



## **Changes to the Adoption and Children (Coronavirus) (Amendment) (No. 2) Regulations 2020: Medical reports for foster carers**

### **About The Fostering Network**

The Fostering Network is the UK's leading fostering charity. We have been leading the fostering agenda for more than 40 years, influencing and shaping policy and practice at every level. We are passionate about the difference foster care makes to children and young people and transforming children's lives is at the heart of everything we do. As a membership organisation we bring together individuals and services involved in providing foster care across the UK.

In England, we have 93 per cent of all local authority fostering providers in membership as well as 60 per cent of independent fostering providers, and 56 per cent of all fostering households. Our views are informed by our members, as well as through research, in this way we aim to be the voice of foster care.

### **Introduction**

Due to the complexity of the issues around the temporary regulatory changes in this consultation, The Fostering Network was unable to use the form provided to respond to the proposal on foster carer medical reports. Please accept this document as our response. Our response to the other proposals around Ofsted inspections and virtual visits have been submitted via the online form.

The coronavirus pandemic has created and continues to create an unprecedented set of circumstances for all sectors of society, including children's social care. We recognised the need behind this set of amendments to the children's social care regulations introduced in September 2020 to ease administrative burdens and ensure that there is sufficient capacity within the fostering sector, whilst also acknowledging that the use of any of these amendments must never compromise safeguarding or outcomes of children in care. We believe that the amendments relating to obtaining foster carer medical reports needs to go further to ensure that there are suitable placements for children in care and the capacity of the workforce is maintained.

Since September 2020, we have increasingly heard from our fostering service members of the difficulties of securing medical reports to meet the current requirements for foster carer approval. They have reported that these difficulties have been a combination of the first set of Coronavirus regulatory amendments ending in September, and increasing pressure on GPs during the pandemic and vaccine rollout. Therefore, when this consultation launched we decided to gather more detailed information from our members across England to quantify the delays on foster carer approvals and therefore placements available to looked after children, and provide evidence on the impact of this.

The following response details the evidence we gathered, the urgent issues that need addressing and two suggestions to resolve these issues and ensure that children are being matched to the right placements whilst balancing safeguarding, the child's welfare and the current restrictions as a result

of the pandemic. The Fostering Network believe that sector wide practice guidance is required urgently to address the issues arising in relation to obtaining foster carer medicals and that this must be available to all fostering services.

When the amendments were first introduced there was a clear steer from Ofsted and the Department for Education that the amendments should only be used when absolutely necessary and with senior oversight. However, whilst local authorities are expected to record all decisions when the amendments are used, we believe there should be more national reporting on how the amendments are being used to allow a clear national picture and understanding of the impact on children and young people. For any amendments extended beyond 31 March 2021, we would want to see national monitoring arrangements in place in order to assess the impact on children and young people.

## Survey findings

To investigate the scale of the problem regarding new approvals, The Fostering Network ran a short survey from 12 – 21 February 2021 asking fostering services in England:

1. For assessments commenced after the 25 September 2020, how many foster carer assessments are currently complete bar obtaining the medical report?
2. Roughly, how many placements for individual children would this equate to?

The survey was sent to fostering services via our practice support team members mailing lists which represent all of our fostering service members in England. We received 62 responses from 52 services (22 local authorities and 30 independent fostering providers), representing approximately 12 per cent of all fostering services in England.

Of those services that responded, they reported that, for assessments started after the 25 September 2020, i.e. when the current amendments came into force:

- **368 assessments are currently complete bar obtaining the medical report;**
- **equating to approximately 518 placements for children.**

In Appendix 1, we have broken down the findings by region and type of provider. The tables in Appendix 1 show higher rates of delays of approvals for independent providers and shows how the South West is experiencing the least delays.

Based on these figures we predict the actual number of placements currently unavailable for children nationally because of delays caused to foster carer approval and the obtaining of medical reports to be much higher.

We also asked fostering services the following question:

3. The Fostering Network is minded to recommend to the Department for Education that they temporarily reintroduce an amendment to the Adoption and Children (Coronavirus) (Amendment) Regulations 2020: that is, to temporarily remove the requirement in Sch 2 of the fostering regulations for health information to be supported by a medical report. This would allow prospective foster carers, where necessary, to be approved without obtaining a medical report, although the fostering service would be expected to gather health information as available and to seek formal medical reports as soon as reasonably practicable. Do you agree with this proposal?

52 respondents agreed with this proposal as outlined in the question above and gave the following reasons:

- Ensure sufficiency of placements for children at a time when many services have reported an increase in demand for placements.
- Allow for timely approval, avoid delays and make sure services were keeping to their recruitment timescales.
- Prevent delays to annual reviews and assessments which provide important safeguarding checks for placements.
- Services also reported a positive experience of using the amendment between April and September 2020.

Respondents who agreed with our proposal raised how this was particularly needed for connected persons carers. Due to the court proceedings and regulatory timescales related to approvals of connected persons, fostering services are finding it difficult to meet these deadlines and approve carers in a timely way because of delays in obtaining medical reports. As a result, this is delaying permanence for children where care proceedings cannot be completed due to outstanding assessments. In addition, where children are placed with connected persons who are temporarily approved as foster carers under Reg 24, the difficulties in obtaining medical reports result in temporary approval expiring before the assessment can be completed and presented to panel and the decision maker for approval. This can lead to children having to move placements, or remaining in the care of someone who is not approved to care for them, in order to avoid further disruption to the child by moving them as required by regulation. The amendment that extended the period of temporary approval from 24 to 32 weeks expired on 25 September 2020.

While the majority of services agreed with the proposal, they stressed that such an amendment should only be used when necessary and in conjunction with panel oversight, follow-up checks, verified with medical records, social worker assessment, and considering the duty of care to the applicant and safeguarding responsibilities.

Of the 10 respondents who disagreed, the reasons were that they believe health information to be crucial to assessments being robust and ensuring safeguarding, and because they themselves were not experiencing delays. When asked what they would like to propose instead, the vast majority wanted to keep the need for the medical report but with greater flexibility and clarity granted around how to obtain the information and what constitutes helpful and good value information on applicants health.

### **Suggestions to address the issues relating to foster carer medical reports**

Difficulties in accessing medical reports for fostering assessments have been reported by our service members for several years and the current system needs review. In the Winter of 2019-20 (pre-pandemic), The Fostering Network, CoramBAAF and the Nationwide Association of Fostering Providers (NAFP) surveyed its fostering service members in England to understand more about the issue and its wider impact on fostering. This [report](#), already shared with the Department for Education and Ofsted, highlights the issues being experienced by fostering services around the delay in obtaining foster carer medicals, how this directly impacts on the recruitment of foster carers and makes recommendations for change. The difficulties outlined in this report have been greatly exacerbated since the start of the pandemic and have become a significant barrier to recruitment of new foster carers.

Above we have evidenced that current difficulties in accessing foster carer medicals are preventing a significant number of foster placements becoming available to the foster care sector. It is creating delay in the approval of mainstream foster carers and significantly, for some family and friends foster carers for children in care proceedings. Since the change in amendments to the regulations from 25 September 2020, this issue has consistently been raised by managers of our fostering service members at The Fostering Network's regular regional networking meetings.

The success of services in negotiating locally to remove current barriers to obtaining medical reports during the pandemic, as well as before, has varied. Reasons for this include the differential pressures on local health services from Covid-19, and the response of Clinical Commissioning Groups (CCGs), looked after children's health services, GP practices, individual GPs and fostering service medical advisers to approaches made to them about the continued need for medical reports as part of the foster carer recruitment process. Local negotiation is time-consuming and while for some, it has resulted in medical reports being made available and therefore assessments progressing to approval, for others, the assessment process remains stuck.

Failure to recruit new foster carers to the foster care workforce leads directly to potential new placements remaining unavailable to the sector, thus reducing capacity. Our survey revealed that in 12 per cent of the fostering services in England alone since 25 September 2020, over 500 placements are currently prevented from being made available to children in need of this care.

As a consequence of the above, we have made two suggestions and list the benefits and drawbacks of each below. In addition to these suggestions it is our view that sector wide practice guidance is required urgently to address the situation, whatever the outcome of this consultation. This must be available to all fostering services.

#### **Suggestion A: Continue with the current regulatory flexibility as set out in the consultation document**

The Fostering Network has [previously expressed its view](#) that the amendments to the regulations as proposed in this consultation do nothing to change the regulations as they apply to fostering assessments. This is because the flexibility introduced is already available within fostering regulations which allow services to undertake stage one and stage two of a fostering service concurrently.

- Pros – the proposal around changes to the requirement for adoption medicals could be used to inform practice guidance for foster care medicals.
- Cons – the regulations as proposed will make no difference to the fostering sector. Without further practice guidance, this proposal offers nothing to address the critical situation facing fostering services that cannot obtain a medical report as currently required to progress foster care assessments to approval.

#### **Suggestion B: Temporarily remove the regulatory requirement for the health information obtained as part of a fostering assessment to be supported by a medical report**

The Fostering Network understands the importance of robust health information being available to inform the assessment of the suitability of prospective foster carers and would support fostering services doing all in their power to access information from a medical practitioner to support any information gathered from the applicant's themselves and from others as part of the assessment. We also understand the concerns that approval of carers without the input of medical professionals to the gathering of health information could lead to approval of carers whose health status, if more fully known and understood, might have led to a decision that they were not suitable to foster. However, we believe that any safeguarding concerns regarding approval of those with health issues needs to be balanced against the impact of reduced placement availability on children's welfare and safeguarding.

The reintroduction of the previous amendment to fostering regulations that removed the requirement for health information to be supported by a medical report would assist those services who, despite their best efforts, have been unable to access a medical report prepared by a suitably qualified medical professional. In such circumstances, it would allow them, where appropriate and as a last resort, to progress that assessment to panel and their decision maker for approval. Guidance could specify that, where a service has reason to question the applicant's suitability on health grounds and

where a medical report would provide additional information to assist reaching a recommendation, the assessment should not be progressed to approval until a medical report has been obtained.

- Pros – ensures placement sufficiency and capacity in the foster care workforce.
- Cons – medical information from a qualified professional is not available for consideration at assessment but will be sought at a later date and other health related information collected to inform the assessment.

### **Practice guidance**

Both these suggestions would require practice guidance to be issued urgently to all fostering services and health services to unlock the delay and make placements available. This could be done prior to 1 April 2021 when any further amendments are expected to take effect.

Such practice guidance could usefully include the following:

- Clarification regarding the key elements of a ‘medical report’ – for example:
  - Which health professionals are considered suitably qualified to provide such a report?
  - What are the minimum requirements regarding contact with the applicant about whom the report is being prepared: phone consultation/video consultation/physical examination?
  - What are the minimum requirements around access to the applicant’s GP held health records? What processes are available to achieve this?
  - What is the role of the medical adviser – is it appropriate for them to prepare as well as comment on the medical report, or does the medical report need to be provided by a different health professional, reserving the role of the medical adviser as the person who reviews the report, obtains additional information from others as appropriate, and comments on the implications of the applicant’s health status for their suitability to foster
- A statement regarding the importance of foster care medicals and the role of the health professionals in the safeguarding of children through provision of medical reports as part of the fostering assessment process. The Royal College of General Practitioners has recently published a [useful summary](#) of this. This will also assist in working through any backlog of medical reports arising from approvals using the amendment in place from 24 April – 25 September 2020 and associated savings provisions.
- A process for managing the review of approved foster carers where a medical report has been obtained ‘as soon as reasonably practicable’ following approval (as outlined in the first set of coronavirus amendments).
- As health information is gathered at stage one of the fostering assessment process, clarification is needed as to whether the service would be able to terminate the approval of a carer approved using the amendment removing the need for a medical report where they are subsequently found to be unsuitable on health grounds based on information within the medical report. In this circumstance, can the decision maker progress directly to a decision to terminate approval, without first making a qualifying determination and providing 28 days during which the carer can apply for a review to the Secretary of State? This issue has been addressed within [guidance](#) for adoption, but the guidance has been silent in respect of process within fostering.

The Fostering Network would welcome the chance to contribute to and comment on any guidance being prepared. Any guidance issued now regarding acceptable working practice in respect of foster carer medicals during the pandemic could be used to trial and inform more permanent changes to working practices needed to address the longer term issues around availability and capacity.

## **Conclusion**

The proposals around medical reports for foster carers need to provide further clarity and/or greater flexibility to ensure seamless recruitment of foster carers such that there are the right placements available for children and that their wellbeing and safeguarding is not compromised. We would urge the Department for Education to act on the evidence and suggestions provided in this response as well as our previous report's recommendations on foster carer medicals and see this as an opportunity to address the ongoing issues of foster carer medical reports causing delays to the foster carer approval process.

## **Recommendations:**

- Sector wide practice guidance published or endorsed by the Department for Education and Ofsted in collaboration with key fostering sector organisations available to all fostering services is urgently required to address the current issues in obtaining foster carer medicals.
- The Department for Education needs to continue to promote an understanding amongst colleagues at the Department of Health and Royal College of General Practitioners on the importance of foster carer medicals and their crucial role in the recruitment and retention of foster carers.

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## Appendix 1: Survey results by region and type of provider

### Assessment delays and number of placements unavailable by region:

Region	Number of services (number local authority)*	Number of assessments delayed	Placements this equates to	Average number of assessments delayed per service	Average number of placements unavailable
North West, North East and Yorkshire and the Humber	10 (4)	42	59	4	6
Midlands	10 (5)	36	47	4	5
South West	4 (3)	0	0	0	0
London, South East and the East of England	25 (12)	77	147	3	6

\*three services not included in this table as the areas where they recruit foster carers were geographically varied. One of these providers was one of the biggest in England.

### Assessment delays and number of placements unavailable by type of provider:

Type of provider	Number of assessments delayed	Placements this equates to	Average number of assessments delayed per service	Average number of placements unavailable
Local authority (N = 22)	125	188	6	9
Independent fostering provider (N = 30)	243	330	8	11