

## Foster to Adopt & information sharing

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### Background

1. Where a Local Authority are considering adoption for a looked after child or are satisfied that a child ought to be placed for adoption but are not yet authorised to<sup>1</sup>, then different considerations apply with regards to the accommodation of that child. Section 22C of the Children Act 1989 means that consideration *must* be given to placing such a child with an individual who is a relative, friend or other connected person to the child who is also a local authority foster parent or if this would not be appropriate, with a local authority foster parent who has been approved as a prospective adopter ((s. 22C9(b)(c)) Those approved under Regulation 25A of the Care Planning, Placement and Case Review Regulations (CPPCR) 2010 are included in this. Reg 25A carers are carers approved as prospective adopters who are temporarily approved by a local authority as foster carers for a named child without having undergone a full Fostering assessment<sup>2</sup>.
2. According to Coram cases where Foster to Adopt seem to be realistic options include
  - a. *Where parents have had one or more child/ren previously placed for adoption or other forms of permanent placement and the evidence strongly suggests that their circumstances have not changed and they pose the same risks as they did to the previous child/ren;*
  - b. *The local authority does not have a proactive plan to rehabilitate the child as the circumstances of the parents are such to pose a serious on-going risk;*
  - c. *Where this is the first child, the circumstances of the parents and the risks to the child are such that there is no proactive plan to return the child to the birth parents or to other family members;*
  - d. *Where parents have indicated that they may want their child adopted, but have not formally consented<sup>3</sup>*
3. The benefit of such placements are “...that the child will be placed with foster carers who, subject to a placement order being made, or parental consent, are expected to go on to become the child’s adoptive family. Delay in finding a permanent family for young children who have already experienced neglect early on in their lives may have a profoundly damaging effect on their development. This type of placement has potential to reduce this delay and the damage caused significantly”<sup>4</sup>.
4. The “Statutory Guidance on Adoption For Local Authorities, voluntary adoption agencies and adoption support agencies July 2013” confirms these remain fostering placements until placement order (or consent is given) and repeats the benefit of them. It reminds LAs to consider the placements on a case by case

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<sup>1</sup> By section 19 of the Adoption and Children Act 2002 (with parental consent) or by section 21 (placement orders)

<sup>2</sup> 3.146 *The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review June 2015*

<sup>3</sup> [https://www.coram.org.uk/sites/default/files/resource\\_files/46%20Fostering%20for%20Adoption%20Guidance\\_2013.pdf](https://www.coram.org.uk/sites/default/files/resource_files/46%20Fostering%20for%20Adoption%20Guidance_2013.pdf)

<sup>4</sup> 3.145 of the Regulations in subsection 2

basis and the principles of early permanence. It should also be noted that recent changes in legislation mean that a Court will when considering granting an adoption order take into account the child's relationship to the proposed adopter with whom they are placed<sup>5</sup>

5. The decision to approve a foster to adopt placement must be made by a nominated officer<sup>6</sup> “ 3.160 *The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review June 2015 The nominated officer must approve the decision to place the child in a section 22C(9B)(c) placement before the placement may take effect., the nominated officer must be sure that the placement is the most appropriate one for the child; ensure that the child's wishes and feelings have been considered in the decision making process and that the Independent Reviewing Officer has been informed...*”
6. The decision should also be communicated to the parents “...*The nominated officer must also ensure that the child's parents (including fathers without parental responsibility) or guardian (if their whereabouts is known) are notified about the proposed placement*<sup>7</sup>. *This notification should be in writing and as soon as the nominated officer is asked to approve the placement decision...*”
7. Coram state in their guidance “...*the parents must be informed that the local authority cannot pre-judge the outcome of care proceedings and only the court can authorise placement for adoption if the parents do not consent to their child being placed for adoption. In seeking the parents' cooperation in the FfA plan, the local authority should make it clear that they are focussed specifically on the needs of the child and the benefits for the child of making such a placement. Further, it must be explained that while the local authority believes that adoption is the right plan, or likely to become the plan if rehabilitation is not successful, they cannot and will not interfere in the parent's right to have their evidence presented and heard before the court if that is what they decide they want to do*”. 2.39 reads “*While there is no requirement for a formal agreement by the parent to the Court care plan, the responsible authority will be aware of the principles underpinning article 8 of the ECHR concerning the 'right to respect for family life' and should ensure that parents are appropriately consulted and that the reasons why their views have or have not been acted upon are recorded*”
8. The CPPCR 3.154 means that Adoption Agencies Regulations 11–17 are triggered when a foster to adopt placement is used, meaning the case record must be set up with information required by those regulations included and the Childs Permanence Report prepared.

## Information Sharing

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<sup>5</sup> (1 (f) Adoption Act 2002).

<sup>6</sup> In CCC this is the ADM

<sup>7</sup> Reflecting the CA 1989 s22(4)

- **The importance of the carers having the relevant information**

9. It is clear that information sharing with a proposed foster to adopt placement is key to ensure that it is suitable for adopters and child to remove risk of breakdown<sup>8</sup>. Before the s22C placement is approved the nominated officer must be sure that it is appropriate for the child and that the needs of the child can be met in the placement (s.3.161 and 3.175, or if it is a s25A placement s3.175).
10. Coram state “*the possibility of adoption by the carers is fundamental to Fostering for Adoption placements. It cannot be consistent with either identifying the placement most appropriate for the child, or safeguarding his/her best interests, if, at the point of matching for adoption, carers were to become aware of information profoundly relevant to the child’s future development, health or well-being that was available before the placement was made, but had been withheld*<sup>9</sup>.”

- **What information should be provided**

“*Sharing information The carers must be informed of all relevant aspects of available information about the child and their family and circumstances as set out in the Care Planning Guidance (para. 3.134). This will need to be done in a way that is consistent with data protection, confidentiality and other legal issues. With FfA placements, the information shared must be consistent with the plan that the foster carers could become the child’s adopters. Where there are necessary restrictions on what can be shared, this must not interfere with the carers’ ability to properly care for the child both currently and in the future. This should not be an insurmountable difficulty but it is essential that the carers do not find themselves in difficulty at the point of the adoption placement being approved because important information about the child or their family circumstances was not appropriately shared at an earlier stage.*<sup>10</sup>”

11. Coram make reference to the 3.134 of the 2010 Guidance which has now been replaced by the 2015:

*3.179 An effective placement plan will ensure that the carer receives essential information about the child, including his/her health, educational and emotional and behavioural needs, how these may affect the child day to day and appropriate strategies for responding to them. In particular, it is important to identify any behaviours which have been of concern to a child’s previous carer and which have contributed to the breakdown of a previous placement.*

*3.183 The 2010 Regulations set out the information which must be provided in the placement plan [regulation 9 and Schedule 2]. The carer will need to know about the child’s family, his/her race, religion and culture, the language spoken at home and any disabilities or other special needs. The carer will*

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<sup>8</sup> BT & GT (Children: twins - adoption) [2018] EWFC 76 in which the LA were ordered to pay damages for HRA breaches including SWs amending CPRs to mislead potential adopters

<sup>9</sup> Practice note 59

<sup>10</sup>[https://www.coram.org.uk/sites/default/files/resource\\_files/46%20Fostering%20for%20Adoption%20Guidance\\_2013.pdf](https://www.coram.org.uk/sites/default/files/resource_files/46%20Fostering%20for%20Adoption%20Guidance_2013.pdf)

*generally need to know the circumstances leading to the child becoming looked after, and the child's previous experiences both before and during the care episode. In particular, the carer needs to know what the long term plan is for the child and its timeframe, what the objectives are for the specific placement being offered and how these fit within the care plan. The carer should be given a copy of the care plan when it is completed and be clear about his/her role in implementing it. Within the context of the care plan the carer needs a realistic estimate of how long the placement is expected to last.*

*3.188 The responsible authority is required to set out a range of specific information in the placement plan **[regulation 9 and Schedule 2 paragraphs (1) to (8)]**. This concerns the child's health and education, contact arrangements, visits by the responsible authority and any arrangements for visits by an independent visitor. The child's carer needs to know what their role will be in safeguarding and promoting the child's welfare across each of the seven dimensions of the child's developmental needs (see Figure 1 and Annex 3). They need to know the content of the child's health plan and PEP and understand their role in implementing these. It is important to ensure they have adequate information about allergies, current medication and the treatment of any health conditions. It is also easy for details such as dates of appointments with specialists to get lost when a child changes placements. Information about additional educational support provided through statements of special educational needs and the PEP should also be included. The child's carers need to be fully informed about any existing arrangements for specialist services such as psychotherapeutic support or extra tuition, and be clear both about their responsibilities in ensuring that these are maintained and their role in helping the child to follow any agreed programmes.*

*3.189 The child's carers should be aware of the child's religion and culture and the manner in which these are reflected in their daily life, including any help the child will need to maintain these links **[Schedule 2 paragraph 3(2)]**....*

*3.190 Arrangements for contact between children, birth parents, siblings who are looked after and other relatives and friends must be clarified and discussed with carers...*

12. As such the LA should look to share the information required in the Guidance. There is no prescribed format for such, but clearly if it is shared orally there should be a written record of what was shared to whom and when to show compliance with the statutory Guidance.
13. Regarding the CPR in most cases this will not yet have been prepared. Where it has been information should be redacted that does not need to be shared with the carers at this stage, though parents may agree to all being shared.
14. It is recognised that in many cases there will be information which is not yet known.

*“Where a child is identified, then it is essential that all the information available on the child's needs and circumstances is made available to the carers including all health and developmental assessments. Where these have not been completed, then they should have been planned for or commissioned. It is likely that many children identified as suitable for FfA will either be new-born infants or under six months of age. This will inevitably mean that the information available on their developmental status may be limited especially in trying to predict later developmental progress. The agency medical advisor will play a crucial role in identifying what is known, what might be expected and what is not known.... This may mean for many prospective FfA carers that the placement will be made in the context of developmental uncertainty, and the carers capacity to manage this appropriately will be an essential part of the placement planning process and the provision of appropriate support... One essential factor in this must be identifying and establishing the child's paternity to minimise the risk of extended family members coming forward after the FfA placement has been made. A decision will need to be made whether or not it is in the child's best interest to delay any placement until paternity is established – if that is possible...”*

15. Corams Practice Note 59 states that *“Caution, therefore, should be exercised where the decision is made to withhold information from Fostering for Adoption carers. Information should only be withheld where it is personal to the parents, and can have no impact on the future health or development of the child”*.

### **Potential issues**

16. Personal information about the parents (their health, criminal record, etc) is confidential, however, the Data Protection Act 1998 provides an exemption from the requirement for confidentiality if disclosure is: *required by or under any enactment, by order of a Court, or by rule of law, or if it is necessary for the purpose of, or in connection with, any legal proceedings, including prospective legal proceedings*. Therefore parental consent is not a requirement for information sharing, but to be considered in the circumstances. Without consent the question would be whether the DPA exemption applies.
17. Corams practice note reiterates the need to carers to abide by confidentiality and for there to be a confidentiality clause in their fostering agreement

### **Conclusion**

18. In order for FtA placements to work as intended and the benefits of early permanence to prevail there will need to be necessary disclosure to placements, there is an importance of this being as full and frank as possible whilst only keeping disclosure to what is deemed as necessary. The 2015 guidance includes the following topics to be disclosed to foster carers about the child:
  - a. health needs, including allergies and medication
  - b. educational needs including PEP

- c. emotional needs
- d. behavioural needs including any behaviours which have been of concern to a child's previous carer and which have contributed to the breakdown of a previous placement
- e. developmental needs
- f. family, his/her race, religion and culture, language
- g. any disabilities or other special needs
- h. general circumstances leading to the child becoming looked after,
- i. the long term plan is for the child and timeframeContact

19. As such the Practice Note 59 from Coarm Baaf is agreed subject to these observations

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