



# Non-Agency Adoptions: Procedures for Practitioners

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## Applicants

To be able to apply for Non-Agency Adoption the applicant must be:

- Over the age of **21** years old
- Resident within the United Kingdom for at least **12 months**

Partners (commonly known but not restricted to Step-Parents):

- The applicant must be **married** to, or the **partner** (civil or unmarried) of, one of the child's birth parents for at least **12 months**
- The child must have had his home with the applicant or, as the case may be, applicants at all times during the period of **6 months** preceding the application\*.

Foster Parents:

- The child must have had his home with the applicants at all times during the period of **1 year** preceding the application\*

Relatives, Private Foster Carers or Others

- The child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them for not less than **3 years** (whether continuous or not) during the period of **5 years** preceding the application\*

\*If a prospective adopter does not fulfil the residence requirement which applies to their circumstances, it is still possible to make an application to court but the leave of the court is required first.

## The Child

The child to be adopted:

- **must be resident** within the geographical area of Gateshead, Newcastle, North Tyneside, Northumberland and South Tyneside for Adopt North East to commence assessment
- must be under **18 years of age** on the date of an application to court\*

*\*S49(4) of the Adoption and Children Act 2002 provides for applications for adoption being made before a child is 18 (An application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application), but that then the order can be made any time before the child's 19th birthday in accordance with s47(9)(An adoption order may not be made in relation to a person who has attained the age of 19 year.*

## **1. Procedure for Partner Adoption**

### **Initial Contact**

When contact is made regarding partner adoption, an **Initial Contact Form** should be created on Liquidlogic LCS (in the adult enquirer's name).

Where the Agency receives Contact from carer/s of a child under the age of sixteen (18 if disabled) where it is apparent that no carer/s have parental responsibility for the child, the Agency will notify the relevant Local Authority Children's Services of a potential Private Fostering Arrangement.

### **Website First**

The RAS Front Door Social Worker should direct the enquirer to the ANE Website which hosts relevant information about Non-Agency Adoption. An Initial Meeting should not be arranged unless the enquirer confirms that they have read and understood the information on the Website.

### **Initial Meeting**

Upon an enquirer's subsequent contact with the Agency, the RAS Front Door Social Worker will clarify they have read the information on the website and come to an informed decision about alternative options open to them (advising about the lesser order principle of the court). They will also clarify costs and timescales relating to the process.

Where appropriate, an Initial Meeting (IM) will be arranged to meet with the enquirer (it is not expected that the Social Worker will meet with the child). The meeting will consider in further detail:

- Why adoption is being pursued
- Other legal options, such as a Child Arrangements Order or Parental Responsibility Order
- Understanding and awareness of the child

- Position of non-resident birth parent
- Proposed contact arrangements
- Lifelong implications of adoption
- The position of other extended family members
- Inheritance issues

At the IM ID checks will be completed. Initial counselling will be an integral part of the IM so that alternative orders to adoption can be explored fully because the court will expect to know why adoption is considered to be the most appropriate option and this expect this to have been discussed at the earliest stage.

In particular, the IM will explore the possibility of a Parental Responsibility Order or Child Arrangement Order being obtained as an alternative to adoption and a means of securing the future for the child.

*A Parental Responsibility Order application can only be made by the partner if the couple are married or in a civil partnership. An unmarried or cohabiting partner cannot apply for a Parental Responsibility Order. An unmarried partner, or one not in a civil partnership, could acquire parental responsibility by a Child Arrangements Order.*

The Social Worker should ensure that the discussion that took place at the Initial Meeting is recorded on LCS in **the RAA StepParent/Non-Agency Adoption Form** (in the adult enquirer's name).

### **Application Pack**

Following this meeting, if someone wishes to proceed, they will need to contact the Agency to request a Step-Parent / Non-Agency **Application Pack**. This will be provided by the allocated RAS FD Social Worker and includes:

- The **Notice of Intention to Apply** form
- ANE application form (includes consent for references and checks)
- Guidance for completing online DBS (including the expectation of registering with the update service) and sending payment to ANE
- In the event that the applicant(s) have spent significant time abroad, the local authority should also consider whether foreign police checks /certificates of good behaviour can and should be obtained or are already available;
- A blank Annex A form to be left with the prospective adopters for information about the areas which will be covered in the assessment;

### **Notice of Intention to Apply.**

If the Agency does not receive a Notice of Intention to Apply from an applicant **within 3 months of the visit** the case will be closed.

Upon receipt of a Notice of Intention to Apply, the Agency will advise the applicant how and when to make an application to the local County Court or Family Proceedings (Magistrates) Court.

On receipt of the Notice, Application form and payment for DBS, the Agency will commence obtaining references and relevant checks.

The effect of a notice of intention to adopt is that restrictions are made on the child's removal from their home. Legal Advice should be sought. The child may not be removed for except by leave of the court or by a local authority or an authorised person. These restrictions also apply after the application for an Adoption Order. The notice of intention to adopt expires after 2 years, if no application for an Adoption Order is made.

The notice regarding adoption may come from either the applicant(s) or the solicitor acting for the applicant(s). In cases where an adoption **is likely to be contested or the whereabouts of the legal birth parent(s) is unknown**, then the applicant(s) should be advised to engage a solicitor.

### **Disclosure and Barring Service Checks**

Upon receipt of Notification of Intention to Apply, the Social Worker will contact the applicant request payment for the Enhanced Disclosure and Barring Service (DBS) Check for every adult member of the household.

The Agency will not start the process until it has received payment.

The Agency will require written consent from the applicant (and any other adult member of the household) to undertake the check and evidence of identification and supporting documentation.

The Agency will progress the checks upon receipt of payment even if the applicant subsequently does not make an application to the Court – this avoids any delay at a later stage.

### **Application to the Court**

An application for a non-agency adoption order is made on [Form A58](#) which is available online or from the Local Family Court. The applicant must apply to the Court within **2 years** of their Notice of Intention to apply (and no earlier than **3 months from receipt by the Agency of their Notice of Intent**). The A58 should be completed and submitted with the child's original / long birth certificate and the applicants' marriage or civil partnership certificate (if applicable).

Those involved in the application will be each person with parental responsibility for the child (unless they have given notice stating that they do not wish to be informed),

any person who is named in a child arrangements order as a person with whom the child is to have contact or spend time with, and the child in rare cases.

The applicant will be expected to pay directly to the Court the non-refundable Court Fee for an Adoption Order Application <https://www.gov.uk/court-fees-what-they-are>

If an application to court has **not been made within 6 months** of the Application Form being received by Adopt North East the case will be **closed**. This does not affect the status of the Notice of Intent which lasts for 2 years. However, if the applicant wishes to progress at a later stage before the Notice of Intent expires, the Agency will require a further Application Form to be submitted as references and checks will need to be repeated.

### **Appointment of Assessing Social Worker**

The Court will ask Adopt North East to appoint a Social Worker to provide them with an Annex A.

The Annex A R is exactly the same as that written in respect of agency adoption placements, though the Welfare Checklist is not required. The report must be prepared within the timescale fixed by the court. No extensions are likely to be given and any possible delay must be explained to the court at the earliest opportunity.

ZH v HS & others (Application to revoke Adoption Order: Procedure in Non-Agency Adoption Placement) 2019 determined that Annex A reports must be read by the supervising Team manager and counter signed.

ZH v HS & others 2019 also refers to the sharing of the Annex A report with the applicant ONLY. This is purely for the purposes of factual correction. All content should be known to the applicant given their intention to adopt; they ought to have the fullest possible information on the child/ren. If it is the view of the report writer that the report should have sections redacted prior to sharing, this should be worked through the report.

A copy of the completed report must be sent (via email or post) to the court, with a covering letter where needed.

The social worker must attend court.

The court will appoint a CAFCASS Officer. This person will be independent of the court and all agencies. The role of the reporting officer is to gain consent from birth parent/s.

### **Counselling**

Counselling for the preparation of the Annex A should commence as soon as an FD RAS Social Worker (where possible, the same Social Worker that completed the Initial Meeting), is allocated. The purpose of counselling is to ensure that the nature

and implications of adoption are understood fully by the child, the prospective adopter(s) and the birth parent(s).

During counselling, the prospective adopter(s), must be made aware of the need to obtain personal details of their family/ies for inclusion in the Annex A report for the court. The birth parent applicant should understand that they will not need to adopt the child with the new partner as used to be required. The effect of an Adoption Order is that they will share the parental responsibility and all legal rights and duties in respect of the child with the partner.

During this visit the Social Worker should gather as much information about the birth parents (and anyone else with PR) known to the prospective adopter. This should include any known contact information, personal details and last known addresses. This will allow the Social Worker to begin to attempt to contact with the non-resident birth parent. The assessment of the family should help them think about the effects of an adoption order on themselves, the child, and all members of the birth and adopting families. They should be able to describe to the Social Worker the full legal effects of the making of an adoption order and be able to explain why they prefer this order over all other options.

It will be necessary to ascertain whether the prospective adopter has informed the birth parent(s) (or other parent) of their intention. If they have not done so, the social worker will need to explain the contribution from the (other) birth parent(s) that will be needed and discuss with the prospective adopter(s) whether they wish themselves to inform the birth parent(s) before the social worker makes contact with them.

The social worker may need to consider:

1. Using an **interpreter** (the Agency will meet these costs) even where people have a reasonable fluency in English, their understanding of the legal options to enable them to care for a child may be limited, and their understanding of the lifelong impact on a child may be difficult to explore;
2. If there is likely to be **difficulty in tracing the birth parent(s)** attempts to do so need to be commenced by the family as early as possible (the Social Worker should contact the Agency Legal Advisor as soon as possible if this is likely to be an issue). The Social Worker should explain to the prospective adopter(s) the need to provide as much detail as possible about the birth parents at the point of notification and that DWP and other investigative organisations may be involved to locate birth parents;
3. Whether the applicants have accessed **Legal Advice**

## **Assessment and Preparation of Annex A**

During the course of assessment the social worker should:

- a. Meet each prospective adopter and the child (if age appropriate to do so) separately at least once, to ascertain wishes and feelings
- b. Observe the child within the family and assess how well they are assimilated and relate to each of the prospective adopters.

- c. Meet with other family members including children in the adoptive family/ birth family to ascertain their wishes and feelings.
- d. Review the DBS information as soon as it is received. An agency may 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 when 18 years of age 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 must notify the prospective adopter in writing, with reasons, without delay
- e. Meet referees face to face where possible and write up a referee report, considering the weight of the reference.
- f. Ensure the family information about how the child came to live with them is clear and backed up with evidence
- g. Meet with any birth parents or those with PR for the child who will lose it if an Adoption Order is granted. Any parent, guardian or special guardian of the child with PR will have to give consent to the adoption or have their consent dispensed with (The latter will require the court to be satisfied that there is good reason to do this; that either the parent cannot be found, is incapable of giving consent or the welfare of the child requires for their consent to be dispensed with).
- h. Ensure any discussions with (other) birth parents or family members clarify these people's full understanding of the effects of adoption on the child.

The child needs to know and have an understanding of their birth origins as well as to be aware of the implications of adoption. They should be seen alone if old enough (e.g. over 5 years) and it is important to note that even young children can understand the difference between a 'parenting' parent and a 'birth' parent. The agency should provide guidance and support to the adults involved to enable them to inform the child.

It is essential that the child's views are recorded and taken into account. Where a child has strong bonds with the absent parent, it is crucial that this matter is given careful consideration. In such cases, it may be that a Section 8 Order is a more appropriate recommendation.

Similarly, anyone with parental responsibility and who has played a significant part in the child's life should be counselled and their legal rights explained fully. Reasons for not involving a birth parent or other person with parental responsibility should be recorded in detail on the file.

Any birth parent not agreeing to the proposed adoption plan should be advised to access independent legal advice as soon as possible.

The views and wishes of the wider family are also likely to be relevant and the social worker will need to consider whom it will be necessary to approach. This may be a matter of special significance if the child's non-resident birth parent is dead. Where there is contact between the child and grandparents it will be necessary for all the family members to consider how the making of an Adoption Order might affect their relationship.

## Issues of Contact

Issues of any on-going contact should be discussed fully with the child, the prospective adopters and the birth parent(s). Such arrangements may be made informally if all parties are in agreement. However, in the event of a dispute, it may be necessary to consider the recommendations of a Child Arrangements Order to run alongside the Adoption Order.

## References and Checks

Following written consent, Adopt North East will check:

- a) Residence of applicant
- b) Criminal Record Disclosure and Barring Service of Adults within Household
- c) Former Partners of applicant
- d) Health of Applicant via General Practitioner
- e) Local Authority Children's Services where resident
- f) Checks of Adult Children
- g) School/Nursery/Health Visitor of the child/ren
- h) Three References of which two must be Non-Family

### a. Residence

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 particular 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.

### b. Criminal Record Checks

The Agency will conduct a UK Disclosure and Barring Service (DBS) enhanced criminal record check on all adult members (those over the age of 18 years old at the time of the Notification)) of the applicant's household.

The Agency will not support Non-Agency Adoption 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 means that the prospective adopter is not suitable to adopt.

The Agency will seek overseas checks where an applicant (or adult member of their household) 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) in a given year at an address outside of the United Kingdom; and
- iii. The applicant has done so within the last 10 years (calculated from the date of Registration of Interest); and
- iv. 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; and
- v. The check/s will not unreasonably delay the progress of assessment (at the discretion of the Agency).

c. Checks with Former Partners of Applicant Adopters

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.

Checks will always be undertaken on all former partners of an applicant during the course of the last ten years prior to the date of Notification 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.

d. Health checks

The Agency will obtain a written report from a registered medical practitioner about the health of the prospective adopter. 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. Medical examinations are not generally required for partner adoptions; however, if there is a significant health issue then a more detailed Medical may be required.

Any charges made by a General Practitioner for a medical must be paid for by the applicant.

e. Checks with Local Authorities

The Agency will check with the Local Authority in whose area the prospective adopter has their home has any information about them that may be relevant to the assessment.

f. Checks with Adult Children

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

g. Headteachers/Nursery Teachers/Health Visitors

The Agency will check with the Headteacher if there is a school age child in the family; the Nursery if in pre-school and/or the Health Visitor if pre-school.

h. References

Applicants will be asked to provide the names of three personal referees, who are adults (not more than one of whom should be related to them), have known the applicant for at least two years and who are willing to give written references on the prospective adopter and be interviewed following the provision of a written reference.

## **2. Foster Parents**

Foster Carers who have had a child in placement with them for the past 12 months can apply for an Adoption Order.

This type of Non-Agency application should be a rare occurrence. In most cases the Local Authority for the child should be supportive of a plan for permanence for the child, either in Long-Term Foster Care or Special Guardianship. Occasionally however, a Foster Carer will disagree with the plan of a Local Authority for the child and can apply to adopt the child.

It will be necessary for Adopt North East to liaise with the Social Worker and Team Manager of the Fostering Service to understand the issues. Where possible, agreement should be reached about the best plan of permanence for the child.

Where agreement is reached that Non-Agency Adoption is appropriate or where the Foster Carers exercise their right to apply to adopt a child who has been in their care for more than 12 months, the process is the same as that relating to Partner Adoption described above.

## **3. Adoption by Others**

In this situation, anyone who has had the care of the child for any 3 years out of the past 5 years, can apply to adopt. This is likely to cover situations such as adoption by relatives or Private Foster Carers.

Private Fostering is an arrangement whereby a child under the age of 16 (or 18 if the child has a disability) lives for 28 days or more in the care of someone who is not the child's parent(s), a person with parental responsibility for the child or a relative of the child. Private Foster Carers are required by law to notify the Local Authority in which they are resident of the arrangement. There are occasions however when the Local Authority has not been notified - failure to notify is something that should be taken into account when considering the suitability of those persons to adopt.

If the family do come under the private fostering regulations, but are not known to the Local Authority, Adopt North East will refer arrangement to the Local Authority immediately, without consent. The Local Authority will have responsibility for the assessment and monitoring of the Private Fostering arrangement which will run alongside the non-agency adoption process. Adopt North East will not take responsibility for any functions relating to Private Fostering.

The process for Non-Agency Adoption is otherwise the same as that relating to Partner Adoption described above.