

## The Fostering Network's response to the consultation on changes to the adoption and children regulations: coronavirus (COVID-19), August 2020

### 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. 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

The Fostering Network agree with the concerns raised by leading social work researchers about the consultation format<sup>1</sup>. We believe there are a lack of open questions in the survey. In addition, some questions are ambiguous as to what the respondent is agreeing to, and the circumstances in which they are agreeing to flexibilities being used beyond September. Therefore, please accept our response in this format.

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 the new social care regulations to ease administrative burdens and to ensure that there was sufficient capacity within the fostering sector. However, this must never be at the risk to safeguarding or outcomes of children in care. We believe the pandemic must not remove protections for our most vulnerable children, particularly at a time when they are even more vulnerable.

The changes to statutory instrument 445 published on the 23 April, while relaxing many statutory duties to increase flexibility of current legislation, made extraordinary changes to regulations relating to the care and protection of vulnerable children, with no formal consultation and without complying with the standard 21-day rule of being published three weeks before coming into force. We believe these radical changes should have been subject to public scrutiny.

The amendments, in relation to foster care, that we were most concerned when they were introduced could impact negatively on the safeguarding and wellbeing of children and the effective support of foster carers were:

- reaching decisions about suitability of foster carers in a context of 'virtual visits' and non-availability of some key checks and references without the independent scrutiny of a foster panel;

<sup>1</sup> Sen R [Academics concerns post SI445 consultation](#) [video] (University of Sheffield, 21 July 2020)

- temporary approval of people without a connection to the child in a context where subsequent visits have only to be done via electronic means 'as soon as is reasonably practicable'; and
- certain relaxations of duties with regard to visits, seem disproportionate especially given that all foster families will have internet and/or telephone access which could facilitate a virtual 'visit' within usual time scales.

Placing children with temporarily approved foster carers with whom the child has no prior connection, where opportunities for preparation and support of those carers is limited and the requirement for a placement plan has been relaxed, this carries potential risks and services should make every effort to guard against these at all times.

When the amendments were 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 robust monitoring arrangements in place to allow a clear national picture and understanding of the impact on children and young people. For any amendments extended beyond 25 September we would want to see robust national monitoring arrangements in place in order to assess the impact on children and young people.

## **Specific comments on proposals to extend regulations**

### **1. Medical reports**

The Fostering Network believes this proposal needs further clarification and detail before we can fully respond. As stated in the guidance and regulations on assessment and approval of foster carers<sup>2</sup> the process for assessing a person's suitability to foster consists of two parts. These parts, unlike the adoption assessment process, can be carried out concurrently in fostering. The only stipulation is that the information required for stage one must be sought as soon as possible, and the decision about whether an applicant has successfully completed stage one must be made within 10 working days of all the information required in that stage being received. Therefore, it is hard to understand what change is being proposed to the fostering approval process by this amendment.

The Adoption and Children's (Coronavirus) (Amendments) Regulations introduced in April 2020 temporarily amended Reg 26 (Assessment of prospective foster parents as amended by The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013). The amendments added a new paragraph 2A to Reg 26 which states that 'the fostering service may comply

with para 2(a) even if the information required by paragraphs 2 and 9 of Schedule 3 have yet to be obtained':

- Para 2 of schedule 3: Details of health (supported by a medical report) The requirement for details of an applicant's health to be supported by a medical report has been temporarily removed, thus allowing self-reporting of health information by the applicant.

The changes to Sch 3(2) mean that prospective foster carers can, whilst these amendments remain in force, be approved without obtaining a medical report to support the health information but the fostering service is expected to continue to seek formal medical reports as soon as reasonably practicable. Prior to the issuing of these amendments, Ofsted (27 March 2020) stated '*We expect providers to gather as much information as possible for the assessment. Panels should be able to*

<sup>2</sup> Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 Fostering Services p4

*make recommendations based on the health information provided in carers' assessment reports. Serious health concerns should be assessed by a GP as soon as it is possible to do so.'*

Therefore, our interpretation of this proposed amendment is that the fostering assessment and approval process will revert back to normal practice in that fostering services will have to obtain a medical report from GPs prior to the approval of foster carers. We do not see how this amendment proposes any change to the time frame for the fostering assessment and approval processes.

It is also unclear how the proposed amendment helps with any pressures on the NHS as the amendment still places a requirement on GPs to provide a medical report as part of the adoption and fostering approval process. The proposal only shifts the time frame for the adoption approval process not the requirement itself.

The Local Government Association in April reported that councils were seeing up to a 50 per cent decline in social care referrals of children who are at risk<sup>3</sup>. The majority of referrals to children's social services come from the police, followed by schools and then the health services<sup>4</sup>. Therefore, it is predicted that when lockdown rules are relaxed, children return to school and routine health appointments resume, referrals will go up and there will be an increased demand for all different types of looked after children's provisions. Given that 72 per cent of all children looked after in England live with foster families, we can expect the demand for foster placements specifically to be particularly high.

Therefore we would advise, as part of the work that is currently happening at a national, regional and local level to ensure there is capacity within the foster care workforce to deal with an increase of referrals, that GPs should give priority to the issuing of foster carer medicals.

The delays within the system to obtain foster carer medicals are not unique to this time or caused by the pandemic. In recent years fostering services have increasingly expressed concern about the difficulties with the system of obtaining health information about prospective foster carers. Earlier this year The Fostering Network, CoramBAAF and 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<sup>5</sup>. The report highlights the issues being experienced by fostering services around the delay in obtaining foster carer medicals and how this directly impacts on the recruitment of foster carers.

We would urge the Department for Education to act on the report recommendations and see this as an opportunity to address the issues causing delays to the foster carer approval process by promoting an understanding amongst health colleagues of the importance of foster carer medicals and their crucial role in the recruitment and retention of foster carers.

## **2. Virtual contact/visits**

The Fostering Network agree with the need to ensure essential services continue to be able to operate during any future local or regional lockdown and therefore support the amendment to allow

<sup>3</sup> Local Government Association [Coronavirus: LGA responds to Children's Commissioner report on vulnerable children](#) 25 April 2020

<sup>4</sup> Department for Education [Characteristics of children in need: 2018 to 2019 England](#) 31 October 2019

<sup>5</sup> Read the full report here: [Foster carer medicals](#) (The Fostering Network, CoramBAAF, NAFP, February/August 2020)

social work visits and contact to happen in a virtual way under these circumstances but only where it is not practicable to have face to face visits.

However, the table set out in the consultation survey references the proposal to extend the amendments for Care planning, Placement and Case Review (England) Regulations 2010 Regulation 28 (1A) – frequency of visits. We do not support that there should be any change to the frequency of these visits.

The Fostering Network only supports the ability to move the method of visits to virtual due to the impact of Covid-19. It is more important than ever that all children in care receive regular visits from social workers.

We would recommend that the practice of virtual social worker visits adopted during lockdown could be incorporated into social work practice moving forward as a blended approach. However, virtual visits should be supplementary to the statutory face to face social worker visits and any change of arrangements should be led by the child's wishes and needs.

### **3. Ofsted inspections**

We accept the need to continue the suspension of the frequency regulation that sets out the minimum number of Ofsted inspections required in various settings until March 2021. We welcome the risk-based assurance visits and the recent advice by Ofsted detailing that they plan to let local authorities know which children's social care services they have completed assurance visits on to allow local authorities to look at a service's assurance visit report to help with their commissioning decisions.

Assurance visits should also be used to monitor how amendments have been used since April and to assess the impact on children and young people. It is essential that Ofsted assess the impact of those amendments that have savings provisions.

### **4. Safeguards**

The Fostering Network have expressed concern about the speed at which SI 445 removed many safeguards that existed for care-experienced children and young people before the Covid-19 pandemic and without proper consultation.

It is vital that any future regulatory changes have inbuilt safeguards to enhance, rather than remove protection for care-experience children and young people. Any future regulations must involve proper consultation and have rigorous monitoring built in to fully understand the impact on children and young people.

We are concerned of the lack of monitoring process for those amendments that have commenced prior to 25 September and are under 'savings provisions', for example, where a fostering assessment has already commenced, a placement been made outside a foster carer's approval, or a person temporarily approved as foster carer for a child. Ofsted as part of their risk-based assurance visits should fully monitor the continued use of any amendments under 'savings provisions' as well as the amendments proposed for extension. In addition to Ofsted scrutiny we would want to see others, such as IROs, scrutinise these decisions.

## **Conclusion**

To conclude, with respect to the proposals to extend the amendments relating to foster carer medical reports, it is unclear what changes are being proposed but, we would advise that GPs should give priority to the issuing of foster carer medicals to support the retention and recruitment of foster carers to meet current and future demand.

With respect to the proposed changes to extend the amendments relating to virtual contact/visits, while we support the means of virtual visits if public health guidelines advise against face to face visits, we do support that there should be any change to the frequency of these visits.

Thirdly, with respect to the proposed extension of the changes relating to Ofsted inspections, we accept the need to continue the current suspension and welcome the risk-based assurance visits. We also think that the assurance visits should be used to monitor how amendments have been used since April and to assess the impact on children and young people.

Finally, with respect to safeguarding concerns, it is vital that any future regulatory changes have inbuilt safeguards to enhance, rather than remove protection for care-experience children and young people. Any future regulations must involve proper consultation and have rigorous monitoring built in to fully understand the impact on children and young people.