



Association of **Lawyers for Children**

Promoting justice for children and young people

## **National fostering stocktake**

# **A review of the fostering system in England**

## **Independent call for evidence**

**Consultation paper, dated 21.4.17**

**This response dated 16.6.17**

## **Evidence of the Association of Lawyers for Children**

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**Details:** The Association of Lawyers for Children (hereafter ‘ALC’) is a national association of lawyers working in the field of children law. It has over 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners practising in different areas of the country. Several leading members are specialists with over 20 years experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children’s law, and hold judicial office. The ALC exists to promote access to justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- ii. lobbying against the diminution of such mechanisms;
- iii. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
- iv. providing a forum for the exchange of information and views on the development of the law in relation to children and young people;
- v. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
- vi. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law, and welcomes this opportunity to provide its views in respect of the fostering system in England and Wales.

1. Foster carers fulfil a crucial role within the family justice system, when a child may have been temporarily removed from her family home and may need to be accommodated in a place of safety while the court proceedings take their course. More fundamentally, foster carers provide care to children outside the court process and for a myriad of reasons. It is important to acknowledge the wide range of reasons why a child may come to be looked after by a foster carer, and to understand the differing dynamics that are involved, depending on the type and status of the placement.
  
2. While typically foster care has been considered to be a temporary caring arrangement or one that has only been utilised because 'no better form of placement' can be secured, the ALC believes that perceptions are changing. For children who cannot remain living in the family home (by which we mean the family home of their birth parent), adoption has been viewed by some to be the 'gold standard' of the various placement options. The ALC believes that informally categorising placements in this hierarchal way is unhelpful, and does not do justice to recognising the unique attributes each type of placement has to offer in meeting the welfare and social care needs of specific children. We are pleased to see a shift in thinking within the child development workforce in this regard, and that foster care sits alongside its counterpart placements, such as residential accommodation, adoption and friends and family care. The ALC would hope that attitudes continue to change along these lines so that foster care will truly be seen as one amongst a menu of placement options, with no one option posed as automatically 'better' than the other. Foster care has its rightful place as a placement option: the significant aspect is the assessment of the child's needs which should dictate the best placement option for that child.
  
3. Following on from the above, the ALC would welcome greater recognition of foster care as a permanent placement option; not one of last resort for 'hard to reach / place' children but one which on assessed welfare and developmental grounds may provide the best care for a particular child's needs. The ALC believes that the national stocktake should consider whether placing local authorities ought to utilise a matching process (similar to that used in adoption)

when seeking to identify foster carers for a child whose permanent placement plan is foster care, whether that plan is endorsed by the court or a local authority itself when care-planning for looked after children who are not the subject of full care orders. We believe that some form of matching process will push social workers in children's social care to think more carefully (for the benefit of the child) about whether that child's particular needs can be met by any proposed foster carer, or, where there is more than one approved foster carer available, ensuring that the final decision is one that best meets the child's assessed welfare needs and is not a decision driven by other factors. Where a long-term placement is envisaged and the child is of sufficient age and understanding, s/he should be given the chance to prepare for the new placement by visiting the new family to reduce his/her anxiety. Research has emphasised that the "chemistry" between carers and a child is a key factor in the stability and permanence of foster care (Sinclair, 2005; Schofield et al, 2012). The ALC understands that this 'matching' type process used to take place as a matter of good practice within some local authorities, but was abandoned as being perceived as likely to cause delay. We believe however that a balance can be found between ensuring the best 'match' for a child and foster carer, while not introducing a complex or protracted process. We also believe that such a process would help to raise the status of long-term fostering.

4. For example, a local authority's own (in-house) fostering services provider (FSP) may have a number of available foster carers assessed and available to take on the care of a particular child; however, if the child has a disability, special educational needs, or cultural / religious needs or other additional needs, the local authority should not be deterred from looking beyond its own FSP and towards other FSPs, including independent fostering agencies (IFAs), if doing so will assist to identify and secure the best possible matched placement for the child.. We are aware that such decisions may be influenced by budgetary considerations, as in-house foster carers may be less costly to fund or otherwise may appear to be less costly because some of the costs of in-house fostering provision are 'hidden'. Essentially, we advocate a more nuanced and transparent child-focused approach to these decisions. All foster carers cannot be considered to be the same or to be able to provide the same standard of care to

all children. Foster carers are assessed and approved as suitable to care for certain groups of children, for example mother and babies; teenagers, 0-3 year olds. Those terms of approval are broad terms indeed, and not sufficient to rely upon as robust matching criteria. In the same way that adoption panels make matching recommendations taking into account various factors, such as emotional, linguistic, cultural and religious needs, so too should any matching process tools developed for use in the permanent fostering context.

5. The ALC believes that foster carers do a very difficult yet important job. Foster carers are remunerated for their work and do not share parental responsibility (PR) for the child with the local authority (if it has an interim or full care order) or parents, who continue to share PR. They effectively do the job of the local authority which, as corporate parent, is charged with 'looking after' the child. These circumstances can be difficult to navigate as foster carers will soon start to know the child and his or hers needs, likes and dislikes with greater depth of understanding than the child's social worker who has formal statutory responsibilities towards the child and the placement. This can lead to disagreements and differing views as to what is in a child's best interests. Foster carers must feel empowered to be able to share their views without feeling threatened that the child will be removed, or that, when the foster carer's suitability to foster is reviewed (at the annual review of suitability or earlier if brought forward), the foster carer will be considered to be someone who cannot take on board 'professionals' views' or is resistant towards the local authority. Some foster carers do find themselves feeling unable to speak freely, and that if they express a view contrary to that held by the local authority, they will be accused of not 'working together' with the local authority. Working together is however a two-way process. These issues can be particularly acute where the FSP is the local authority which holds "looked after" responsibility for the child. We hear that foster carers who are approved and registered with IFAs often feel better supported by their link / supervising social worker because that person is not employed by the local authority. In the interest of children and young people however, The ALC would encourage the stocktake team to consider what best practice can be taken from IFAs in their relationship with foster carers and the

placing local authority, and applied to foster carers who are with a local authority FSP.

6. Related to the above are the difficulties that foster carers may often face as a result of not having PR for the child placed in their care. These difficulties can be even more pronounced when the local authority itself does not share PR with the parents (and others who hold PR) because the local authority is accommodating and 'looking after' the child pursuant to section 20 Children Act 1989 (CA 1989) as opposed to under an interim or full care order granted pursuant to section 38 or 31 CA 1989.
7. One of our executive committee members has in the last month taken instructions from a section 20 looked after child (aged 16) who faced such issues. She wished to go on holiday with her foster carer and the foster family. The foster carer agreed to this, the local authority with 'looked after' responsibility agreed it would be in the child's best interests, and it was willing to pay for the accommodation and flight costs. However, the local authority itself could not formally consent to the child leaving the jurisdiction of England and Wales (for up to one month pursuant to section 33(8)(a) CA 1989) as it did not share PR with the parents; having never applied for a care order. The local authority, instead of making an urgent application for a care order (or permission to apply for a specific issue order or invoke the inherent jurisdiction of the High Court), simply told the child that she would have to be placed with respite foster carers until the foster carer was back from her holiday. Our executive committee member, having first sought to obtain written consent from the child's parents, which was not forthcoming, advised the child to apply for permission to apply for a specific issue order (section 8 CA 1989). This is an unusual step for a child to have to take. Acting expeditiously within two weeks from the original meeting with the child, the order was granted and the child is now able to go on her summer holiday with her foster carer.
8. We highlight this case as one example of the issues which trouble foster carers (who may feel powerless in such situations) but which also demonstrates clearly the welfare implications for the child concerned. It highlights the need for local

authorities - when thinking about the child's legal status and orders, to consider the particular difficulties which may arise in the future for the child (and foster carer) and to seek to avoid those.

9. The ALC is aware that fostering practices are very different across the country, and that some consistency in relation to certain processes and decision-making for children should be achieved. All foster carers need clear information about the decisions they can take for their foster child, and those they cannot take. Some foster carers have not for example been clear about how much money they are required to save for a child, which has led to problems when the child is no longer looked after and becomes a "former relevant child".
10. The ALC would strongly endorse improved training programmes for foster carers (including connected persons foster carers) to reflect developments in therapeutic / restorative parenting. Children and young people who are removed from their birth family because they have suffered or are at risk of suffering harm, nevertheless suffer separation and feelings of loss. Clinical evidence indicates they require proactive support to help them overcome any setbacks or delays in their development as a result of maltreatment. Many require therapeutic re-parenting, the style of which is likely to be different to that foster carers deploy with their own children, and which may seem counterintuitive. Foster carers who are suitably supported, equipped and trained are likely to be able to offer the best care to a child with high level needs and, in turn, provide the strongest foundations for the child's future.
11. While it has to be acknowledged that foster carers are given financial support (which may include a remuneration element) and so in some ways can be seen to be 'doing a job', it is unusual for people to embark upon the fostering task with financial reward being a primary motivation. Most foster carers have other reasons in mind for approaching a fostering career. The ALC welcomes the idea that fostering is taken very seriously and that foster carers are seen generally (if not by the children) to be professionals working alongside other professionals in a child's life (teachers, social workers, GP etc). At the same time, foster carers should feel encouraged and able to create for the child an environment which

mirrors (as much as possible) that of a normal family life. That is surely the intention behind fostering – that the child moves into a ‘family home’ rather than a placement which is clearly non-familial (such as a residential children’s home or a residential school). Sometimes this can be difficult for foster carers to achieve, if the role they play in a child’s life is diminished or downgraded by other professionals. The ALC would welcome efforts to improve societal perceptions of foster carers and the vital work that they do. It is important to raise their status in the armoury of services the state provides for vulnerable children.

12. Without doubt the most difficult and stressful of times that a foster carer can encounter is where a child makes an allegation of abuse and the foster carer is implicated as being the perpetrator of harm to that child. Foster carers will often feel betrayed by the child or may act or say things in the heat of the moment which they may not mean, due to heightened feelings of loss and anxiety about what is going to happen next. Foster carers may sometimes feel let down during the ensuing processes which include investigation and review of their suitability to foster, and potentially the deregistration process. The ALC believes that at the heart of these processes must be the child, whose welfare is paramount. However, it must also be acknowledged that the foster carer, other foster children in the home and possibly the foster carer’s own birth children will be going through a very difficult time. Professionals must continue to support foster carers in a sensitive way.
  
13. We often hear of situations where, immediately following allegations of harm from a child, social workers remove children instantly, packing their belongings into black refuse bags. No matter the urgency of the situation, care must be taken in planning the change of placement, to ensure all children are treated with respect and dignity. Even children who have made allegations of harm may not want to move, and will be devastated to be taken away from their foster carers. ‘Goodbye’ arrangements for the child and the foster carers are also matters which need planning with care, and consideration of contact whilst investigations are being undertaken (if appropriate) as a child may wish to return to that placement. The ALC would like to see these aspects being incorporated into the Fostering Services: National Minimum Standards.

14. The research with foster children undertaken by Ian Sinclair in 2005 demonstrated that they want to be heard and to have their views taken into account. Sinclair found that they have five main requirements for their foster care:

- normality – they do not want to feel singled out;
- family care – if it is a long-term option, they want to feel they belong in their foster family;
- respect for their origins;
- control over their lives; and
- opportunities for success at school and a good job (Sinclair and Wilson, 2009).

If the experiences of young people entering foster care are to be improved, these matters must be at the heart of the process. It is a matter of deep regret that some twelve years after the seminal work of Sinclair (2005) – and the messages tabled by the then government and by BAAF (now CoramBAAF) (e.g. see Berridge 2005) that we have to repeat evidence-based messages to local and central government.

15. Finally, the ALC would welcome the stocktake team investigating the take up of “staying put” and how well “staying put” is being supported by local authorities and FSPs. The ALC believes that staying put is an essential tool for meeting the needs of many children, but we have heard of staying put arrangements not taking place or else not being sustained because of financial considerations. The ALC believes this is an important area for the stocktake to focus on.

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