

**Relinquished Children: A briefing for social workers**

**May 2018**

1. **Introduction**

*What do you do when a mother wants to relinquish her baby for adoption? Do you have a duty to inform the father, the wider family, to explore a family placement, is adoption the last resort for the baby’s permanency? What are your responsibilities?*

The facilitation of the adoption of children with the consent of their parents remains a statutory social work function and a duty of adoption agencies. The new online Tower Hamlets Children’s Services Procedures Manual provides guidance and practice advice on relinquished children: <http://www.proceduresonline.com/towerhamlets/cs/p_relinquished_children.html> .

Profound social change over the last 40 years has radically reduced the extent of consensual adoption and accounts for the fall in children adopted in the UK. 25,000 adoption orders were made in 1968 only 5,000 in 2013. Mothers still have the right to relinquish their children for adoption and where they do, despite the changed social context, may consider that in the circumstances, the best opportunity for their baby’s welfare is for them to be raised in an adoptive family.

1. **Statutory framework**

The statutory framework is set out in the Adoption and Children Act 2002[[1]](#footnote-1). If an Adoption Agency (such as LBTH Children’s Services) is satisfied that parental consent is given it may place a child with prospective adopters (either specified by the consenting parent or chosen by the agency) [s19 ACA 2002][[2]](#footnote-2). The parent may also make consent in advance to the making of an adoption order [s20 ACA 2002].[[3]](#footnote-3)

The mother cannot give her formal consent for her baby’s placement for adoption and advance consent for their adoption until they are at least 6 weeks old. The mother must be offered counselling about her intended decision and all of its ramifications [‘Good Practice Guidance for Adoption Agencies and CAFCASS: Children Relinquished for Adoption’ CAFCASS/ ADCS 2007].

So it *is* lawful for parents to relinquish their children for adoption. It is not necessary to make a public law application to the family court for care and placement orders. But what about baby – is there any oversight of their interests in this process? Yes – the Local Authority (in its function as an Adoption Agency) has this oversight by law.

“The paramount consideration of the court *or adoption agency* (my emphasis) must be the child’s welfare, throughout his (her) life” [s1 (2) ACA 2002] and “an adoption agency may only place a child for adoption with prospective adopters if the agency is satisfied that the child ought to be placed for adoption” [s18 (2) ACA 2002]: The Local Authority [in its capacity as an Adoption Agency] exercises this duty to consider the relinquished child’s best interests and lifelong welfare through its Adoption Panel who upon consideration of the Child Permanence Report [CPR], prepared by the child’s social worker, advise the Agency Decision Maker [ADM] whether adoption should be the plan.

1. **Assessment**

You should in your assessment (expressed within the CPR) consider those questions posed above, the mother’s motives for relinquishment, the family situation, the position of the father if he is aware, his views, the merits or demerits of him knowing, the presenting risks, the future risks to the child and their background. The child’s circumstances must be thoroughly investigated and assessed. All the dimensions of their welfare in relation to their possible adoption as set out in the expanded ‘welfare checklist’ found in the Adoption and Children Act [s1 (4)(a) – (f) i, ii, iii. (5) & (6) ACA 2002][[4]](#footnote-4) must be thoroughly explored.

A thorough analysis of the realistic options for the child as is customary in adoption cases (and as indicated in the judgement *Re B-S[[5]](#footnote-5)*) must be carried out in the CPR. The mother’s views, her confidentiality, the risks she and her baby may face if her family discovered her predicament need to be weighed against any benefits in the father or the family knowing and any prospects for support or placement that they might offer[[6]](#footnote-6).

Where the mother, or in many cases both parents, seek to relinquish their child for adoption, they will very often have given considerable thought and endured much heartache in reaching their decision. Here the intervention of the Local Authority is far less invasive than in cases where parents oppose the adoption of their children and a family court must dispense with their consent by making a placement order. Considerable weight must be given to the wishes of the parents [s1(4)(f) ACA 2002]. These are not cases where in relation to a child’s adoption that *“nothing else will do”* [*Re B* [2013] UKSC 33 para 198]. Because of the parent’s views and consent for adoption the test is less stringent [*Re JL and AO* [2016] EWHC 440 (Fam)]. It is not enough that the parents wish to relinquish their child but considerable weight should be given to their wishes.

Your CPR must be prepared and submitted to the Panel as early as possible and before the mother signs her consent under s19 &20 [ACA 2002] so that the Local Authority can meaningfully act on the recommendation of the Adoption Panel and decision of the ADM. In exceptional circumstances the mother may be allowed to sign consent prior to the Adoption Panel’s consideration of the child’s lifelong welfare and the Adoption Agency’s decision, for example, where her availability is limited or she is at risk of harm or in danger.

You must also consider if the mother has the capacity to consent to the relinquishment of her baby that she understands the significance of her decision and that is has been taken without undue influence. You must explore if the parents are competent to give their consent. An assessment of parental competency may be required.

The mother’s signing of the s19 (and s20) papers giving consent for her child’s placement for adoption (and advance consent to their adoption) must be witnessed by a CAFCASS Children’s Guardian who will also explore issues of consent and competency.

1. **CAFCASS Notification**

Upon referral, CAFCASS should be given advance notification of the parents wish to relinquish their children (using ‘letter 1’, Annex 2 of the CAFCASS guidance – see the online procedures). Following the Panel and ADM decisions and where the baby’s welfare is considered to be best advanced by their relinquishment for adoption a full referral should be made to CAFCASS by submitting the ‘Schedule 2’ forms.[[7]](#footnote-7)

1. **Referral to the Permanency and Adoption Support Team (PAST)**

Upon referral the PAST should be immediately notified and a referral made. The PAST team can provide counselling to the mother seeking to relinquish her baby (both before and after its birth). They will also assist with family finding and arranging for the Adoption Panel to consider the case.

1. **Legal Advice**

Legal advice may be sought pre-birth, before or after the Adoption Panel decision and of course in the case that the Panel considers that adoption is not in the baby’s best interests. It is advisable that legal advice is sought at the earliest opportunity.

Legal advice might be sought in relation to consular contact in relation to children of foreign nationals[[8]](#footnote-8), disclosure to a father or family members or in relation to concerns about maternal coercion, exploitation or trafficking that might have arisen from the social work assessment.

There is legal provision for family court judicial consultation short of a formal public law s 31 (CA’89) application through a pre-emptive application to the court by the exercise of *Part 19 Family Procedure Rules 2010[[9]](#footnote-9).*

1. **Placement for Early Permanency**

Placement with approved prospective adopters in the interim should be considered for all children who have been or are very likely to be relinquished for adoption.

In the interest of protecting the relinquished baby from the impact of changes of primary carer it is advisable to place them with alternative carers who are likely to care for them permanently and can serve as their adoptive parents[[10]](#footnote-10).

Children can be placed in the interim with approved adopters under regulation 25a[[11]](#footnote-11) with the agreement of the Agency Decision Maker (ADM). In this case a report must be submitted to the ADM giving details of the case and the rational for the proposed placement and a completed Decision Sheet for the signature of the ADM (the ADM’s approval is required because the decision pre-empts the later ADM decision in favour of placement for adoption and ADM approval of the children’s match with their prospective adopters – as advised by the Adoption Panel).

Children can be placed with approved adopters who are also approved as foster carers. Dual approval of adopters is achieved with the approval of the foster care panel upon consideration of a fostering assessment report (Form F) or an enhanced Prospective Adopters Report (PAR) which covers all the aspects of a Form F.

The prospects for placement of relinquished children with approved adopters should be considered at the initial care planning meeting. Again a referral to the PAST team should be made as early as possible in the preliminary care planning process.

1. **The Child’s Life Story and Record**

The relinquished child, like all of us, will want to know who they are and what has happened in their life and why it is has happened. They will want to know about their parents and feel a connection to them.

The mother of the child relinquished for adoption (and the father if involved) should be encouraged to name their baby and register their birth. You should endeavour to collect as much information as you can about the parents, their lives and families, their background, upbringing, education, ambitions and aspirations and personal histories, to take their photographs (and record video imagery) alone and with their child.

You should record their views, reasons for relinquishing their child and their hopes, wishes and aspirations for them.

This information should be recorded in the ‘Child Permanency Report’ and the child’s ‘life story book’.

1. **The Accommodation of the Relinquished Child**

In the interim until they are adopted the child will need be lawfully accommodated by the Local Authority. The mother should sign s20 papers placing her child in the care of the Local Authority. She should sign papers giving the Local Authority medical consent and consent for a Health Assessment (LAC medical).

1. **Contact**

Given the wishes and intentions of the mother (parents) it is not advisable to encourage her to have prolonged contact with her baby.

**Headline Points**

* *A mother (alone or with the father) may lawfully give up her baby and give her consent for her baby’s placement for adoption and her advance consent for the child’s adoption – either by adoptive parents of her choice or those identified by the adoption agency (local authority)*
* *The mother (and involved father) must be offered counselling*
* *The parents must be competent to make an informed decision about their child’s adoption (an assessment may be required)*
* *The parents cannot formally sign their consent for their baby’s adoption until their baby is at least 6 weeks old*
* *The Local Authority (Adoption Agency) has a duty to determine if adoption is in the best interests of the child*
* *The child’s social worker should make an assessment and prepare a ‘Child Permanency Report’ for consideration by the Adoption Agency’s Adoption Panel. The Panel will make a recommendation to the Agency Decision Maker about the plan for the child.*
* *The assessing social worker should consider all the options for the future care of the child and their lifelong impact (making a ‘re BS’ analysis as they would in support of a s31A care plan)*
* *However because the parents’ have given informed consent in favour - their child’s adoption is not ‘the last resort’ where ‘nothing else will do’*
* *The mother’s (or both parent’s) signed consent for their child’s placement for adoption (s19) and/or advanced consent for their adoption (s20) must be witnessed by a CAFCASS Officer – a ‘children’s guardian’.*
* *The Adoption Panel (and ADM) should have considered the plan for the child before the parent’s sign their consent for their child’s adoption.*
* *In exceptional circumstances the forms can be signed and witnessed prior to the Adoption Agency decision*
* *The mother’s (and if involved the father’s) confidentiality should be respected (legal advice must be sought if there are exceptional reasons to the contrary)*
* *Consideration should be given to the safety of the mother and whether she might be being coerced in seeking her child’s relinquishment*
* *Legal advice should be sought by referral to the weekly ‘Legal Planning Meeting’ at the earliest opportunity*
* *Early placement for permanency, placement with prospective adopters under regulation 25A (with ADM approval) or dual registered foster carers cum approved adopters, should always be considered to prevent changes in baby’s primary carers*

**Please read the chapter on ‘Relinquished Children’ in the ‘Tower Hamlets Children’s Services Procedures Manual’.**

Brian Sharpe

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1. https://www.legislation.gov.uk/ukpga/2002/38/contents [↑](#footnote-ref-1)
2. S19 “Placing children with parental consent**E+W**

This section has no associated Explanatory Notes

(1)Where an adoption agency is satisfied that each parent or guardian of a child has consented to the child—

(a)being placed for adoption with prospective adopters identified in the consent, or

(b)being placed for adoption with any prospective adopters who may be chosen by the agency,

and has not withdrawn the consent, the agency is authorised to place the child for adoption accordingly.”

<https://www.legislation.gov.uk/ukpga/2002/38/section/19> [↑](#footnote-ref-2)
3. s20 “Advance consent to adoption**E+W**

This section has no associated Explanatory Notes

(1)A parent or guardian of a child who consents to the child being placed for adoption by an adoption agency under section 19 may, at the same or any subsequent time, consent to the making of a future adoption order.” <https://www.legislation.gov.uk/ukpga/2002/38/section/20> [↑](#footnote-ref-3)
4. <https://www.legislation.gov.uk/ukpga/2002/38/part/1/chapter/1> [↑](#footnote-ref-4)
5. See re B [2013 UKSC 33, re BS [2013] EWCA CIV 1146 & re R [2014] EWCA CIV 1625 [↑](#footnote-ref-5)
6. See s1, **4**(f) (i), (ii), (iii) – Adoption and Children Act 2002 – see above – note 4 [↑](#footnote-ref-6)
7. Good Practice Guidance for Adoption Agencies and CAFCASS: Children Relinquished for Adoption [↑](#footnote-ref-7)
8. See *Re JL and AO [2016] EWHC 440 (Fam)* and articles 36 & 37 of the Vienna Convention on Consular Relations 1963 [↑](#footnote-ref-8)
9. <https://www.justice.gov.uk/courts/procedure-rules/family/parts/part_19> see also *Re RA (Case Management) [2016] EWFC 25* and *Re TJ (Relinquished Baby: Sibling Contact) [2017] EWFC 6* [↑](#footnote-ref-9)
10. Anyone who wishes to adopt the children who isn’t already an approved adopter would have to be an approved foster carer or a family member assessed and approved as one under reg. 24. [↑](#footnote-ref-10)
11. Care planning, placement & case review & fostering services regulations 2013: <http://www.legislation.gov.uk/uksi/2013/984/pdfs/uksi_20130984_en.pdf> [↑](#footnote-ref-11)