

# Relinquished Children:

## Interim Practice Guidance for Practitioners

*This Guidance is currently in interim form only as Adopt North East is consulting with partner agencies to seek their agreement and full participation in the process detailed.*

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Author/s	Nik Flavell, Senior Manager for Adopt North East
Owner	Nik Flavell, Senior Manager for Adopt North East
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### 1. Introduction

Section 19 of the Adoption and Children Act 2002 provides that a parent may consent to the placement for adoption of their child. This consent may be to placement with any prospective adopter or to a specific prospective adopter. This process is commonly known as the 'Section 19' process or the 'relinquished baby' process in which, by consent, a child becomes subject to a plan of adoption and Placement Order.

Critical to the process is the issue of consent.

### 2. Immediate Referral to Adopt North East

Initial Contact regarding potential relinquishment of an unborn or very young child is likely to be made to the 'Front Door' of the Local Authority in which the mother resides.

At the point of allocation by the Local Authority for Social Work assessment, a referral should be made by the Local Authority to the Adopt North East Family Finding Team, sharing the full details of the referral made to the Local Authority.

Upon receipt of a referral, Adopt North East will allocate a Social Worker from the Family Finding Team to offer work alongside the Local Authority Social Worker, providing counselling to the birth parent concurrent to the assessment of the circumstances of the child by the Local Authority Social Worker.

### 3. Social Work Assessment and the provision of Birth Parent Counselling

#### a) Joint Initial Visit

An initial home visit to the birth parent should be undertaken jointly by the Local Authority Child's Social Worker and the allocated Adopt North East Family Finding

Social Worker (where the birth parent is a child themselves, it may be appropriate to include the birth parents' own parents in the visit).

The focus of this Initial Visit must include a general discussion, sensitively undertaken, about adoption and its legal and emotional implications and include an exploration of available alternatives to adoption. The visit should emphasise that the involvement of Adopt North East and discussion about adoption is **not** a commitment to proceed to adoption by the birth parent.

#### b) Written Information about Adoption

The birth parent(s) should, if appropriate, be given written information by Adopt North East about adoption at the Initial Visit.

#### c) Involving Birth Fathers

A birth father should, where possible, be included in the counselling process from the outset.

If the birth father has Parental Responsibility (PR) for the child, his consent to adoption **will** be required.

Although the Act does not require the formal consent of the child's father (where he does not have parental responsibility) to adoption or placement for adoption, if it is practicable and consistent with the child's welfare, Adopt North East must provide the father with counselling and information. Where the father's identity and whereabouts can be ascertained it should be rare for the Agency to decline to offer him information and counselling.

When the birth mother does not wish to disclose the identity of the birth father, the issue **must** be raised with the Local Authority Team Manager and the Adopt North East Family Finding Team Manager. Legal services for the Local Authority and Adopt North East **must** be informed to avoid any unnecessary delay. A decision will need to be taken whether the Agency should exercise its discretion to contact a father without parental responsibility where the mother does not want to disclose his identity. In exercising this discretion, the Agency will consider the nature of the child's relationship with the father and the nature and extent of the father's relationship with the child's mother and any siblings of the child. It must also consider whether it would be contrary to Article 8 of the Convention to prevent disclosure of the birth of a child to the child's father.

In *Re C (A child) v XYZ County Council* [2007] EWCA Civ1206, the court emphasised the fact that the Agency cannot simply act on the information given by the mother; it must critically examine what she says and it will be a question of judgment as to


whether this needs to be checked or corroborated. It is important that the agency make it clear to the mother that disclosure is a matter for the agency's or court's discretion and therefore that agency must be careful not to give any undertakings as to whether or not the father will need to be notified of adoption proceedings.

#### d) Involving Wider Family Members

Where the birth parent(s) wish to conceal from members of their family the fact of the child's existence, or the fact that they are seeking their adoption, the Local Authority and Adopt North East will be faced with a conflict between the parents' right to privacy and the child's right to know and perhaps the chance of being brought up by their extended family. Where the Local Authority considers that it is likely to be in the child's interests to be given this opportunity, it should encourage the parents to consider the matter from the point of view of the child. Generally, the courts have been reluctant to override a parent's determination for the extended family not to be informed but as with fathers without parental responsibility, agencies should avoid giving parents any undertaking that the birth or the proposed adoption will be kept secret. Each case will have to be considered on its own facts and legal advice should always be taken.

#### e) Content of Counselling to be Offered

Following the Initial Home Visit, further joint home visits by the Local Authority Child's Social Worker and the allocated Adopt North East Family Finding Social Worker should be made to ensure that the following information is verbally provided and explored:

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- Local Authority support available to the parent(s) to maintain the child in their care
  - Alternatives to adoption for the child, including temporary care with a view to reunification with support or permanent care by extended family members
  - The process of and legal implications of adoption, this must include that a birth mother's consent to her child's adoption will not be effective until six weeks after the child's birth
  - Research and learning around issues of separation and loss resulting from adoption for the birth parent(s), their network, siblings of the child and the child themselves
  - The process of removing and placing a child, including Early Permanence
  - The rights to and arrangements for Family Time (contact) with a child prior to adoption
  - Family Finding processes and the involvement of birth parents
  - Post Adoption contact
  - The future rights of an adopted child to information

#### f) Advance Notification to CAFCASS

Adopt North East will provide notice to CAFCASS that it has commenced birth-parent counselling in relation to a possible Section 19 relinquishment and may require an Officer to witness the parent's or guardian's consent to placement or to adoption prior to court proceedings.

#### g) Assessment and Preparation of the Child Permanence Report (CPR)

The Local Authority Social Worker should consider the care options for the child and where the Local Authority considers that adoption is the preferred option it should commence the Child Permanence Report. It is advisable to gain as much information as soon as possible whilst the birth parent is continuing to engage. The report should be discussed with the birth parent/s and their wishes clearly recorded. The report content must be read and signed by the social work team manager.

The CPR must contain an analysis of the options that have been considered by the Local Authority for the future care of the child and explain why adoption is considered the preferred option.

The Adopt North East Family Finding Social Worker will book an Adoption Panel as close as possible to the birth of the child.

Assessment should be urgent and timely, focused if the child is unborn, on the expected date of delivery (EDD). With planning, in some cases it will be feasible for the Adopt North East Adoption Panel to be ready to consider the case within a day or so of the birth and for the Local Authority Agency Decision Maker to make the decision the same day.

### **4. Consent to Placement of the Child Once Born**

Section 52(3) of the Adoption and Children Act 2002 makes it clear that birth parent(s) cannot consent to the adoption of a child before the child is six weeks old. Accordingly, the Local Authority and Adopt North East **must not** seek formal consent to adoption before the child is 6 weeks old.

However, the Local Authority and the Agency are permitted to ascertain, after careful counselling, whether the parent is prepared to consent to the child being placed for adoption with a Fostering for Adoption Carer, either agreed by the birth parent or with a prospective adopter chosen by the agency.

When seeking signed consent to the placement for adoption of their child aged under six weeks, the Local Authority and the Agency should make it clear orally and in writing that the parent retains full parental responsibility until:

- they give their consent under section 19 of the Act, after the child reaches the age of six weeks or;
  - or a placement order is made; or
  - an adoption order is made
- the parent or guardian may only have contact with the child by agreement
- with the agency or by order of the court;
- if the parent or guardian asks for the child to be returned, the child must be returned by the agency unless any of the following orders are applied for or made in relation to the child:
  - an emergency protection order or a care order under the 1989 Act
  - a placement order or an adoption order under the Act,
- after the child is six weeks old, the agency will seek to arrange for them to give their formal consent to the child being placed for adoption.

The Local Authority Social Worker and the Adopt North East Family Finding Social Worker should work together to identify the most Fostering for Adoption placement.

Birth parent(s) should be involved in discussions around a suitable placement for the child, including the possibility of a Fostering for Adoption placement. They should have the opportunity to share their views on what they would like in a carer, for example religious and cultural considerations and any geographical difficulties with regard to the extended family. Birth parent(s) should, if appropriate, be shown profiles of possible families.

If for any reason it is agreed that Fostering for Adoption is not the appropriate route to placement then the Local Authority Social Worker must make a referral to the Local Authority Fostering Service for a fostering placement.

Whether the child is placed in a Fostering for Adoption placement or a Local Authority Foster Care placement, the placement must conform to the Care Planning, Case and Placement Review (England) Regulations 2010 – the birth parent must give consent for the child to be accommodated by signing s.20 Children Act 1989 consent for the Local Authority to place the child and medical consent forms for the emergency treatment of the child. Copies should be provided to Adopt North East for their records.

## **5. Maternity Care and Discharge of the Baby from Hospital**

Following the birth of the baby, the birth mother can decide whether to care for the baby or request segregation from the baby whilst in hospital. The parent/s should be encouraged to see the baby but must not be forced to. The parent/s do not need to provide anything for the baby but can and may wish to do so.

The Adopt North East Family Finding Social Worker and the Local Authority Social Worker should see the mother as soon as possible after birth.

It may be useful for the prospective Foster for Adoption or Foster Carer(s) to visit the baby in hospital prior to discharge but this must be done in consultation with the birth parent(s), the hospital and the carer(s).

The Local Authority Social Worker must arrange for the baby to be discharged into the care of the Local Authority once the baby is medically fit for discharge.

On discharge the Hospital should be given details of the proposed placement including the carers' name, address and contact number and the carers' GP. There needs to be a careful discussion to ensure that the discharge details for the child are not put in the birth mother's medical records and that the carer's details are not disclosed to the birth mother. A letter for the community midwife and GP will be given to the carers when baby is discharged.

Prior to, or on discharge, CoramBAAF medical forms M and B should be provided to the Ward for completion by the paediatrician or senior nurse responsible for the child and the mother. These should be presented with the consent form signed by the birth parent. Often mother and baby are placed on different wards and so different medical professionals may need to complete the forms.

Upon discharge the birth parent/s must be advised by Adopt North East of the services of PAC UK ([www.pac-uk.org](http://www.pac-uk.org)) and provided with written information about the service.

## **6. Discharge of the Baby from Hospital**

The Local Authority Social Worker must inform the Local Authority Independent Reviewing Service of the baby's accommodation into Local Authority care and request the allocation of an Independent Reviewing Officer to undertake Child in Care reviews.

Both the Local Authority Social Worker and the Adopt North East Social Worker for the Adopters must complete statutory visits throughout the whole period that the child is looked after with the first visit being within 1 week of the placement starting.

## **7. Adoption Health Assessment of the Child**

A pre-adoption health assessment of the child should be arranged as soon as is practicable following the Local Authority's usual process. The Medical Adviser undertaking the medical will require the appropriate Health Assessment form as well as:

- Background information in respect of the child;
- CoramBAAF medical forms M and B;

- CoramBAAF PH forms completed by the birth parents regarding their own medical history.

## **8. Subsequent birth parent counselling and Family Time**

Counselling with birth parent(s) should continue following the birth of the baby.

Birth parent(s) can see their child should they chose to do so and this will need to be arranged with the carer by the Local Authority Social Worker. The Local Authority Social Worker also has responsibility for ensuring that the birth parent(s) are, if requested, kept informed of the baby's progress and well-being.

## **9. Adoption Panel**

The Adopt North East Adoption Panel is required to consider and make a recommendation on whether the child should be placed for adoption.

Where it considers that it has insufficient information it should request the Local Authority obtain further information and the Local Authority must comply with this request.

The Panel must also obtain legal advice in relation to the case. Legal Advice should be obtained from both the Local Authority for the child and from the Legal Advisor to the Adopt North East Panel.

## **10. Agency Decision that the Child Should be Placed for Adoption**

The Adopt North East Adoption Panel will make a recommendation to the Local Authority Agency Decision Maker.

In *Hofstetter v LB Barnet and IRM* [2009] EWCA 3282 (Admin) the court set out guidance for the way in which the decision-maker should approach a case. The court said that it would be good discipline and appropriate for the decision-maker to:

- list the material taken into account in reaching the decision;
- identify key arguments;
- ask whether they agree with the process and approach of the relevant panel(s) and are satisfied as to its fairness and that the panel(s) has properly addressed the arguments;
- consider whether any additional information now available to them that was not before the panel has an impact on its reasons or recommendation;
- identify the reasons given for the relevant recommendation that they do or do not wish to adopt; and
- state (a) the adopted reasons by cross reference or otherwise and (b) any further reasons for their decision.

## **11. Birth Parent Decision**

Section 52(3) of the Adoption and Children Act 2002 makes it clear that any consent to adoption given by a mother before her child is six weeks old is ineffective.

### The effect of Section 19

Section 19 of the Adoption and Children Act 2002 provides that a parent may consent to the placement for adoption of their child, and that this consent may be to placement with any prospective adopter chosen by the agency, or to a specific prospective adopter. In the latter case, the consent may (but is not required to) provide that, in the event of the placement with a specific prospective adopter being terminated before an adoption order is made, the agency may place the child with a prospective adopter of its own choosing.

The legal consequences of giving Section 19 consent to placement are as follows:

- a) The local authority shares parental responsibility with the parents and with the prospective adopter(s) from the date of placement. The extent to which the parents may exercise it is determined by the local authority.
- b) The child is looked after, but the duty to promote contact no longer applies. Contact arrangements are at the discretion of the Local Authority (Contact Orders can be made if an application is made to the court).
- c) The parents can withdraw consent at any time until an application is made for an Adoption Order. If there is no Care Order, the local authority is then obliged to return the child to the parents if they request it (within seven days if the child is in foster care and 14 days if placed for adoption). If the child is subject to a Care Order the local authority will then apply for a Placement Order.
- d) If the child has been placed with the prospective adopters for more than 10 weeks, the prospective adopter(s) can apply for an adoption order. If, following the application for an adoption order, the parents or guardians then withdraw their consent to placement, the prospective adopters are not obliged to return the child to the local authority or parents unless a court orders it.
- e) If s19 consent to placement is not withdrawn before the Adoption Order is applied for, it is deemed consent to the making of an Adoption Order.
- f) A parent or guardian may not oppose the making of the Adoption Order unless they have obtained permission from the court.

### The effect of Section 20

Section 20 of the Adoption and Children Act 2002 provides that a parent, who gives consent to the child being placed for adoption, may also give their advance consent to the making of an adoption order. At the same time they will have the option of making a statement that they do not wish to be informed of any application for an adoption order (although they may retract such a statement later). This situation could arise where a parent has requested their child be adopted and is clear that they wish to



have no further involvement with the plans for the child. If such a statement is made, the Regulations requires that this is recorded on the child's adoption record and at the same time file a copy at court.

### Capacity and Consent

Adopt North East must be sure that the parent has the capacity to give consent.

During the Initial Visit and during subsequent counselling sessions, care should be given to identifying whether the birth parent(s) have the capacity to give consent, especially if there is evidence of learning disabilities, mental health issues, cultural, ethnic or faith issues or if the parent is a child.

Where there is concern as to the parent's understanding, the Local Authority Social Worker should seek an additional and specialist assessment of capacity from the Local Authority.

If there is an issue of capacity to consent then Adopt North East must not ask CAFCASS to witness consent until the issue resolved.

If there is any doubt about the competence of a parent to give consent to adoption or placement for adoption, the issue should be referred to a court.

### Evidencing Consent

In *Re S (Child as parent: Adoption: Consent)* [2017] EWHC 2729 (Fam) the High Court was clear that parental capacity to consent to a child being accommodated under s.20 Children Act 1989 does not equate to capacity to consent to an Adoption Order in respect of the child - the capacity to consent is decision-specific.

The court set out the salient or 'sufficient' information which is required to be understood by a parent regarding extra-familial adoption:

- Your child will have new legal parents, and will no longer be your son or daughter in law;
- Adoption is final, and non-reversible;
- During the process, other people (including social workers from the adoption agency) will be making decisions for the child, including who can see the child, and with whom the child will live;
- You may obtain legal advice if you wish before taking the decision;
- The child will live with a different family forever; you will (probably) not be able to choose the adopters;
- You will have no right to see your child or have contact with your child; it is highly likely that direct contact with your child will cease, and any indirect contact will be limited;

- The child may later trace you, but contact will only be re-established if the child wants this;
- There are generally two stages to adoption; the child being placed with another family for adoption, and being formally adopted;
- For a limited period of time you may change your mind; once placed for adoption, your right to change your mind is limited, and is lost when an Adoption Order is made.

When establishing the consent of a parent the Court asserted that 'all practicable steps' must be taken to help a parent to make the decision, for example using simple language, visual aids or other means.

Before exercising their decision-making, a parent should freely and fully understand the information set out on the consent forms, which should be conveyed and explained to them in an appropriate way; there is no expectation that the parent be able to understand the precise language of the consent forms.

If there is any doubt about the competence of a parent to give consent to adoption or placement for adoption, the issue should be referred to a court.

## **12. CAFCASS Officer as Witness to the Parent's Consent**

Adopt North East will request that CAFCASS appoint an Officer to witness the parent's or guardian's consent to placement or to adoption prior to court proceedings.

For consent to be effective, the CAFCASS Officer will need to be satisfied that the parent fully understands the consequences of giving consent and that they are willing to do so unconditionally. The CAFCASS officer will then need to witness the formal signing by the parent or guardian of the Consent to Placement Form, sign the Form themselves and then notify the agency in writing, including the consent Form with the Notification. The CAFCASS officer must keep a copy of the original form.

Where the CAFCASS officer is not satisfied that the parents wish to give their full consent, or has doubts that they fully understand its implications, or considers that they are not competent to give consent, the CAFCASS Officer will notify both the Local Authority and Adopt North East. In these circumstances consent cannot be given and it will be necessary for the Local Authority to make an application to the Court.

## **13. Withdrawal of Consent by Birth Parent**

### **Withdrawal of Consent to Place for Adoption**

The child's birth parent is able to withdraw their consent to the child's placement for adoption at any time up to the point where the prospective adopters apply for an Adoption Order.

On receiving the notice of withdrawal of consent the Local Authority is required to immediately review its decision to place the child for adoption. The Authority may decide to apply for a Placement Order, having taken legal advice to ensure that the conditions for this are satisfied. This would prevent the child's removal until such time as the court has decided whether to make the Placement Order.

Where consent to placement has been given and withdrawn but the child is not yet placed for adoption, then the child must be returned to the parents within 7 days unless the authority decides to apply for a Placement Order.

#### Withdrawal of Consent under Section 19/20

Where the child is placed for adoption by consent under Section 19 and that consent is withdrawn, the child must be returned to the care of the Local Authority by the prospective adopters within 14 days and the Local Authority must return the child to the parents unless the Authority decides to apply for a Placement Order.

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