



The Fostering Network's response to the Northern Ireland Assembly Health Committee call for evidence on the Adoption and Children Bill, September/October 2021

The Fostering Network welcomes the invitation to respond to the Northern Ireland Assembly's Health Committee call for evidence on the Adoption and Children Bill.

- **Our expertise**

The Fostering Network is the UK's leading fostering charity and in Northern Ireland we have been leading the fostering agenda for more than 20 years to influence and shape policy and practice at every level. Our views are informed by our members. We have approximately 55,000 members across Scotland, Wales, England and Northern Ireland from 37,000 households.

In Northern Ireland, we currently have 100% membership of all approved foster and kinship foster carers across all statutory and independent providers, in total this includes 2971 households, all five Trusts and all Independent Fostering Agencies. As such, we aim to reflect the views of our members and this response is informed by a consultation process with them, carried out in September. This response also presents evidence from our practice base across the UK, focusing on challenges experienced with implementation of similar provisions to those outlined in the draft Adoption and Children Bill.

- **Consultation undertaken with foster carer members of The Fostering Network**

This evidence includes comments and views of foster carers consulted. We circulated the draft proposals directly to our members via email and through our Northern Ireland closed Facebook site, which has an active community of almost 250 foster and kinship foster carers. Thirteen percent of those in the Facebook group responded to the questions. We also facilitated an online discussion forum attended by 20 foster carers to discuss the Bill's provisions in relation to foster care and held polls for each section we discussed. Additionally, we shared the proposed Bill for comment with our Foster Carer Education Forum where seven foster carers contributed their views. In total, 62 foster carers responded to this call for evidence in the short time available. A discussion on the draft Bill with members of our Independent Fostering Providers forum took place in September and their comments also helped form the evidence response.

- **Overall response to the Bill**

The Fostering Network broadly welcomes the Adoption and Children Bill. For many years we have called for the introduction of a clear regulatory framework for all aspects of foster care in Northern Ireland. We briefed committee in July 2020 on the impact of the modifications of foster care regulations due to the pandemic and made strong representation on the need for the draft foster care regulations to be brought forward to begin a process of developing standards for foster care. We are disappointed these regulations are still not in place and believe that the progress of the Adoption and Children Bill provides an opportunity to introduce these regulations alongside the primary legislation as there is clear synergy between the two.

We believe the amendments to the Children Order set out in the Bill, alongside the introduction of the draft foster care regulations, which will lead to the development of foster care standards and an inspection regime, would begin to provide such a framework.

Regarding the Bill, there are some additional areas we would like to see included. A definition of permanence for children and young people which includes long-term fostering we believe would be helpful. In our comments we have also suggested where the committee could consider evidence of implementation of measures such as the Independent Reviewing Mechanism.

The consultation with foster carers was unanimous in welcoming new measures to improve the experience of children who are looked after but recognised the need for resources to be attached to its implementation.

The Bill, once passed, will require development of a raft of regulations and the respondents were anxious to know how these developments would be prioritised in order to bring about the changes required. There was a sense of frustration that the challenges in foster care, which have been well documented over many , have not yet been addressed through the introduction of the foster care regulations which have been in draft for seven years. We would urge the committee to urgently introduce these also.

Our comments on the clauses in the Bill most relevant to fostering are set out below:

- **Placing fostering panels on a statutory basis**

Clause 126 of the draft Bill would place fostering panels on a statutory footing with the constitution, membership, functions etc. of such panels to be prescribed in regulations.

We consider the establishment of statutory panels to be essential to ensure decision making is consistent and to enable a range of permanence options to be explored, including long term foster care.

90% of the foster carers who attended our consultation event supported this proposal as did all but one of those who replied to this question in our facebook poll for members.

This provision however also raises the question of timescales to introduce the draft fostering regulations which have been consulted upon but not yet introduced.

The role of Agency decision maker is not universally in place in relation to foster carer approval and given that 93% of looked after children in foster care are looked after by H SCT carers, it would seem prudent to introduce these.

Foster carer comments were focussed on the importance of independence within the panels, for example, they called for an Independent Chair for panels in all Health and Social Care Trusts.

We recommend, in developing regulations for panels, consideration is given to the composition, representation and independence of the fostering panel to ensure a fair and transparent process.

- **Care planning to be on a statutory basis**

Clause 134 will place care planning on a statutory basis, with the Trust required to prepare and review a plan. However, a duty will not be placed on the court to scrutinise the care plan in full. The care plan will continue to be available for the court to scrutinise should they so wish to and it will be a matter for the court to determine the level of scrutiny required in each particular case.

There was unanimous agreement among foster carers at our consultation event that care planning should be placed on a statutory footing but consistent with the response on panels, there was significant concern about independent scrutiny, with foster carers keen to see regulations prescribing a role for independent reviewing officers.

Foster carers expressed concerns that the children they look after are not always aware they have a care plan and they felt they, the foster carers, could usefully contribute to these. Many suggested the introduction of an Independent Reviewing Officer for care planning should be considered and introduced.

We recommend provision is built in for foster carers to provide input to care plans.

- **Independent Review Mechanism**

Clause 126 would introduce a power for the Department to prescribe, by way of regulations, a procedure for independent reviews of fostering decisions (made by fostering panels) about whether a person should be approved to foster or whether a person should continue to be approved to foster. The mechanism will be comparable to the independent review mechanism for adoption decision making. The intention is that both mechanisms will be able to operate in the same way, which will provide the scope to have a single body/organisation dealing with reviews of both fostering and adoption suitability decisions.

The majority of those at our consultation event and via our poll agreed with this proposal but around 10% had concerns, not with the introduction of independent reviewing mechanism, but with the fact that as currently set out in the Bill this provision does not go far enough.

We would like to see evidence of implementation in other UK countries taken into account in the wording of the Bill. In England and Wales, the IRM is limited by its ability to review only, meaning that its recommendations can be ignored with no consequence. We recommend that the Department draw on learning elsewhere to ensure the independent reviewing mechanism achieves its intended purpose in Northern Ireland.

If a concern is raised in England or Wales about an approved foster carer's suitability to foster, either through an allegation or other means, an investigation is

carried out by the fostering service and a review is undertaken which may be referred to the fostering panel for consideration. If the decision maker makes a qualifying determination to terminate the approval, the foster carer can opt to make a referral to the Independent Reviewing Mechanism (IRM) in England (and Wales) for review or make written representations to the service's fostering panel. The purpose of the IRM is to independently review the case and make recommendation to assist the fostering decision maker in reaching a final decision.

Following the IRM's recommendation the final decision on continued suitability to foster is made by the fostering service's decision maker. In 2016-17 the IRM heard 85¹ fostering cases and in 30² of these cases recommended that the applicant was suitable to foster (22 of these the panel decision was unanimous) but the fostering service's decision maker disagreed with the IRM recommendation in 14 out of the 30 cases. It is concerning that the recommendations of the national body responsible for independently scrutinising decisions can be so ignored by the fostering service and the fostering service is able to end someone's career as a foster carer against the IRM's recommendation.

We believe the fostering service should be responsible for making local decisions but should not be making decisions about a foster carer's continued suitability to foster; rather they should make a referral on suitability to a central body such as the IRM. If there were a central register of approved foster carers, then individuals could be removed following unsuitability decisions.

We recommend an amendment to address these issues by replacing the word "review" in clause 126, page 77, line 10, with the words "final decision", establishing a procedure under which any person in respect of whom a qualifying determination has been made may apply to the Department for a final decision of that determination by a panel constituted by the Department"

Experience in England and Wales also suggests that extensive timeframes can be an issue when waiting for recommendations from the IRM. We would like to see an IRM in Northern Ireland operate in a timely fashion, with truly independent members, including experts by experience, foster carers and young people. All those experts by experience, alongside key stakeholders, should be involved in the development of the regulations governing the IRM.

- **Going the Extra Mile Scheme (GEM)**

The GEM scheme in the North of Ireland led the way in the UK in terms of best practice in post 18 provision. We welcome clause 128 in the Bill which will place the scheme on a statutory footing. This has long been the stated position of The Fostering Network and we are pleased to see this. Consistency of provision regionally is essential to ensure that young people who reach 18 still have access to supports within their foster family. 92% of members we consulted in 2017 and 100% of those who responded this year agreed that the scheme should be placed on a statutory footing.

We are concerned however that the GEM scheme is only open to young people in education, training or employment. There are other young people who do not fit this

definition who could benefit significantly from the extra stability. Of the 295 care leavers aged 16-18 in 2019/20 16% were unemployed and 13% were economically inactive because of caring responsibilities or illness/disabilities. 27% of care leavers aged 19 were not in education, employment or training (NEET)¹. Excluding these young people from post 18 foster care seems inconsistent with the *Pathways to Success* strategy to reduce the number of young people who are NEET². We therefore suggest that eligibility criteria for the GEM scheme should be extended to include all those in foster care.

In addition, provision of post 18 care should not be restricted to being delivered by the foster carers young people are currently living with and we would welcome clarification of the level of financial support associated with this clause within the Bill

We recommend that Clause 128, page 79, line 25 replaces “former foster parent” with “approved foster carer”.

In relation to financial provision within GEM service, we recommend inserting “in line with fostering allowances” at the end of Clause 128, page 79, line 40

- **Extending support for care leavers**

We welcome the provisions in clause 129 extending support for care leavers. All those who attended our consultation event and responded to our poll supported the extension of the age limit for support provided to specified care leavers who are still engaged in education and training from 24 to 25. We also welcome the new provisions for specified care leavers aged between 21 and 25 to pursue a new course of education or training; the new duty for Trusts, on request, to provide specified care leavers aged between 21 and 25 with advice and support which has been assessed as appropriate; and the requirement on Trusts to publish information about the services they offer to care leavers (the Local Offer); We are pleased that young people receiving such support, advice or assistance will have a Personal Advisor appointed and a pathway plan prepared.

We note that foster carers consulted noted that young people they have cared for in the past or are caring for currently do not have an appointed PA.

We are concerned to ensure the Bill is resourced sufficiently to ensure PAs are available.

- **Duty to promote educational achievement and prevent disruption of education and training**

100% of those attending our consultation event and responding to our Facebook poll supported clause 122, the duty to promote educational achievement.

¹ Department of Health (2021), *Northern Ireland Care leavers 2019/20* [Online]. Available at www.health-ni.gov.uk

² Northern Ireland Executive (2012), *Pathways to Success: preventing exclusion and promoting participation of young people. A Northern Ireland Executive vision, strategy and action plan*. Available at www.economy-ni.gov.uk

A sufficient number of approved foster carers need to be available in the right places in order to require Trusts to provide a child with accommodation to ensure that the child's education or training is not disrupted. We would like to see robust local planning of the needs of looked after children and workforce sufficiency planning to meet these needs.

At our Foster Carers Education Forum, participants shared some concerns about this provision in that some children actually thrive better when they are no longer attending the same school in the same community where they experienced traumatic events. Each decision taken needs to ensure the needs of the child are paramount and a trauma informed approach is central to this.

There were many comments which may be useful to the Department when developing the regulations; for example, the importance of good transition support, the view that foster carers should be seen as a key part of the team and the need for good SEN provision and effective advocacy for children with special educational needs. Personal education plans, which we understand will be prescribed in regulations were seen as a welcome development, but they need to be properly resourced and not just a tick box exercise.

The Fostering Network in Northern Ireland has delivered the Fostering Attainment and Achievement (FAA) contract on behalf of the HSCB since 2018. FAA is designed to improve educational outcomes for children living in foster care. We also delivered its predecessor, Fostering Achievement for 12 years from 2006-2018. As such we are concerned to ensure that there is continued access to such provision which provide direct resources to young people and support foster carers to support their child navigate the education system.

Foster carers consulted expressed concern about the lack of co-ordination they currently experience in advocating for children in their care to access education. The role of foster carers as advocates is mentioned elsewhere in this document as they know the children best and have active interests in ensuring they have good educational outcomes. As such, this emphasises the importance of recognising the role of foster carers as advocates within a statutory advocacy system.

Foster carers strongly supported the need for services such as FAA which make tailored provision for individual children in foster care. They also felt this type of provision should be extended to children on care orders at home, in supported lodgings and in residential care.

As formal education remains the responsibility of the Department of Education and not Health, there is a need to ensure budgets can adequately meet the level of need which this provision will elicit. We suggest the Children's Services Co-operation Act is a mechanism to facilitate development of provision in education.

- **Special Guardianship orders (SGOs) and residence orders**

Clause 119 would introduce Special Guardianship Orders (SGOs), a new legal order intended to provide greater permanence for children who cannot return to their birth

families but for whom adoption is not appropriate. The Fostering Network believes that there should be no hierarchy to permanency for children and young people and we would like to see special guardianship support on the same basis and with the same eligibility as adoption support. 78% of those who responded to our 2017 online consultation about the Bill felt SGO arrangements should be strengthened and all the young people who responded online agreed. Those consulted were pleased to note this could be a route for foster carers, who wish to see a more permanent outcome for children, to ensure greater permanence

There was however a mixed response at our consultation event with concerns raised about the levels of post order support, including financial support, and questions about how SGOs would operate in practice. As this is a new type of order being introduced, it was unclear to consultees how this would work in practice and how it would impact them or the children they are caring for when introduced.

Foster carers queried if they would be expected to undergo further assessment if they decided to take an SGO for a child they had been caring for already.

- **Residence Orders**

All those we consulted supported clause 117. This clause will reduce the time period a child is required to have lived with a foster carer from three years to one year, before a foster carer is permitted to seek a Residence Order under Article 8. They also welcomed the provision that Residence Orders are to be automatically granted to age 18, or extended to age 18, unless a court determines otherwise (clause 118).

We believe the Bill could go further in terms of permanence options, as set out below.

- **Long-term foster care as a permanence arrangement**

Around 80% of children looked after are cared for by foster carers. Some will move in and out of care, some will be on care orders at home or with kinship carers and other will stay with foster carers long term. We agree with the moves to seek permanence at an early stage but to do that we feel we need a range of measures. SGOs and Residence Orders are important but long-term fostering also needs to be legally recognised as a permanence option.

Feedback from our members through our State of the Nation survey shows placements can be ended even when carers feel it is not in the best interests of the child. They reported experience of children being moved for financial reasons or because a difficult relationship had developed between the carer and social worker/agency and for other reasons that would likely not be accepted if a court were involved in decisions regarding long-term placement moves. This includes children moved as a result of an allegation, where child protection thresholds in place for all other children are not adhered to, and children were quickly moved without a proper assessment.

This lack of legal permanence leads to children in otherwise stable long-term relationships feeling less secure and more vulnerable to disruption, in a way that those living in adoptive families do not. The introduction of SGOs will provide one permanency option, however The Fostering Network wants to see long-term fostering relationships respected, valued and actually seen as permanent and protected similar to the proposals for adoptive and special guardianship placements.

When making a decision about permanency for a child decision makers need to be clear why a child is being placed in long-term foster care as opposed to SGO or adoption. The key difference between long-term foster care and other permanency options is the child remains in the care system which offers a protective and nurturing environment, within a family setting are able to remain in contact with their birth family and are afforded rights to therapeutic services, access to social work support for the child and foster carer and care leaver entitlements.

We suggest that a first step towards this in Northern Ireland would be to use a definition of permanence which makes it clear there are a variety of options, all of which can deliver good outcomes for individual children.

- **Wishes and feelings**

There was unanimous support amongst those we consulted for clause 120, the requirement on Trusts to ascertain the wishes and feelings of a child in need in relation to suitable services or investigations. Foster carers very much welcomed this and were anxious to understand how this would be achieved. They gave examples of where children in their care had not been heard and where children and young people had wished to make a complaint or raise a concern, and this was complaint had to be made to the individual about whom they wished to complain.

They expressed a view that the proposed Independent Advocacy service could lead on this, developing best practice in this area. They also proposed foster carers could support young people to share their wishes and feelings and also asked how this would be recorded to ensure the child's wishes and feelings are taken into consideration in decision making.

- **Short term breaks outside of the looked after children system**

We welcome clause 121 which would introduce a power for Trusts to provide accommodation to a disabled child, for the purposes of providing short term breaks outside of the looked after children system. There was full support for this from those we consulted. The new provision also contains a power for the Department to prescribe, by way of regulations, other categories of children to whom such accommodation may be provided. The Fostering Network recommend consider defining further "other categories of children" to which this provision could relate. For example, extending to children on the edge of care receiving specific types of support to support initiatives such as (SUSD). The Fostering Network and the South-Eastern Health and Social Care Trust (SEHSCT) jointly run the Step Up Step Down (SUSD) programme which provides parents with the support of a trained Family Support Foster Carer (FSFC) who can 'step up' if the family needs additional support and 'step

down' when parents are in a better place to support their children. The model sits at the interface of fostering and family support services and would benefit immensely from this clause.

We recommend that forthcoming guidance details “other categories of children”

- **Statutory advocacy services**

We strongly welcome clause 132, the introduction of statutory advocacy services for looked after children, former looked after children, special guardianship children or adopted children. 90% of those we consulted agreed with this proposal. Those who did not were concerned to see stronger provisions to ensure independence. We would also like to see clarification of the complaints' procedures. Foster carers at our consultation event shared some examples of poor practice in regard to the handling of complaints they had made about practice or on behalf of children they cared for. Many of those consulted said they saw themselves as advocates for children and were concerned that their advocacy was not always well received or welcomed.

Foster carers welcome this clause and would like to see regulations which include foster carers as advocates for the children in their care and for that advocacy to be given the same legitimacy as other contributors.

- **Contact**

We welcome clause 135 which would amend the Children Order to make it clear that the duty on a Trust to allow reasonable contact between a child in care and their birth parents (and guardians and certain others) is subject to the duty on the Trust to safeguard and promote the welfare of looked after children. Contact is one of the top 3 issues raised with The Fostering Network's advice service. Those included in our consultative events who had experience of adoption were very supportive of this proposal as they had experiences of having to facilitate and support contact which was in their view damaging to the child's emotional wellbeing.

The key issues for those we consulted were the quality of contact and the importance of contact with all significant others, including siblings and former foster carers.

- **Guardian ad Litem**

We welcome clause 136 regarding Guardians ad Litem, with a new name “Children's Court Guardians” approved by children and young people. We welcome the extension of their role, to include: applications for the making or revocation of an adoption placement order; and applications for the making of a special guardianship order with respect to a child who is subject of a care order.

- **Dually Approved Carers**

We support the intention to minimise the number of moves a child may experience. The Bill aims to achieve this via clause 15 which would introduce a legal duty on a Trust to consider the placement of a child with dually approved carers (i.e. approved foster parents who are also approved prospective adopters) when it is considering adoption, or where the decision has been made that the child ought to be placed for adoption.

This practice is still developing here. We think that where long term foster care is an option it should still be considered (see permanence section above) . Assessment processes must be conducted properly, with no foster carer feeling under duress to adopt where they don't feel they will have the support required to address a child's complex needs. All options should be considered when decisions are being made and where an agency is placing with dual approved carers, appropriate information and supports should be in place as proposed elsewhere in this draft Bill to ensure there is no loss of services.

- **Inquiries into representations**

We welcome clause 130 which would introduce a power to make regulations to require Trusts to impose time limits on the making of representations (including complaints) about services provided under the Children Order.

- **Corporate Parenting**

We welcome clause 123 which would introduce a framework of corporate parenting principles that overlay the existing responsibilities of Trusts towards looked after children and those leaving care to make clear what it means for the Trust as a whole to act as a good parent. All those we consulted welcomed the requirement for Trusts, when carrying out their functions, to have regard to the following principles and also to any guidance produced by the Department:

- acting in the child's best interests and promote their well-being;
- encouraging children to express their views, wishes and feelings;
- taking into account their views, wishes and feelings;
- helping them gain access to services provided by the Trust and any relevant partner;
- promoting high aspirations and seeking to secure the best outcomes for children;
- delivering safety and stability to children in their home lives, relationships, and education or work;
- preparing children for adulthood and independent living.

These principles were supported by all those who responded to our consultation; the issues raised were around how to make them a reality in practice. Again, they felt the introduction of the draft Foster Care regulations, which have been in draft form for almost seven years, could enable these principles to be applied in practice.

- **Children Order Annual Report**

Clause 143 would remove the statutory requirement for the Department of Health to produce a Children Order annual report. With no standards and limited reporting we are concerned that this leaves a gap in terms of understanding the care system. Rather than less reporting, we would like to see better data and improved transparency.

- **Definition of Harm**

Clause 133 would amend the definition of “Harm” in the Children Order to cover harm caused to a child by seeing or hearing the ill-treatment of another person. We support this provision which may mean that some children may be subject to protection measures or potentially removed from their parents’ care if domestic abuse is considered to place them at risk of significant harm.

However, we are concerned to note this does take regard of the child aggravator in Article 9 of The Domestic Abuse and Civil Proceeding Act (NI) 2021 which does not require a child to have seen or heard the abuse for the aggravator to apply.

We recommend that the definition of harm in the Children Order be amended to reflect that a child can also be seriously adversely impacted by domestic abuse in the home, even if they do not hear or see the abuse taking place.

Concluding remarks

This is a large Bill where the main focus is on adoption. It is difficult to make detailed comment with so many of the provisions requiring the development of regulations wherein will lie much of the detail of interest to foster carers.

However, as the majority of children in care are living with foster carers, we urge the committee to give equal prioritisation to the fostering provisions. We are keen to see the current draft Foster Placement regulations published for consultation as soon as possible. These will be vital for clarifying the regulatory framework and must cover the provision of support for foster carers subject to allegations.

We would be pleased to facilitate meetings with our foster carer members to elaborate on the issues set out in this evidence and to share their experiences with committee members.

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