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## Care Planning

## DfES Draft Regulations and Guidance

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## Consultation Response

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## **BRITISH ASSOCIATION FOR ADOPTION & FOSTERING**

### **RESPONSE TO THE DRAFT GUIDANCE ON CARE PLANNING**

**The British Association for Adoption and Fostering (BAAF Adoption & Fostering) is the leading charity and membership organisation in fostering and adoption in the UK, we:**

- promote the highest standards of child-centred policies and services
- speak out on behalf of looked-after children
- influence UK-wide policy and legislation
- provide much-needed information and advice
- promote greater public understanding of adoption and fostering
- support our members in their work

BAAF's main activities are the development, promotion and advocacy of best policy and practice; the provision of advice and information to our members and to the general public; training, consultancy and seminars; child placement services including the publication of our monthly newspaper, *Be My Parent*. We publish a quarterly professional journal, *Adoption and Fostering*, books and guides for professionals, academics, parents and carers and research studies. The main users of our services are our members, comprising local authorities across England, Scotland and Wales, voluntary adoption agencies, independent fostering agencies and also individual social work, legal and medical professionals and carers. Discussion in BAAF's special interest groups, including its legal and social work practice advisory committees, has helped to inform this response.

#### **1. GENERAL COMMENTS**

We understand that this document represents only some initial thinking about one part of a more substantial guidance document on wider issues of care planning. We are relieved that this is the case, since it is essential that workers are not confused by many different piecemeal guidance documents. A comprehensive guide is needed, which would incorporate existing guidance (updated) on the Children Act 1989 (for instance the contents of volume 3 Children Act Regulations and Guidance), National Adoption Standards and Guidance on Reviews, including the role of the Independent Reviewing Officer, and cross-refer where necessary to the new Adoption Agencies Regulations.

Any such Guidance will need to set out the core principles governing all planning for children, with the overriding aim of ensuring that children are securely attached to carers as outlined in paragraph 1 of the Draft Guidance. The plan for each child will need to identify the desired outcome, the steps to be taken in pursuit of this, and the day-to-day arrangements for the time being. The process needs to ensure that, while the focus is on the child's

welfare, wishes and feelings, all concerned (including, in particular, parents and carers) are consulted and enabled to contribute to the planning, and to understand how the decisions taken are intended to help achieve the desired outcome.

## 2. PARTICULAR COMMENTS

### Care Planning and Reviews paragraphs 4 – 6

Paragraph 5 says that achieving permanence will be “a key consideration from the day that the child is looked after.” In the context of this Guidance, it would surely be more accurate to say that this is **the** key consideration. It is also important that, except in emergencies, the planning begins before the child is looked after. A child’s chance of achieving permanence within his or her birth family may be irretrievably damaged by a too hasty removal without a clear aim in view. This then requires that family support services must be involved in permanency planning as much as ‘looked after’ children’s teams and indeed that services are readily available to implement this. There is ample research from the 1970’s through to the present day that demonstrates the importance of this. although this research has not been as influential in driving policy and resources as it should be.

Paragraphs 5 and 6 contribute to the existing confusion about decision-making and reviews. The penultimate sentence of paragraph 5 implies that the statutory review makes or alters the plan. It is the local authority that makes the plan, following the process set out in the existing government Regulations and Guidance, and which alters the plan when such an alteration is indicated for any reason, as well as by review recommendations. The IRO of course has a key role in ensuring that the plan is adapted appropriately to meets the child’s needs and changing circumstances (and must under the new regulations be kept informed of any changes) – but neither the IRO nor the review **makes** or **alters** the plan. Where adoption is identified as the desired plan, the situation is further complicated by the need to involve the adoption panel in making a recommendation before the local authority can reach a decision that the child should be placed for adoption.

While it is of course desirable that a plan for permanence is identified no later than the second review, it cannot be said that this must be agreed “whatever the particular circumstances of the case.” For example, while assessments are still being undertaken, especially during court proceedings the permanency plan cannot be “clearly articulated” at the second review – although there may be room for “twin-track” planning in these circumstances. If the guidance intends to say that a contingency or “twin-track” plan falls within the definition of a permanency plan and hence meets the requirement to have a permanency plan identified no later than the second review, this should be made explicit. The child’s needs must be central in driving the planning process but the complexity of resolving disputed facts or issues, reaching a view about parental capacity, accessing scarce resources and working across complex organisational boundaries must not be underestimated. They are the realities of care planning.

## The Range of Options – paragraphs 9 – 16

This part of the Guidance is confused and confusing. It might perhaps be more helpful to distinguish between, on the one hand, the different contexts within which permanence can be achieved, and on the other, the legal status of different options. They are not coterminous. Broadly, the different contexts within which a child may find permanence are:

- Having a home with his or her birth parent(s)
- Having a home with relatives
- Having a home with “strangers” chosen by the local authority<sup>1</sup>

As the first bullet point in paragraph 11 points out, living with birth parents may occur under a care order or without any order. In either case, well-planned support will be essential. The importance of social workers with the knowledge and skills to support parents and children in this process cannot be overstated.

Placement with friends and family may, again, be undertaken without any court order, and may or may not involve approval of the relatives as foster carers or prospective adopters.

Placement with strangers may be a fostering placement or a placement for adoption, but we would like to see an acknowledgement that a placement for fostering could be made with a view not only to the child remaining permanently in that home, but with the intention that the carers will apply for special guardianship or residence orders as appropriate.

Paragraph 12 talks of residence orders or special guardianship orders being used to “increase the degree of legal permanence” in a placement. It cannot realistically be said that a residence order increases the degree of “legal permanence” (whatever precisely that phrase means). While, as mentioned in paragraph 2.4 under background and context (some of which would be more helpfully included in the main part of the guidance), a residence order may be extended to the age of 18, it may be varied at any time. It would be useful to mention, in the context of legal security, the provision of section 91 (14) of the Children Act 1989 for restricting future applications to the court.

We would take issue with the statement in paragraph 2.11 of the background and context that because special guardianship is a private law order it is not a placement option. Adoption is also a private law order. While it is true that statutory provision is specifically made for “placement for adoption”, there is no reason why a local authority should not state their **plan** to be special guardianship. Of course, whether or not that outcome is achieved will depend (usually) on whether the application is made, and on whether the court agrees to grant the order, but the same is true for adoption. So a local authority could

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<sup>1</sup> A residential placement cannot in itself provide permanence. In those cases where it is a necessity, the child’s hope of achieving permanence will rest on the efforts made by the local authority and the birth family or other adults to engender a sense of belonging.

place with foster carers in the expectation that in due course they would apply for special guardianship, or even, in some cases, recruit carers with this in view. Additionally, while court proceedings are in train, and relatives or others are wishing to be considered as permanent carers, the local authority's care plan could recommend to the court the making of a special guardianship order.

### **Financial Arrangements and Support paragraphs 15, 16 and 22**

We welcome the reminder of the government's commitment in *Every Child Matters* to ensuring that different permanence options are chosen because they best meet the needs of the child rather than because of any particular support arrangements available. We are not however confident that resources are being made available to enable such choices to be made in the most appropriate way. The detailed provisions for special guardianship support and the right to an assessment contrast forcibly with the discretionary powers contained in schedule 1 of the Children Act for the provision of financial support in residence orders, and the tentative suggestion in paragraph 16 that local authorities "may wish to look at the provision of financial support and other services for residence orders" could hardly be described as a robust call to local authorities to meet the commitment expressed in the Green Paper. Foster carers who wish to become special guardians or to apply for residence orders need to be confident that the support they and the child need will continue to be available. Without this, the take up of the new provisions is likely to be very low. For kinship carers too, a more consistent approach to support is essential. We would endorse the call in the response to this consultation paper by the Family Rights Group and others for an "unsupported child" element to the child Tax Credit funded from Central Government.

### **Contingency Planning paragraphs 17 – 21**

Paragraph 17 mentions confusion among social workers but unfortunately these paragraphs contribute to this confusion, which has also sometimes been compounded by statements made by courts during proceedings. We wholeheartedly support proper attempts to avoid unnecessary delay in reaching a decision about a child's future. In some cases clearly it will be necessary, while assessment of birth parents or other family members is continuing, for the local authority to consider what steps may be put in place to ensure an alternative placement without further delay if the assessments indicate that the child cannot return home or be placed with the relatives. It must be recognised though that there is a limit to what can be done at this stage. References to the need for "contingency planning" have sometimes been used, for example, to suggest that a child's case should be referred to the adoption panel for a recommendation on whether adoption is in the child's best interests **before** the necessary information from the assessments of the birth family is available. As the Draft Guidance on Arranging Adoptions makes clear (paragraph 2.27) the adoption panel's recommendations (which will in future include a recommendation that the child "should be placed for adoption" – replacing the "best interests" recommendation) should not be

conditional, and it should not be asked to make “in principle” recommendations. Paragraph 2.36 of the same Draft Guidance points to the need to make a decision on the Panel recommendation within 7 days, and this would clearly be impossible if all the information required were still not available. Under the new regime the agency’s decision to accept a panel recommendation that a child should be placed for adoption will trigger the legal obligation to apply for a placement order, if the necessary parental consent is not available. Clearly it would not be appropriate to start proceedings for a placement order while the local authority had yet to ascertain that other options were impossible or unsuitable. The referral to panel should therefore be made at a time when assessments are completed, and the LA is in a position to make a final care plan for adoption supported by the evidence of the assessments.

In this context it would also be appropriate to refer to concurrent planning schemes. BAAF believes that, in the hands of skilled practitioners, concurrent placements can offer an important way to minimise moves for children. Even in those cases where a concurrent planning placement is not appropriate or not available, planning will need to focus on the importance of minimising moves for a child. Any concurrent placement will need to be under the Fostering Services Regulations 2002, unless and until the plan becomes adoption. Under the ACA 2002, it will of course be necessary to have formal consent to placement *for adoption*, or a placement order, before the agency can confirm a decision to place for adoption and make a placement plan under the new regulations.

Paragraph 20 of the Draft Guidance is misleading. Where a contingency plan has been made, then of course it remains only a contingency plan unless and until a decision is made that “plan A” is no longer appropriate. If it is intended to say that it must be made absolutely clear to the parents and to everybody else if a decision is made to follow the contingency plan rather than the original plan, then this needs to be stated more clearly, and we would of course entirely agree. It is also vital that timescales are set so that everyone is aware of what is expected of them within what time scales.

It is not clear why paragraph 21 has been included under the heading “Contingency Planning.” The guidance contained here applies to **all** decisions about placement.

**Impact on Carers of Court Orders and Support Arrangements – chart on page 25.**

This is somewhat incomplete. If it is going to remain it would be useful to include under “the impact of placement with approved foster carers of a looked after child” that the child will of course be subject to the review process. In respect of both residence orders and special guardianship orders it would be helpful to include a reminder about section 91 (14) applications. Again in both instances it needs to be made clear that contact orders are possible and, in the case of special guardianship, it should be emphasised that there are limitations on applications to vary or discharge a special

guardianship order. It will also be significant for some special guardians that they have the power to appoint a guardian for the child after their death. The difference between residence orders and special guardianship orders in terms of the balance of power in exercising parental responsibility between carers and birth parents also needs to be explicit. Reference could also be made to the fact that prospective adopters with whom a child has been placed under the new Act will acquire parental responsibility on placement.

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