

The Adoption Sub-Group of the Public Law Working Group interim report on “Recommendations for Best Practice in Respect of Adoption”

Cafcass’ response to consultation on findings

1. Cafcass (the Children and Family Court Advisory and Support Service) is a non-departmental public body sponsored by the Ministry of Justice. Cafcass is the largest employer of child and family social workers as Family Court Advisers, Children’s Guardians and Reporting Officers. Cafcass has a statutory duty to safeguard the welfare of children in family law proceedings in England. Guardians make sure that their wishes and feelings are heard and advise the courts about what is in their best interests. Cafcass is independent of the courts, local authority children’s services, education, and health authorities. Guardians provide independent professional advice and recommendations to the courts.

Cafcass’ role in adoption proceedings

2. Cafcass’ involvement in adoption proceedings will generally follow care proceedings or occur when a parent relinquishes their child for adoption. In care proceedings, when a local authority makes an application for an order to safeguard the welfare of a child, the child is represented in those proceedings by a Cafcass Children’s Guardian and by their own solicitor. There are a number of public law orders that a local authority can apply for in the family court, including Care Orders, Placement Orders, and Adoption Orders.
3. A Placement Order allows the local authority or adoption agency to make plans for a child to live with someone the local authority or agency has approved as a prospective adopter. A placement order will last until an Adoption Order is made or until the court decides to end the placement order. An Adoption Order gives an adopter full parental responsibility for a child and the legal relationship between the child and their birth parents comes to an end.
4. The child is not usually a party to proceedings in adoption proceedings, so there will not be a Children’s Guardian, but the court can decide to add the child as a party in certain circumstances and will then appoint a Guardian to represent their interests.
5. In some situations, a person may decide they want to adopt their partner’s child in a stepparent adoption. The court may ask Cafcass to become involved to make sure the adults understand what the adoption means for them and the child, and to make sure that the other birth parent really does agree to it.
6. Where a child is being relinquished for adoption, and there is agreement that adoption is in the best interests of the child, the social worker appointed by the court who is employed by Cafcass is known as a Reporting Officer. They will speak to everybody with a legitimate interest to make sure that they understand what the adoption means for them and the child and ensure that they really do agree to the adoption. The Reporting Officer will then witness the consent forms being signed and inform the court.
7. In any of these circumstances, if a parent does not agree to the adoption, or cannot be found, the court may appoint a Children’s Guardian. The role of the Children’s Guardian in these cases is to make sure that the birth parents fully understand the process and agree to it, or, if they do not agree to it, to tell the court what they think is best for the child. Before the court makes a Placement Order, a crucial role of the Children’s

Guardian is to make sure that sufficient consideration has been given to any contact arrangements for the duration of the Placement Order.

8. The appointment of the Children's Guardian usually ends once the Placement Order is granted because it is not the role of the court or the Children's Guardian to be involved in approving the adoptive family in Placement Proceedings. However, parents may dispute the adoption and seek to oppose the making of an adoption order. A Children's Guardian will then be allocated to comment on any issues relevant to the best interests of the child, for example to comment on future contact arrangements.

Chapter 1: Adoption and contact

9. Cafcass supports the recommendation that birth parents should be signposted to independent support and we are committed to promoting that this practice is consistently followed in family law proceedings. Birth family members experience complex and distressing emotions associated with the potential of 'losing' their child and it is important that they receive support for this.
10. In line with this recommendation, our internal guidance states that it is good practice to make sure birth parents are aware of post adoption counselling and support services, and that the Reporting Officer/Guardian must make sure that the parent or carer has been offered support and counselling to ensure they are well informed about the adoption process, by a social worker other than that appointed for the child.
11. Cafcass agrees that children must be supported to have contact with their birth family where this is in the child's best interest. As recommended by Nuffield Family Justice Observatory in their July 2020 paper on contact following placement¹, the purpose of contact with birth family members should be 'safe and meaningful involvement', ensuring acknowledgement of when contact may risk further abuse or re-traumatisation for the child. When carrying out their assessment, the principle need for every child is to establish a secure and stable environment that supports emotional permanence, with a subsequent comprehensive evaluation of the welfare checklist which encompasses recommendations for the child's contact with their birth family. We would emphasise the need to amplify and carefully consider the child's needs, wishes, and feelings in relation to future contact arrangements with birth parents to make a holistic assessment of their best interests.
12. A significant part of this assessment is determining whether contact will be supportive to the child's long-term sense of permanence, acknowledging potential risks that contact could undermine the child's relationship with adoptive parents. We agree that it is important to comprehensively evaluate all options for contact.
13. However, we are concerned that proposals for a contact support plan being considered when making a Placement Order is too early in the process. Establishing a detailed plan for contact during Placement Order hearings without the involvement of the prospective adoptive parents may not be sustainable or lead to the best outcomes for the child. Adoption is a lifelong journey and to ensure arrangements for the child are long-lasting and adaptable, it is our view that decisions regarding contact should be made in consultation with all relevant parties, including birth parents, adoptive parents, professionals involved, and the child where appropriate. The needs and circumstances

¹ [Contact following placement in care, adoption, or special guardianship: implications for children and young people's well-being - Nuffield Family Justice Observatory \(nuffieldfjo.org.uk\)](https://www.nuffieldfjo.org.uk/contact-following-placement-in-care-adoption-or-special-guardianship-implications-for-children-and-young-peoples-well-being)

for the child may change over time, requiring adjustments to the plan for spending time with family members and significant others. This could result in tensions, uncertainty for the child, additional court hearings and further delays, which can be avoided if all parties are involved from the outset.

14. We acknowledge the need for a balanced approach that considers the child's evolving needs, and acknowledges that, where contact does not take place, support is provided to ensure the child understands their family heritage and identity.

Chapter 2: Access to records

15. All children have a statutory right to access personal information that is being held about them by any organisation and, although that right is more limited for children who are not party to the proceedings, they have the right to get a copy of the information that is held by Cafcass about them through a Subject Access Request (SAR). We agree that a national protocol to standardise the archiving, retention and retrieval of adoption files across the sector would be beneficial for children and help to streamline the process for accessing records.

Chapter 3: Applications for placement and adoption orders

16. No Cafcass specific recommendations.

Chapter 4: International adoptions

17. We agree that Cafcass must be given sufficient resources to allow us to continue to advise in these complex cases, and to connect with specialist charities such as Children & Families Across Borders (International Social Service UK).

Chapter 5: Adoption by consent

18. We would welcome the development of a national strategy for training around adoption by consent. We're currently updating our joint guidance with ADCS on children relinquished for adoption, and we have extensive guidance on adoption available for practitioners.

19. If there are any questions regarding the points raised in this consultation, please contact Nikki Gardner, Policy Officer via policyteam@cafcass.gov.uk.