

# Consultation

## **CoramBAAF submission in response to recommendations for best practice in Public Law Working Group**

### **Adoption sub-group respect of adoption: interim report**

**5 December 2023**

#### **About CoramBAAF**

We are the UK's leading membership organisation for professionals working across adoption, fostering and kinship care. We provide information, best practice guidance, advice, training and resources to support our members and influence policy to improve outcomes for children and young people.

Our corporate members in England, Wales, Scotland and Northern Ireland represent 94% of all local authorities as well as regional adoption agencies, health and social care trusts, independent fostering providers and voluntary adoption agencies, and cover 88% of all children and family social workers.

Our 650+ individual and associate members - comprising lawyers, health professionals, educational institutions, therapeutic and family support services, and more - reflect the multidisciplinary nature of our work.

Together, our members make up the largest network of organisations and individuals involved with children in their journey through the care system.

#### **Introduction**

CoramBAAF is grateful for the opportunity to contribute to this important consultation. Overall, CoramBAAF welcomes the recommendations for best practice in respect of adoption: interim report from the Public Law Working Group: adoption sub-group. This report sets out a number of important recommendations which if taken forward will reflect a significant shift in adoption practice.

CoramBAAF recognises that the Public Law Working Group (PLWG) is not able to make resourcing decisions and is not able to provide funding. However, if adoption practice is to address the issues highlighted in this report, then resources will be required to ensure that the approaches and practice changes have the most positive impact.

For more information or if you have any questions about our response, please contact:

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## **What approach should be taken to adoption and contact?**

### **Do you agree with the recommendations in Chapter 1?**

We welcome the approach taken by the PLWG in relation to adoption and contact. The proposals reflect changing attitudes and practice in adoption in England and are welcome. The rise in use and presence of social media platforms mean that it is no longer possible to have 'closed adoptions' in the way it would have been historically. Social media allows easy tracing and contact by both children wanting to trace and know about their birth family members and vice versa.

The most critical aspect of any approach to post adoption plans for staying in touch is that it needs to allow for genuinely individual plans. No two children/families or adopters are the same. Those with lived experience constantly reiterate the need for an individual, flexible approach which allows for differences in circumstances and can also change to reflect the changing needs of the child throughout childhood, teenage years and beyond. For instance, it should not be presumed that every child will always want to pursue enquiry or connection or that such arrangements function well in other kinds of fostering and kinship arrangements. Coram Voice's systematic Bright Spots surveys with young people in and leaving care demonstrate that all too many are concerned that they have too much or too little contact with the people they care about.

We are aware that children and families prefer not to use the term "contact" for staying in touch with people important to them, such as parents, brothers and sisters and friends, although we acknowledge that this is the terminology used in regulations. "Contact" which is a term traditionally used by professionals, does not represent the reality of what "contact" actually is or means to children and those important to them.

We would encourage the PLWG to consider language in their final response to this consultation process and use 'staying in touch' or 'maintaining relationships' as appropriate.

To ensure that the "sea change" in approach suggested in the report, becomes a reality, resources will need to be provided to agencies and professionals to support this significant shift in practice.

Anecdotally, CoramBAAF is aware that practice in relation to adopted children staying in touch with their family is changing. We have increasingly heard accounts of adopted children maintaining links with their birth family and significant people and that they have been supported to do so by their adoptive parents. In many instances, we are aware that this has happened outside of social work support. Adopters and birth family can make arrangements between themselves for the benefit of the child, and we know staying in touch works best where all parties are open to it and supportive of each other's circumstances, i.e. based on the relationships between the adults. They should, however, be supported to do so in to ensure the best outcomes for the child.

Social workers need training about how best to support adopters and birth families set up arrangements and then maintain those arrangements safely for the benefit of the child. This is not an easy or straightforward task, particularly when there are siblings involved in multiple homes and families, traditionally perceived as a potential 'risk' to the adoptive placement. There are also challenges where parental responsibility may be split. Social workers need training to promote and facilitate open adoption in this context. They need to be able to provide the right information and advice to the adopters and birth family about how they can make "open adoption" work for the child and why it is in the child's best interests to do so. This is more than being trained as to the benefits of



open adoption as suggested by the consultation. CoramBAAF publishes and shares good practice, delivers training and provides advice for social workers and is therefore well placed to support social workers in this context.

There are cases where a lack of timely support has resulted in significant harm to adopted young people. Any arrangements must be on a case by case basis and should not be seen as a substitute to the fulfilment of the current commitments to life story work which are themselves inconsistent in delivery and quality.

No child of any age should find that they are required to establish or maintain connection with people that they do not wish to engage with nor where they face risk, emotional distress or untenable arrangements and decisions made must recognise parental responsibility of adopters.

Paragraph 63: We are aware that there is increasingly a lack of ‘permanency planning’ knowledge and experience within frontline social work teams. This is partly due to the on-going retention crisis in social work and in part due to the creation of the Regional Adoption Agencies which have employed many of those with long-term experience and knowledge of lifelong impacts of adoption.

Those with expertise in writing and supporting contact between adopted children and their families are therefore frequently no longer situated with local authority offices where they used to disseminate information and practice experience.

Change in practice is necessary and welcome but will require significant resources in terms of training, tools and guides for social workers, adoptive parents, birth family, other professionals and children to help enable this to happen in the way that the PLWG envisage that it should. The application of the national standards and Early Permanence Quality mark are relevant tools in this and updates to the CoramBAAF Child Permanence Report (CPR), due for pilot early next year, includes a section that considers different ways of staying in touch with people important to the child. The default position will be that direct face to face meetings is the expectation post adoption, and if this is not the plan, there is a requirement to explain why.

The proposed contract templates provide a ‘starting point’ and may be signed in good faith by all concerned. They do not, however, reflect the realities and practicalities of maintaining relationships long term – 18 years in some cases and we therefore urge caution in their use. At the point that it is proposed that these contracts are signed the birth parents may not be in a position to agree to the plan. Protracted court proceedings, additional complex needs, and disorganised lifestyles may all contribute to why they may not be in a position to agree them at this stage, and indeed maintain the plans long term. As a result, they may need considerable support and counselling to be able to realise the ways in which they can still play a critical role in their child’s life beyond the Adoption Order. The most common difficulty in sustaining direct contact is parental substance misuse, of which there is no recognition of this in these contracts and potentially leaves adopters to be making assessments of whether it is appropriate for meetings to go ahead. Any ‘contract’ needs to be flexible enough to reflect the changing needs of the child, and circumstances of all those involved and allow change. They should, therefore, not be too prescriptive.

It may be appropriate to make use of S26 Orders, to support sibling relationships, for example. There is potential for arrangements to be trialled whilst the child is still looked after, and support is available for birth parents, child and carers. This would allow arrangements to be reviewed to inform whether such an order is required post adoption.



It is agreed that contact arrangements should be reviewed 1 year post adoption and at 3 years and then at key stages during the child's development. However, this cannot be completed at the present time as the teams are not staffed to deal with these reviews. Reviews should include consideration of practical issues such as transport costs, work patterns and school patterns.

With regards to the court using a provision to facilitate a review of contact by the court at a suitable time after the making of the adoption order there is concern about how this would work in practice. We suggest this should be only used in exceptional circumstances.

## **Do you have any other proposals? In particular, what should any best practice guidance contain?**

The PLWG has made a recommendation for best practice guidance in relation to supporting children who have been adopted stay in touch with family. We welcome this. Any best practice should contain:

- context
- regulations and guidance
- who is staying in touch for
- benefits of staying in touch for the child, the adopters, the birth parents
- different ways of staying in touch (direct/indirect/digital)
- preparing adopters for staying in touch
- supporting birth parents to contribute to their child's identity
- writing plans for staying in touch, sibling relationships
- practicalities, including financial and logistical
- supporting face to face sessions

## **In respect of access to records:**

### **Do you agree with the recommendations?**

The recommendations are welcome. However, there is a lack of intermediary services and available support. As with the answer about "contact" a significant issue is the resourcing of services and of the courts to be able to deliver these recommendations. In order to realise these ambitions for improved practice and the experience of those affected by adoption, increased resourcing and funding of the services such as courts or intermediaries will be needed. There are 12 recommendations in total lettered (i) to (xii). We will address some of those points here.

- 1.** Agree. In order to achieve consistent and appropriate timescales it is important that court staff are adequately resourced to retrieve and process adoption court records.
- 2.** Agree and would recommend that better public information include information about how to engage intermediary agencies and those agencies providing those services, how to apply for a birth certificate and adoption records.
- 3.** Agree and we agree with the response by Improving Adoption Services for Adults: a time for change (IASA Project) that there should be a protocol to standardise the archiving, retention and retrieval of adoption files across the sector. This is particularly important given the various arrangements of Regional Adoption Agencies and that they currently not arranged under any statutory footing.



4. Agree. As others have noted “counselling” may need greater explanation in the context in which it is meant here as it can mislead those accessing it to believe it to be therapy or something similar.
5. Agree
6. Agree
7. Agree
8. Agree
9. Agree – careful consideration as to the information that may be shared in the CPR is needed. Further below in our response we recommend that guidance on writing CPRs needs to be explicit around use of language and the purpose and extent of information being shared. For example, we have been made aware of instances where information that has been shared in post commencement CPRs can at times contain highly sensitive and personal data about third parties. Both those receiving the information and those that the information may be about may well not have known the information that was held in the CPR. Sharing this information without support can result unintentionally in further trauma for those involved.
10. Agree. However, there is a shortage of intermediary services for pre commencement adoption and therefore there will need to be investment in these services for this to be effective.
11. Agree
12. Agree

## **Do you have any other proposals?**

There is a gap in support – post commencement regulations allow files to be sent to individuals at home who have no support.

Guidance on writing CPRs need to be explicit around use of language and sharing information that is appropriate and necessary for adopted people to access and read in the future.

## **What further public information is required?**

A central point for information about accessing records is welcome. Although intermediary and counselling services are no longer a requisite of accessing records it is strongly advised that these services are used. Any national register of court records, whilst welcome, needs to provide historical information about where records have transferred to and between agencies in the past.

The ‘Alive or Dead Service’ provided a critical source of information for adopted people and their relatives. It has been unavailable since COVID and the website states that the ‘service under review’. It is critical that this resource is reinstated as matter of urgency, it is used by a number of organisations including the Salvation Army and Missing, in addition to providing a valuable resource for those adopted and their relatives.

## **Placement and adoption orders:**

### **What final recommendations should be made in respect of leave to oppose adoption orders applications?**



Applications for leave to oppose the making of adoption orders: We welcome the plan to review in 12 months' time whether the changes to legal aid make a difference to the number of applications for leave to oppose adoption orders that are made and refused and representations by Family Rights Group. Whilst the vast majority of applications for leave to oppose are unsuccessful, a minority are successful, and it is for this reason we think that appeal processes should be retained.

However, in most cases, we recognise that these applications are launched without consideration of the merits of the case, and as a result, almost all of them fail. In doing so they cause delay for children, false hope for parents and anxiety for adopters. The proposition for amendment to Family Procedure Rules to allow provision for a summary procedure to deal with these applications on paper if the judge considers it appropriate seems appropriate.

Paragraph 160: A template statement with a statement of truth incorporated should be created and sent to the parents. Headings directed at the legal test should be included. Whilst this seems a reasonable proposal, parents are likely to need support to engage with and complete such a form.

Paragraph 175: use of a separate form (A65) to request confidentiality of child's current address is likely to lead to this information being shared in situations that may present a risk and adds additional unnecessary complexity to the application process. Amendment of the A50 to include this information is therefore welcomed.

## **What changes, if any, should be made to the core documentation and reports?**

Part 19 applications - recommendations to clarify the procedure particularly in cases involving wider family members are welcome.

The English Adoption Statutory Guidance 2013 version and draft 2014 version should be updated to reflect current case law. As rightly acknowledged in paragraph 170 these have implications across all areas of adoption practice and are in need of urgent updating to reflect current case law and practice. Regional Adoption Agencies did not exist at the time the guidance was written and are therefore not reflected in it.

Paragraph 180: The process of ADM decisions within local authorities is one which is complex and requires co-ordination of a large number of reports and documentation. CoramBAAF has been commissioned to work with and deliver training for Agency Decision Makers across England over the past year. In delivering this training we have heard the experiences of more than 150 Agency Decision Makers. Those that are given time for this work within the normal working week are in the minority – the vast majority end up working at weekends and in their own time to give these decisions the careful consideration they require and in order to comply with the timescales. They report that court timetables are frequently uncoordinated with the expert reports and assessments and that they are left with very little time to read all the material (often in excess of 800 pages). Any further requirements to notify parents of planned decision times is therefore likely to create an additional practical burden on a process which is already very difficult. It is imperative that as much flexibility as possible is retained in the system.

Detailing the date by which the decision needs to be considered in the timetabling and then notification to parents afterwards works well in practice and should remain.

Medical Reports - Comments regarding Postscript at 218 and guidance relating to medical processes.





It is valuable that there is reference to the Somerset and Cumbria cases, as medical professionals have reported that has been some ensuing confusion regarding processes that support completion of medical reports in adoption.

Paragraph 218 ii): It would be helpful if “*necessary experience*” could be more clearly defined. There could be a link to the national competencies' framework. (RCPCH, RCN [Looked after children competencies](#), 2021).

Paragraph 219: It would be helpful in this section to be absolutely clear if the advice is referring to the medical adviser report about the child or the medical adviser’s report about the adopters.

New national templates for both these reports would be supported as long as they are developed by those with appropriate expertise.

In addition, there are some other points regarding medical processes that could be clarified further.

Timescales in respect of the need to update the child's medical adviser report at matching and application for adoption order, could be clarified as recommended in the consultation at paragraph 219 (ii). Currently there is variability across the country.

It would be helpful when adoption guidance and regulations are drafted or updated in the future, that this included; mention of looked after children health assessments; and to clarify how these reports are used in the production of the medical reports for children in the adoption pathway.

## **Adoption with an international element**

The Children Act 1989 England and Wales places a duty on local authorities to promote the upbringing of children within their families so far as this is consistent with their welfare. For children in care, this may include consideration of placement with family members living abroad.

However, there is no uniform guide on how to place children overseas. If a local authority has not placed a child in a particular country before, and does not know what steps to follow, there is no obvious path to follow.

In 2016 concern about the lack of information for local authorities in relation to outbound intercountry adoption led to the Department for Education (DfE) approaching IAC – the Centre for Adoption, because of its expertise in inbound intercountry adoption. The service began as a six-month pilot project in February 2017 with the North London Adoption Consortium, and then expanded to all English local authorities in August 2017. It became clear that many local authorities were also seeking to place children overseas on Special Guardianship Orders, and so the DfE-funded pilot Outbound Permanence Service broadened to become a service that advises on all legal orders. From 1st April 2018 it became a subscription service. From 1st July 2023, Intercountry Adoption Centre joined the Coram group as Coram IAC and the outbound service moved to Coram BAAF.

The outbound service provides the following for practitioners:

- A dedicated advice service for local authority lawyers and social work staff
- Online case consultation for specific complex cases with our legal researcher.



- Country factsheets and guides for overseas viability assessments and to the Convention Adoption and SGO process for professionals.
- A grant funded booklet explaining the process to overseas carers.
- Practice workshops on legal and practice issues.
- Delivery of specialist training to legal and social work teams.

## **Do you agree with the recommendations? Do you have any other proposals?**

There is a need for research into the outcomes of children placed overseas with connected carers.

Paragraphs 237 and 238: In relation to overseas placements outside the UK, specific guidance is needed on the ten-week minimum for which the child must have his/her home with the prospective adopters before application for a UK Adoption Order or Section 84. This is because practice for these placements differs so much from what the traditional Convention scheme envisages.

## **What should be the focus of any written guidance provided?**

As above.

## **What, if any, amendments should be proposed to the primary and secondary legislation? Other comments:**

Adoption from the UK overseas is usually by relatives, and this implies that contact is more likely to be kept with family in the UK. However, this is not entirely clear, due to the lack of research available. This has safeguarding and financial implications above and beyond the usual aspects, as there will not always be an identified resource such as a post adoption team for the overseas adopters to refer to if any issues arise. It also brings with it possible financial strain, especially if there is to be a move towards open adoption and direct contact. It can be costly for the adopter/local authority to fund face to face contact from an overseas country e.g. USA, Australia, New Zealand to the UK.

Amendments proposed: Paragraph 234 has a reference to Children and Families Across Borders (CFAB) in relation to viability assessment and help and advice to local authorities. It should be noted that CoramBAAF through our own advice line and outbound permanence service gives advice on both domestic and international adoption to local authorities and agencies.

## **Adoption by consent:**

### **What should be the focus of any national strategy and training?**

The low priority of adoption by consent, both in service design and delivery, is acknowledged. This is partly due to the low numbers of babies placed through this route. Many professionals will have limited experience of adoption by consent and, because referrals are so low, opportunities to develop this expertise is limited.

The suggestion of regional specialist hubs is welcome although a national service may be as appropriate to make available expertise to ensure that information is easily accessible in a timely way and that all those concerned are supported with minimum delay.





A national strategy will need to set out the importance of a system being driven by the needs, of the child and the circumstances of the parent/mother. Building on and developing the skills and knowledge and experience of the workforce, including CAFCASS, will be key to best practice and at the centre of the national strategy.

We welcome the recommendations as set out in the report including the use of Early Permanence placements.

### **Do the consent forms require simplification?**

The design of the form should make clear the significance of signing the form and if necessary, translation into the first language of the parent/mother.

#### Foreign nationals

It has become clear that where the parent/mother is a foreign national, there may be a challenge from the country of origin about issues of consent and the authority of the country of origin in challenging the decision of the mother in the plan for child. These issues need to be acknowledged in ensuring that the resolution of these issues reflect the welfare of the child and wishes of the mother.

Local authorities should be encouraged to make use of Part 19 applications under Family Procedure rules 2010 to seek guidance on whether it is necessary to inform the relevant authorities/Embassy overseas in these situations. Part 19 is meant to be a speedy way to resolve a discrete question – court staff may need to be trained in identifying these applications and listing them expeditiously to avoid delay in the substantive proceedings.