not be shared with a former partner following separation – that the ex-partner has no right to know about their application or concerned that a former partner may be deliberately untruthful and seek to undermine their application. Occasionally, an applicant adopter may be concerned that contact by Adopt North East may even place them at risk, for example, where the previous relationship was domestically abusive – either through triggering the trauma associated with past experiences that may impact upon their wellbeing or through the risk of re-establishing some form of connection between them and their ex-partner as a result of Adopt North East's involvement. Likewise, an applicant adopter may feel that contact by Adopt North East with an ex-partner may place the ex-partner at risk, for example impacting their mental health and well-being. In all cases, any concerns by an applicant about the implications of contact by Adopt North East with a former partner should be shared in full and in confidence with Adopt North East. Where reasonable to do so, Adopt North East will require evidence from the applicant to support their concerns. Where concerns are determined to be reasonable and legitimate in the opinion of the relevant Team Manager, Adopt North East will not undertake checks of a former partner and instead seek through other sources to gain insight into that period of an applicant's life journey. Alternatively, it may be that Adopt North East can mitigate the risks identified whilst still undertaking the check.

Adopt North East will work hard to balance the views and wishes of an applicant with its overriding duty to safeguard children requiring adoption.

What if an applicant adopter has no contact details for a former partner?

It is the responsibility of applicant adopters to provide written consent and the contact details necessary for the Agency to conduct all necessary reference checks – this includes the contact details of all former partners of an applicant during the last ten years prior to the date of the Registration of Interest where the relationship was significant.

Where an applicant adopter advises that they do not have the contact details of a former partner, the applicant will be encouraged to take all reasonable steps to try to obtain the contact details of the former partner. It is noted that Adopt North East is not responsible for facilitating or supporting an applicant's search for a former partner's contact details and will not do so.

Where an applicant adopter advises that they are not able to obtain the contact details of a former partner and can evidence they have made reasonable attempts to do so, the relevant Team Manager will come to a judgment as to whether the inability of the Agency to undertake a relevant former partner check is such that the application cannot progress or whether the gap in reference checks can be addressed through other sources to gain insight into that period of an applicant's life journey. As noted, the Agency will always try to balance the needs of an applicant with its overriding duty to safeguard children requiring adoption.

Where a Former Partner check has already been done on a previously approved adopter or approved foster carer

Where, however, the prospective adopter has previously been approved, in acknowledgement of the sensitivity of Agency contact with former partners, it is the practice of the Agency not to require a second reference where a full response was provided first time around in relation suitability.

However, the Agency will request a reference from a former partner where there was no response or an inadequate response during the previous assessment process, or where new information has come to the attention of the Agency which means a reference is deemed necessary to enable the Agency to come to an informed decision about suitability.

#### **4. Checking Health**

The Agency must obtain **a written report from a registered medical practitioner about the health of the prospective adopter** following a full examination. The report must include the matters specified in Part 2, Schedule 4 of the Adoption Agency Regulations unless the agency has received advice from its medical adviser that such an examination and report is unnecessary. These include name, date of birth, sex, weight and height, family health history, current and past health history of applicant, levels of alcohol consumption and any other information that the adoption agency deems may assist. This might include details of treatment and/or support with all physical, mental, sexual, fertility and gender affirming care received.

The Agency has a duty to satisfy itself that **prospective adopters have a reasonable expectation of continuing to enjoy good health** and that their health would not place a child at risk through an inability of the individual to protect the child from commonplace hazards or limit them in being able to provide a child with a range of beneficial experiences and opportunities.

The Agency will be mindful of the need and possibility of providing support in appropriate cases to assist in overcoming any possible negative consequences arising from disability or restricted mobility.

More severe health conditions may raise a question about the suitability of the prospective adopter, but the Agency will consider each case on its own facts and with appropriate advice.

## Health checks about Previously Approved Adopters or Approved Foster Carers

Regulation 26(B) of the Adoption Agencies Regulations 2005 (England) (as amended by the Adoption Agencies (Miscellaneous Amendments) Regulations 2013 requires the Agency to obtain a written report from a registered medical practitioner about the health of a prospective adopter following a full examination which must include the matters specified in Part 2 of Schedule 4, unless the agency has received advice from its Medical Adviser that such an examination and report is unnecessary

Where however the prospective adopter has previously been approved or is an approved Foster Carer in England at the time they apply to adopt, the regulations merely require that the Agency must ensure that there is a 'summary, written by the agency's medical adviser, of the state of health of the prospective adopter' without the statutory requirement that there must be a full examination or that the summary must contain all the elements of Part 4 of Schedule 2. Accordingly, for previously approved adopters, the Agency will request a summary from the Medical Advisor and it will be a matter for the Medical Advisor as to whether a full examination is or is not necessary to provide such a summary. This is likely to depend on matters such as the length of time since the previous approval, any self-reported changes in health or information about health coming to the attention of the assessing Social Worker. In short, the Agency does not require a full medical examination for those prospective adopters who have previously been approved or are approved Foster Carer in England at the time they apply to adopt (although the Medical Advisor may choose to do so).

## **5. Checking with Local Authorities**

The Agency will check with the **Local Authority in whose area the prospective adopter currently has their home and any Local Authorities the applicant has lived in within the last 10 years** (calculated from the date of the Registration of Interest) to establish whether there **is** any information about them that may be relevant to the assessment.

Where in the course of Stage 1 or in assessment Stage 2, it becomes apparent that a check of another Local Authority to that in which the prospective adopter resides – for example, that a Local Authority was involved with the prospective adopter as a child – a check of that Local Authority will also be undertaken.

## **6. Checking Current and Former Employers**

The Agency will check with the **current employer(s)** of an applicant adopter and any previous employers of an applicant during the past three-year period (calculated from the date of the Registration of Interest).

Additionally, if an applicant was **employed in a caring profession with children or vulnerable adults at any point in the last 10 years** all former employers will be contacted.

## **7. Checking other Adoption or Fostering Agencies**

The Agency will check with any other Adoption or Fostering Agencies that the applicant has applied to (Registered their Interest), been assessed by or been approved as an adopter or as a Foster Carer.

## **8. Checking with Landlords**

Where an applicant lives in rented accommodation, the Agency will request a **reference from the Landlord** related to conduct of the applicant as a tenant (not the suitability of the accommodation for adoption).

## **9. Checking with Adult Children of an Applicant**

All **adult children of an applicant** will be contacted by the Agency and, save in exceptional circumstances, interviewed by the Agency.

Where it is not possible to contact an adult child or where they refuse to be interviewed or to provide information, the Agency will decide regarding the

requirement to undertake a risk assessment or seek additional references to inform a recommendation regarding the applicants' suitability to adopt.

## **10. Checking with Professionals Involved with a child of an applicant**

The Agency will check with the professionals involved with a child under the age of eighteen with a child. This will include the nursery, school or college of the child. It may include the child care provider and Health Visitor of a pre-school child.

## **11. Checking with Significant Support Figures**

Where the applicant proposes an adult as likely to be significantly involved in the care of a child or the support of an adopter (or it is the judgment of the Agency that this will in fact be the role of another adult), checks will be undertaken.

Where the Agency considers it necessary as part of its checks of a Significant Support Figure, the Agency may require that the adult is subject to a DBS check. This will be at the discretion of the Agency and dependent on the likely role and responsibilities for a child that the adult may have.

## **12. Checking with Named References**

The Agency will ask each applicant (whether a single applicant or applicants wishing to care as a couple) to provide **3 references**. Guidance for the selection of referees is as follows:

- All referees should have known the applicant for **at least 2 years** prior to the date of Registration of Interest by the applicant.
- All referees will need to be willing to be **interviewed**, in person, by the Agency.

- Of an applicant's 3 references, **no more than 1** should be a family member.
- Of an applicant's 3 references, **no referees should be jointly living** in the same household as another referee.
- Of an applicant's 3 references, at least **1** referee should have known the applicant for **at least 5 years**. This may or may not be a family member.
- For couple applications only, of the 6 references in total, 2 – one for each applicant – **should know and be able to comment on the applicant's couple relationship**. This may or may not be a family member.
- Where it is necessary to do so, either at the request of a referee or at the judgment of the Agency, **translation and interpretation** for a referee will be offered.