Good Practice Guidance Foster to Adopt

- **Learning points**
  - Exploring adoption by foster carers as a positive route to permanence: examining messages from research
  - Understanding the legislative framework governing adoption by foster carers
  - Step-by-step guidance on the fostering to adoption process in both agency and non-agency adoptions
  - Practical tips on the social workers’ role in assessing and preparing foster carers, children and their birth families
  - Suggestions for supporting foster carers, children and birth families through the adoption process and beyond.
Introduction

For some looked-after children, adoption by their foster carers can be an extremely positive route to permanency. It builds on existing attachments between the child and their primary care-givers, enhances the stability and security of the child’s membership of their foster family, and reduces the need for a placement move which provides continuity of care.

Although an increasing number of foster carers are adopting the children in their care, according to published figures, it seems there is variation in the practice of adoption by foster carers both between local authorities and between the four countries of the UK.

In Northern Ireland, a high proportion of children are adopted by their foster carers. However, the majority of these carers are dually approved as adopters and foster carers so that the child can remain with their carers if they cannot return to their birth family. There are also a smaller number of children who are adopted by foster carers who had not been dually approved. Statistics published for 2014/15 show that 53% of the 72 children adopted were adopted by their foster carers, but it is not possible to know what proportion of these had been dually approved or were short term carers.

In England over the past few years there has been an incremental increase in the number of children being adopted by their foster carers, from 380 children out of 3080 children in 2010/11 to 750 children out of 5040 children in 2014/15. In Wales, 40 of the 385 children adopted from care during the year ending 31 March 2014 were adopted by their foster carer. Similar figures for Scotland are not available.
This guide explores current practice, mainly in England, focusing on the legislative framework, messages from research and some of the practice issues inherent in foster carers adopting children placed with them. The guide will not cover situations where the prospective adopters are approved as foster carers within concurrent planning projects. Their assessment and preparation will be more specialised and specific, determined by the requirements of that specific role.

Messages from research

![Photo: Cultura/REX/Shutterstock](image)

The most recent research comparing placement stability in three types of permanent placements included foster carers who had adopted; the other two models being adoption by strangers and permanent foster care (Biehal et al, 2010). The following key messages were identified:

- Foster carer adoption gives older children, who have often come into care at a later age, a chance of adoption: “Two children who had been placed with their adoptive families at the age of five expressed great relief at having achieved the legal security of adoption.”
- Children adopted by their foster carers were found to have a strong sense of belonging to their adoptive families and, although curious about their birth parents at the time of the study, they had no reported sense of divided loyalties.
- Foster carers who were reluctant to adopt children in their care were concerned at losing both financial and placement support.
- This was a theme in earlier research such as Kirton (2006) and also noted by Dibben and Howorth (2016). Local authorities varied in what financial support they offered to foster carers, eg if fostering allowances continued to be paid beyond two years after the adoption order. It was also evident that not all carers where aware of more recent changes and entitlements to adoption support introduced as
part of the adoption reform programme. Local policies, resources and practice cultures had an impact on how decisions were taken, particularly for older children.

- Dibben and Howorth (2015) also found that foster carers seeking to adopt often experienced different responses from workers from within the same agency as a result of local authorities not having clear policies about their view of and response to foster carer applications and provided examples of clear agency policies.
- A key finding was: “The fact that carer-child relationships were already strong before the adoption application was made contributed to the success of these carer adoptions.”

**Legislative framework**

Adoption by foster carers in England is governed by the Adoption and Children Act 2002 and the Adoption Agencies Regulations 2005. Further guidance can be found in the July 2013 statutory guidance on adoption in England.

Foster carers can apply to adopt either through the regulations that govern agency adoption or those that apply to non-agency adoption. Government policy and guidance indicate that agency adoption is the preferred route:

“3.75. Foster carers who express an interest in adopting children in their care or prospective adopters expressing an interest in a specific child should be given advice about the fact that the adoption procedures apply in their case as in any other. Biehal et al found that outcomes for foster carer adoptions were, on the whole, positive. Although foster carers have a legal right to institute their own adoption application once the child has lived with them for a specific period of time (known as a non-agency case), the local
authority should encourage them to participate in the adoption agency process.”
(Chapter 3:75, Adoption Statutory Guidance for England, DfE, July 2013)

N.B. A child must have lived with their carer for one year before they can apply for a non-agency adoption, although they could apply for leave of the court to apply for a non-agency adoption after the child has been there for nine months. Whilst some local authorities appear to encourage foster carers to make a direct application, as a non-agency adoption, this means there will be no scrutiny of their approval or the match by the adoption panel and the carers will not necessarily receive any preparation or training.

Agency adoptions

When foster carers notify the local authority of their wish to adopt the child or children in their care, the agency is free to provide information and counselling in the same way as it does for other applicants. However, since July 2013, it has been open to an adoption agency in England not to do so as is explained in more detail below.

**Practice point:** Prospective foster carer adopters should be offered access to necessary adoption preparation, although agencies may need to give some thought as to what form this most helpfully might take. Most foster carers will have already undertaken training as part of their fostering role and a more “tailor made” preparation course focusing on the lifelong nature of adoption of a child placed with them as a foster carer might be of more help.

In agency adoptions by foster carers, more generous adoption support services are likely than in the case where the proposed adoption is not supported by the agency. As the July 2013 adoption statutory guidance for England explains:

“3.76. The foster carer needs to understand the eligibility for adoption support, ie if the foster carer applies direct to the court for an adoption order and the local authority
opposes the application, they and the child will be limited in their eligibility under the Adoption Support Services Regulations 2005 to counselling, advice and information only. However, if the local authority supports the application to the court for an adoption order, the foster carer and the child will be eligible for assessment of their adoption support needs as the child is a looked after child.”

Although the local authority is not required to provide adoption support services to a non-agency placement, there is however scope for the discretionary provision of additional support. As the statutory guidance goes on to explain:

“9.7. Under section 3(3)(b) of the [Adoption & Children Act 2002], local authorities have discretion to extend services to persons other than those to whom services must be extended. This means that, for example, services to prevent disruption could be provided to a non-agency adoptive child, and financial support could be provided if the local authority considered this appropriate.”

**Non-agency adoptions**

The July 2013 statutory adoption guidance is clear that the preferred course is for foster carers to seek to adopt with the agreement of the local authority.

In the event that a foster carer decides to pursue a non-agency adoption application because they are not being supported by the local authority or, contrary to guidance, is encouraged by their local authority to make a direct application to the court, perhaps with a view that this will speed up the process, the child they are fostering must be under 18 years of age and have been living with them for a year (section 42(4) of the Adoption and Children Act 2002). A foster carer can apply for leave of the court to apply to adopt the child where this period of residency is not met (section 42(6) of the Adoption and
Children Act 2002) but they cannot give notice to the local authority until leave has been given (section 44(4) of the Adoption and Children Act 2002).

Under section 44 of the Adoption and Children Act 2002, the foster carer must notify the local authority where they live of their intention to apply to adopt the child at least three months prior to making an application to court, and the local authority must then notify the placing local authority within seven days. This will enable the placing local authority to consider whether they wish to support the application.

**Where the local authority opposes adoption**

Where the local authority assesses that it is not in the child’s best interests to support the foster carer’s application, then it should notify the carer of the reasons for this decision and advise them to seek independent legal advice (Re A, TL v Coventry City Council 2007).

Having given notice, the foster carer may then apply directly to the court without needing the agreement of the local authority responsible for the child. When notified of the application, the local authority has a duty to investigate the circumstances of the application and to prepare a report for the court (section 44(5) of the Adoption and Children Act 2002).

If the child has been living with the foster carer for at least one year when they give notice of their intention to apply for an adoption order, neither the local authority nor any other body may remove the child without the leave of the court unless, in doing so, they are acting “in the exercise of a power conferred by an enactment” other than section 20(8) of the Children Act 1989 (section 38 of the Adoption and Children Act 2002). So, for example, the restrictions on removal do not prevent a removal under the child protection provisions of the Children Act 1989.

Where a foster carer applies to adopt a child that they have been looking after and the local authority opposes the application, the local authority is not required to meet the legal costs of the foster carer. This is because the authority has not placed the child for adoption with the foster carer, and the child does not then fall within the definition of an agency adoptive child. In such circumstances the local authority may wish to advise the foster carer that they may be able to obtain help with legal costs from the Legal Services Commission provided they satisfy the means and merits tests.

The carer should also be advised that although they will, as adopters, be entitled to seek an assessment for post-adoption support, the potential support that is available is restricted, as explained above in this guide.

**Initial enquiry from foster carer**
When an expression of interest has been made by a foster carer, the local authority responsible for the child should respond in a timely manner. The process for this should be set out in the local authority’s adoption policy. The local authority may want to hold an initial planning meeting to agree whether the local authority would want to support the application. However it should be clear that where the foster carer has submitted a written interest in adopting the child this should be treated as should a Registration of Interest (ROI). Statutory Guidance (3.14) sets out that the agency should decide within five working days from receipt of a registration of interest form whether or not to accept this, unless there are exceptional circumstances which mean that longer is needed.

It is important that foster carers are included in and kept informed about the care planning for children in their care. A balance needs to be found between placing any pressure on foster carers to adopt while enabling them to express interest at an early stage so there can be a child-centred viability assessment of what they are wishing to do.

Difficulties can arise when foster carers express an interest in adopting the child they are caring for when the local authority has already begun and is well advanced in identifying suitable adopters – when adopters have been identified or even where the child has started introductions. This can create stress and distress for current and prospective carers and the children concerned, as well as introduce delay in establishing a permanent placement for the child (Biehal et al, 2010). This was evident in the case of Coventry City Council v PGO in 2011.

Statutory guidance (3.15) is clear that applications from foster carers should be dealt with in a positive and timely way and, as with all applications, factors such as age, ethnicity, health (including whether or not they are smokers) should not be reasons for automatically excluding people as prospective adopters. Where the child and adopters
are from different ethnic or cultural backgrounds, this too should not be an automatic reason to rule out the application.

**Initial visit**

As a minimum there should be an initial visit to the foster carers, ideally by an adoption social worker and possibly in conjunction with the child’s social worker or fostering social worker. There are a significant number of issues that should be covered and thought will need to be given to the sequencing of these, the detail to which they need to be explored and how long this might take.

These will include:

- How the carer has arrived at their decision and their motivation.
- The views of immediate and wider family members.
- Their understanding of the lifelong implications of adoption, including contact and talking to children about their origins and history.
- Information on the adoption assessment process.

In addition, more detailed exploration will need to be given to their understanding of the child’s needs in the context of permanence and how they could meet these needs as they develop over time.

Consideration might also need to be given to any issues relating to the existing care plan, for example, contact or geographical considerations together with a recognition that these may need to be revisited in the light of the carer’s application.

It is important that during any subsequent discussion and decision-making forum, such as the looked-after children’s review meeting, the information gathered from the initial
assessment is made available to those involved and they are fully aware of the outcome of this assessment so it can inform their decisions.

**Decision-making process**

There should then be a clear, formal local authority decision-making process to identify whether the local authority is prepared to support an application. This is likely to involve a care planning meeting attended by relevant social workers and managers, and may in some agencies include the independent reviewing officer (IRO). It would be important to ensure appropriate legal advice has been sought prior to the meeting.

Decisions will need to be made on the basis of whether the carer can meet the child’s identified long-term needs, and take account of existing attachments between the child and carer and the impact on the child of a further move.

If the decision is taken to support the carer’s application to adopt, there should be written acknowledgement of this and an adoption assessment should be undertaken by a social worker who meets the requirements set out in the Restriction on the Preparation of Adoption Reports Regulations 2005, namely that they have been qualified for three years or if not supervised by a social worker with that level of experience. Since July 2013, the assessment process in England has differed from that applying to other prospective adopters, as explained in more detail below.

If the decision is taken not to support the carer’s application, they should be informed of this in writing as well as verbally with reasons given to help them in understanding the decision. They should also be given information about the local authority’s complaints process and further steps they may take.
There is also the question of whether an adoption agency can refuse to assess a prospective adopter’s suitability to adopt in a case where they do not support the adoption proposal. Regulation 21 of the Adoption Agencies Regulations 2005 now permits an adoption agency in England to refuse to proceed with an assessment. The July 2013 statutory guidance on adoption in England gives examples of when it might be appropriate to refuse to assess but this does not include the case where the agency is not supportive of a foster carer’s intention to adopt (paragraphs 3.14 to 3.16 of the guidance). If an agency has significant concerns about whether this would be a suitable placement eg where they felt the birth parent’s knowledge of the carers and where they live would put the carers and child at risk or where they felt the foster carers would not be able to parent the child to adulthood the social worker should seek legal advice. The local authority will be required to provide a report to the court if the carer then decides to make a non-agency adoption application is made (under section 44 of the 2002 Act).

**Practice point:** Where the foster carer has indicated they will seek a non-agency adoption if their application is not supported by the local authority there should be consideration of whether it would be more appropriate to accept a Registration of Interest and complete a full assessment, which would include the scrutiny of the adoption panel.

**Preparation of foster carers applying to adopt**

All prospective adopters should be given the opportunity to attend preparation training that enables them to consider the lifelong implications of adoption. For foster carers who are applying to adopt, this might be a different type of course than the one offered to other prospective adopters.
As existing carers, they will have attended a range of child care training as part of their fostering approval. The adoption preparation should focus more on the long-term needs of the young person, the changes in their legal status and the support available to adopted children and their adopters. It may also include more in-depth material relating to attachment and child development in the longer term. This may be covered in a one-off event or a course run over several sessions, and should provoke debate and discussion to assist foster carers to better understand the likely changes in their role and responsibilities.

As with all preparation, the prospective adoptive carers will benefit from hearing directly from foster carers who have adopted either as part of a training event or through “buddying”.

**Practice point:** There may be benefit in local authorities running a joint event by local agreement or through a consortium arrangement given that numbers are likely to be small. Where foster carers do have to join a general preparation course, there should be recognition of their existing knowledge and experience.

**Assessment of foster carers applying to adopt**

Originally, the assessment rules were the same for approved foster carers as for any other person wishing to adopt. As from July 2013, however, the Adoption Agencies Regulations 2005 (for England) were amended to create a different set of assessment rules for approved foster carers (as well as persons who have previously adopted a child). The approval process in these cases should be completed within four months (schedule 4A(6) to the Adoption Agencies Regulations 2005) rather than six months and that is why it has been described as a “fast-track” process. It should be noted that the
assessment remains one of general suitability to adopt any child, not simply the person’s foster child.

The new assessment rules are provided for in regulation 30F of, and schedule 4A, to the Adoption Agencies Regulations 2005. They modify the usual assessment rules in the following way:

(i) Regulation 22 of the 2005 regulations does not apply. In other words, a “prospective adopter stage one plan” is not to be produced. However there will still need to be an assessment agreement as part of the Stage 2 assessment.

(ii) The adoption agency is free to disapply regulations 24, 25 and 26 of the 2005 regulations. These only apply where an agency considers them “necessary”. What this means is that the agency has power to leave out the following steps which are normally required under stage 1 of the new (July 2013) prospective adopter assessment process for England:

- the duty to provide a counselling, information and adoption preparation service under regulation 24;
- the duty to carry out police checks under regulation 25; and
- the duty to obtain a range of pre-assessment information under regulation 26.

In practice, an agency’s decision as to which of these activities are “necessary” will be influenced by any information it holds as a result of making a request under its new power in regulation 30F(5) of the 2005 regulations. This allows the agency, with the prospective adopter’s consent, to request access to any relevant records compiled about the person’s approval as a foster carer by the relevant fostering service provider.

(iii) Regulation 27 of the 2005 regulations do not apply. In other words, pre-assessment decision at the end of Stage 1 is not made and, as a result, the application inevitably proceeds to the adoption panel.

(iv) Regulation 30 is modified so that some differences to the prospective adopter’s report are required. The modifications are contained in schedule 4A to the 2005 regulations but, generally, the agency can use information obtained from reading previous reports and should make a decision about what new checks are needed.

The following areas of the assessment will be particularly important to explore with a foster carer wishing to adopt:

- Their understanding of the differences in the role they would be taking on as an adoptive parent rather than as a foster carer and their confidence in exercising their parental responsibility as adopters.
- Their motivation to adopt this child – whether they have been put under any pressure by the child, their social worker or other family members to make their application.
- Their understanding of the lifelong implications of adoption, for example, of the child legally becoming a full member of their family for life.
• Their understanding of the impact adopting the child will have on other members of the family and the inheritance implications in the event of their death for any existing birth children.
• Any issues arising from existing contact arrangements or birth parents having a relationship with the carers or having knowledge of where they live.

An adoption medical may be required but there is recognition that a medical adviser can consider the information from existing medicals and decide whether a further examination and report is necessary.

**Practice point:** It may be that a written update from the GP would be sufficient but this would depend on how long ago the medical had been completed and whether there were any medical conditions that would assume more significance where a long term placement is being offered. It would be important to ensure the medical adviser is involved in this decision.

When taking up personal references, it may be helpful to revisit people who gave an original reference for their fostering application if they continue to be active within the support network. It may also be important to interview extended family members to have an understanding of how the child has become a member of the family and will be welcomed as a permanent member in the wider family.

If concerns emerge about the foster carer’s suitability as an adopter once an assessment has been started, the agency should follow a similar process to that followed for other assessments. They can set out their concerns and invite the prospective adopter to withdraw their application, they can prepare a brief report for early presentation to the adoption panel (AAR 30.4) or they can complete the full assessment. Where a full assessment is being presented with areas of concern, there should be a second opinion visit to discuss these issues which will then be included in the assessment report (para. 3.57, July 2013 statutory adoption guidance for England).

**Panel process – approval and match**

Two social workers preparing for a panel meeting
There are two stages for the adoption panel – the approval of the foster carers as adopters and then the match with the specific child. Statutory guidance makes it clear that an adoption panel can hear a case regarding suitability and then make a link on the same day and indeed could occasionally also hear the case for the child being placed for adoption.

However, if the issues are complex – for instance, if there are concerns about the suitability of prospective adopters – then consideration should be given to the match being brought to the next available panel once it is known that the agency decision-maker has agreed the foster carers’ suitability to adopt.

**Placement process**

![Photo: Photofusion/REX/Shutterstock](image)

Following the decision maker’s approval of the match, there should be a placement planning meeting to address all the relevant areas specific to the adopters and the child. The adoption placement plan should cover whether parental responsibility of the prospective adopter for the child is to be restricted, the plans for contact, provision of adoption support and the arrangements for review of the placement. The meeting would be attended by the child’s social worker, adoption social worker and the foster carer. If the foster carer was continuing to foster it may also be appropriate for their supervising social worker to attend.

**Practice point:** As the child is already living with the family this meeting should be held within a month as the child (where old enough to understand what is happening) and their carers will be keen for the placement to be formalised.

The local authority will need to inform the prospective adopter, in writing, of the date on which the child’s placement with them becomes a placement for adoption. This will then need to be notified to other relevant bodies, for example, health and education, and if financial support is to be paid under the adoption support plan this will be paid from the
formal placement date and any fostering allowance will cease from that point (para. 5.7, July 2013 statutory adoption guidance for England).

Placement support for carers and child

In the case of agency adoptions, a detailed adoption support plan (a part of the adoption placement report) should be presented at the adoption matching panel, outlining the child’s assessed current and predicted needs and the type of support the adopters will require to parent the child.

**Practice point:** At this point it is expected that the panel will see evidence of the work that has been done, or is about to be done, with the child and with the applicants about the change in status of the placement. There may be questions about any plans the carers have to continue fostering and what support they and the child may need to achieve this.

Evidence of the child’s wishes and feelings, and their understanding of what is being proposed, is significant at this stage, as is evidence of what support will be available to them and the family to assist the process. Support may be financial, or may involve various forms of parenting support or therapeutic work. It may also identify the level of support and supervision to be provided if direct contact with birth relatives is considered.

**Practice point:** It is important that the lifelong implications of adoption are emphasised at this point and that the prospective adopters are clear about who they go to for support, advice and guidance, and for how long this will be available to them.
Preparation of children in placement

It is essential that the child’s wishes and feelings about the proposed placement are established and that the quality of their relationship with the foster carers is clearly understood by all concerned. This should be reflected in the adoption placement report that is presented to the adoption matching panel. Where children are of an age to understand the concept of adoption, they should be enabled to participate in the decision-making process and their views should be clearly recorded in the child permanence report presented to the matching panel.

**Practice point:** Tools such as ‘The New Life Work Model’[4] can be used to explore these issues. (See Community Care Inform’s guide to life story work).

Regulation 35 of the Adoption Agencies Regulations 2005 requires a placement plan to be sent by an adoption agency (local authority) to a prospective adopter once it has decided to place a child with the prospective adopter and met with the adopter to consider placement arrangements. The contents of a placement plan are set out in schedule 5 to the regulations. They include “the dates on which the child’s life story book and later life letter are to be passed by the adoption agency to the prospective adopter”.

**Practice point:** For children adopted via a non-agency route, it is good practice that they and their adoptive parents have access to full information about their background and that life story material is available to them. Children need to be able to make sense of the decisions made about them and with them at different stages in their life, and later life letters and full life story work can assist in their understanding of their history and why they came into care, and their development of identity and self-awareness.

It is also vital that any prospective adopter has access to information that will enable them to meet the needs of the child over time, so health information and family background details are of crucial importance. As part of developing these materials, it is expected that the child is prepared by both the social worker and the foster carers for the proposed change in their status. A range of tools and materials can be helpful in explaining to children what adoption means and how the relationship with the carers can develop.[5]
Preparation and support for birth family

Preparation of the birth family is of vital importance and where the child is to be adopted by current foster carers. Significant thought should be given to the amount of information that is shared with the birth parents. In some circumstances, it may be that the birth parent approves of this decision and can work with the social worker in offering materials for the child’s life storybook. Depending on the nature of the relationship between the birth family and the foster carers, some contact may be appropriate. In other situations, where birth parents have a history of extreme or challenging behaviours and remain opposed to the adoption plan, care should be taken to preserve the anonymity of the prospective adopters. The risks in each case must be assessed in order that the child and the adoptive family’s security and well-being are not compromised. Although this can be a reason for the local authority feeling they cannot support the placement, Dibben and Howorth (2016) were given examples of where some carers have moved home, moved out of the area or even changed their names to safeguard the placement. (See Community Care Inform’s guide to working with birth families.)

Conclusion

First 4 Adoption has filmed two foster carers talking about their experience of adopting a child in their care. This can be viewed here.

“…This is my home, this is my mum and dad. I'm here until I decide otherwise and that's the way it is and that's the way it's staying.” (Girl adopted by her foster carer)

Foster carers could currently be seen as an underused and unrecognised resource in providing the security and stability that adoption can offer children who cannot be cared for by their birth family. Although at present 10-15% of adoptions are made to previous
foster carers, Dibben and Howorth (2015) noted that in other countries, such as USA or Ireland, different policies and accepted practice have led to a much higher proportion of children being adopted by their foster carers.

Local authorities need to ensure that they have clear policies which are known to both child care, fostering and adoption staff, which emphasise the benefits of foster carers adopting and takes account of their differing motivation from ‘stranger adopters’. This will assist in an application from a foster carer being processed in a timely way that minimises unnecessary delay for the child but supports the strengths and addresses any concerns about the adoption of the child by their foster carers. The policy should cover all aspects of the application process, preparation and assessment of carers and support services to the child, their carers and the birth family members. (Dibben & Howorth 2016)

The following quotes from ‘Belonging and Permanence’ (BAAF, 2010) demonstrate the benefits of foster carer adoption – encouraging a sense of security and stability, feelings of being wanted and belonging, and reducing placement moves:

“My mum and dad say they are going to keep me forever…I like everyone, everyone’s being nice to me…I think they should have started here and ended here, that’s what I would like to think of.” (A nine-year-old boy who had experienced previous disrupted placements.)

“I took a lot of advice and I said I need to make him safe, I need to make him secure, he needs to know that nobody can take him away or fight to take him away…Cos he used to write at school all I want is to be called Terry (adopter’s surname) and I want to stay with this mummy and daddy…He felt loved and wanted and a part of somebody’s life really you know.” (Adopter, who had previously been his foster carer.)

“Has it changed my relationship with my child? Well, yes and no. I already loved him, already cared for him, already put his needs first. Now I am able to add permanence and belonging to that. That doesn’t change my love for him at all, but it will, I believe, give him the best chance for his future.” (Adoptive mother who had fostered the child from 18 weeks old.) (Dibben and Howorth, 2016)

References

- Research articles


- Books


Dibben, E. & Howorth, V. (2016) Adoption by Foster Carers: A guide to preparing, assessing and supporting foster carers adopting children in their care, CoramBAAF


• Case law
