

**This chapter highlights the importance of considering parental responsibility and ensuring parents are clear about providing their consent when initiating the adoption process.**

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### **1. Parental Responsibility and Birth Parents / Guardians**

The Adoption and Children Act 2002 provides that the agreement of each parent or guardian of the child must be either given unconditionally and with full understanding of what is involved (but a person may consent to adoption without knowing the identity of the prospective adopters) or else dispensed with by a court order. However, any consent given by the mother to the making of an adoption order is ineffective if it is given less than six weeks after the child's birth. The Act defines the term 'parent' as meaning 'any parent who has Parental Responsibility for the child under the Children Act 1989'.

The following people are included within the meaning of 'parent' for the purposes of the Act:

1. The child's natural mother;
2. The child's natural father;
  - If he was married to the child's mother at the time of the child's birth;
  - If he subsequently married the child's mother;
  - By reason of Section 111 Adoption & Children 2002, if after the 1st December 2003 he is registered on the birth certificate at the time of the child's birth. He would also acquire PR if the parents re-register the birth after 1st December

2003. It does not give PR to any fathers registered prior to 1st December 2003;

- If he has obtained an order granting him parental responsibility in respect of the child;
- If before the commencement of the Children Act 1989, he has obtained an order granting him parental rights and duties in respect of the child (as the order will be deemed to be an order under the Children Act 1989);
- If he has acquired parental responsibility for the child under a parental responsibility agreement made with the mother.

**NB** If there is a doubt in the father's status, legal advice should be taken.

3. The child's adoptive parent, if he has been the subject of a previous adoption. In those circumstances, the child's natural parents' consent would not be relevant;
4. An unmarried father may be made a respondent to the adoption placement order application of his own violation;

When considering adoption, the department has some responsibility to obtain information about an unmarried father, to counsel him and to ascertain whether he intends to apply for a Child Arrangements Order. In care proceedings and/ or placement order application, the court must be satisfied that the unmarried father does not intend to apply for either a Parental Responsibility Order or that if he did so, he would be unlikely to succeed.

## **2. Hertfordshire Children's Services Responsibility to Birth Fathers**

Birth fathers with parental responsibility (and anyone else with PR) should receive similar counselling to the mother. If attempts to contact him fail, details of actions should be recorded with dates and included in the child's placement report and Schedule 2 Report. CoramBAAF information leaflet 'If Your Child is Being Adopted' or Hertfordshire's leaflet 'Information for Birth Parents' should be given, and a signed acknowledgement obtained and/or noted in the file on a DR1.

A birth father without parental responsibility should also be interviewed by the social worker. It should be established:

- Whether he accepts paternity;
- Whether he intends to apply for parental responsibility.

His views regarding the adoption should be obtained, and information about his legal position given. He should also be advised to seek his own legal advice.

Mother's husband: Consent will be needed unless it can be proved he is not the father.

Father married to mother: Must give Child's Permanence Report agreement in his own right. He should seek his own legal advice if he has any doubts about the adoption.

### **3. Supplementary Guidance of Fathers Without Parental Responsibility**

The difficulties faced by agencies in counselling fathers without parental responsibility for the child were underscored by the cases of Re H and Re G. In each case, the mother has placed her baby with a local authority with a view to adoption on the basis that neither mother would be pressed to disclose the identity of the father without parental responsibility.

Whether or not the unmarried father enjoys an Article 8 right to respect for family life will depend on the facts of the case, but the fact may be difficult to establish or open to dispute.

In Re H the parents had had a relationship - they had lived together, and their relationship lasted several years. The father had shown continuing commitment to the elder child. The father was entitled to respect for family life with the child under Article 8 and to place the child without notice would be a breach of that right. In accordance with rule 15(3) the father should be given notice and made a respondent with an opportunity to be heard.

In Re G the parents had never lived together, and their relationship did not show de facto family ties and did not come within concept of family life: the father had no right to respect for family life. It was therefore not necessary for him to be joined in any proceeding.

As part of its counselling of the mother, the agency should explain its obligations in relation to the human rights legislation to counsel and seek the views of the father of the child. An adoption agency should consider the nature and extent of the father's relationship with the child's mother and any siblings of the child.

Where the agency considers that it is in the child's best interest, the agency must take all reasonable steps to trace and counsel the child's unmarried father, if his identity is known.

If the father's identity cannot be established, the agency should seek legal advice. Each individual case will need to be considered and legal advice sought. One option would be to seek a direction from the court on whether it is lawful to place the child for adoption without consulting the father. Another option is to apply for a placement order where a local authority considers that the requirements for section 31 of the 1989 Act are met. The latter approach has the merit of enabling the court to consider the circumstances of the case and reach an earlier decision on whether the child should be placed for adoption.

In cases of *Re H* and *Re G* the mothers had placed their babies with a local authority with a view to adoption on the understanding that neither mother would be pressed to disclose the identity of the father without parental responsibility. The court was critical of these arrangements. Agencies should avoid entering into arrangements that undermine their obligations to the child and to other parties.

The paramount consideration for the agency must be the child's welfare. Except where provided for in the Act, such as consent for placement with identified adopters, agencies should not enter into arrangements that place conditions on consent for placement, or advance consent to adoption.

Where the mother gives consent to placement for adoption, or gives advance consent to adoption, and the mother subsequently marries the father of the child, the father would acquire parental responsibility and become a parent within the meaning of the Act. The Act provides under section 52(9) and 52(10) that if the child is placed the father is deemed to have given his consent but, *concourse*, he may later withdraw it, provided he does so before the prospective adopters apply to the court for an adoption order. Unless such a father withdraws his deemed consent, the adoption process should continue.

#### **4. Shared Parental Responsibility – Birth Parents, Adoption Agency, and Adopters**

When an Adoption Agency has authority through a Placement Order or by consent to place the child for adoption, Parental Responsibility is shared between the Adoption Agency and parents under Section 25 (1) and (2) of the Adoption and Children Act 2002 Under Section 25 (3) where a child is placed with prospective adopters they also have parental responsibility. Section 25 (4) provides that the Adoption Agency may determine that the parental responsibility of any parent or guardian or prospective adopter. The Agency can decide whether it can be restricted and to the extent that either a parent or prospective adopter can exercise their parental responsibility. Adoption Panel gives advice and considers whether the parental responsibility of any parent or Guardian or prospective adopter should be restricted and to refer to what extent this is done when the Adoption Panel is matching and proposing a placement.

In making the recommendation the Adoption Panel needs to look at how best to share parental responsibility for a particular child according to his or her needs and as the case progresses through the adoption process.

The most important elements of parental responsibility include:

- Providing a home for the child;
- Having contact with the child;
- Protecting and maintaining the child;
- Disciplining the child;
- Determining and providing for the child's education;
- Determining the religion of the child;
- Consenting to the child's medical treatment;
- Naming the child or agreeing to the child's change of name.

The Adoption Agency should decide in each case the extent in which it is prepared to involve the parent or guardian in the exercise of parental responsibility. In coming to a decision on the exercise of parental responsibility for the child the agency should take into account the child's welfare and views of the child, if he or she is of sufficient age and understanding the view of the parent or guardian, where it is reasonably practical to do so and anyone else the Agency considers relevant.

It is clear when the plan is likely to be adoption that the Agency will be making a decision and the Panel firstly will make a recommendation for instance that the parents no longer provide a home for the child. The question of contact will be looked at by the Panel in each case. Protecting and maintaining the child at this stage is likely to become the responsibility of the Adoption Agency. In addition the parents are unlikely to continue having responsibility for disciplining a child. In regard to determining and providing for the child's education, it for instance a child is still attending the school that the child was attending when care proceedings were instituted it may well be that the Adoption Agency may wish to look at whether this is appropriate as it may be more appropriate if the child attends a school where the prospective

adopters live. Again in determining religion it may be that the prospective adopters would want the child christened or baptised. Again with regard to medical treatment if immunisations are delayed or have not been arranged by parents previously it may be that the Adoption Agency will make arrangements to ensure that all immunisations are up to date. The naming of a child or agreeing to the child changing name again is still determined by the Court in that Sections 22 and 23 (a) provide the person may not cause a child to be known by a new surname where the child has been placed for adoption under Section 19 or the Adoption Agency has authority to place the child under a Placement Order unless the Court gives leave or each parent or guardian has given written consent. If the Agency wishes a child to be known by a new surname application needs to be made to the court.

When the Adoption Agency makes a decision on the exercise of responsibility by the parent or guardian it should write to the parents if their whereabouts are known and make clear:

- The extent of their parental responsibility;
- That this will be reviewed and that the Agency may change the extent of their parental responsibility for the child if the Agency considers it appropriate;
- That they will be notified in writing of any change.

The Agency should also seek to explain its decision and reasons for this decision. Again where the Agency considers it appropriate the child is of sufficient age and understanding a child should also be informed in writing of these matters. The extent of the parent or guardian's parental responsibility for the child should be reviewed by the Agency if it considers it appropriate.

## **5. Parental Responsibility Prior to and During Placement**

Where an Adoption agency is considering placement for a child for adoption with a particular adopter the Agency should consider the extent to which the prospective adopter's parental responsibility for the child should be shared with them while the child placed. Again this means for Panel when considering matching and a proposed placement for adoption the members of the Adoption Panel need to make a recommendation as to the extent to which prospective adopter's parental responsibility is shared while the child is placed. In making this decision the Adoption Panel should consider the following:

- The child, if he or she is sufficient age and understanding;
- The views of the prospective adopters;
- Anybody else the Agency considers relevant.

Where the Agency decides to place a child with prospective adopters there is requirement that the Agency sends to the prospective adopters an Adoption Placement Plan. The Placement Plan should set out the extent of the prospective adopter's parental responsibility for the child while the child is placed with them. If there is any change to this plan then the prospective adopters should be informed in writing.

When the child is placed for adoption there is a requirement that the Agency considers as part of its review the arrangements for the exercise of parental responsibility for the child and whether they should continue or be altered. Again there is requirements and notification when this is altered:

- The child should be notified whether the Agency considers he or she is of sufficient age and understanding;
- The prospective adopters should be notified;
- Any other person the Agency considers relevant. This may well include a child's parent or guardian.

In respect of the arrangements for the exercise of parental responsibility for the child the agency should keep on the child's care record a record of the view of:

- The child;
- The parent or guardian;
- Prospective adopters where the child is placed;
- A record of any agency decisions.

In some cases the Panel may well want to make a recommendation to the Adoption Agency that the Adoption Agency may consider it appropriate to retain some elements of parental responsibility when a child is placed passing these to the prospective adopters as their parenting skills develop. It may well be that with a relatively young and uncomplicated baby the recommendation of Panel will be that the prospective adopters can exercise that parental responsibility with very few limits from the Adoption Agency from the beginning. However in a case where a child is older and a child has special needs it may be to ensure that the child's interest are protected that the Agency exercises parental responsibility in many areas in relation to the child gradually allowing the exercise to pass to the adopters once the Agency is clear that the prospective adopters are able to meet the child's needs. Examples of this are the following:

- Attendance at meetings and involvement in decision about the child's special needs education;
- Attendance at meeting and involvement in decisions about the child CAMHS therapy, or other therapy;
- Holidays and school trips overseas;
- Choice of schools, in some cases, particularly where the child has special educational or other special needs.

Others as the Agency may consider it appropriate.