

Family Justice Review – Call for evidence Adoption UK response – 30 September 2010

About Adoption UK

Adoption UK is the only national charity run by and for adoptive parents. The charity's aim is to provide and support a self-help network for adoptive parents to explore the unique social, emotional and developmental needs of adopted children and young people and their families. Through this network, Adoption UK also promotes effective learning practice, based on over 35 years' experience of adoptive parenting, which is integrated with current theories of trauma, attachment and development. Adoption UK has a membership of over 5,000 families.

All children who are adopted will have experienced some form of loss or trauma through being separated from their birth families. Many adopted children will have experienced further loss and trauma through their early experiences of abuse or neglect within the birth family, which may have been compounded by numerous moves within the public care system. For many children, this trauma may lead to emotional, behavioural, educational or development difficulties, which may also affect the children's abilities to form secure attachments with their new parents. Traditional parenting techniques may not work and adoptive parents may need to develop alternative parenting strategies in their role as "therapeutic parents" for traumatised children.

Adoption UK's information, advice and support services include training programmes and workshops, local support groups, online message boards, two magazines, a national helpline (0844 848 7900), a casework and advocacy service, mentoring schemes, a wide-ranging publications programme and contact networks. We also work with numerous local authorities throughout the UK under service level agreements to help them deliver their adoption support services. Our members have access to all of our services, but they are also part of a community of adopters who have made the commitment to help and support each other, with understanding and without judgement. This unique community of adopters is our most important resource.

For further information about this response or the work of the charity, please contact either:

Jonathan Pearce (Chief Executive)
Adoption UK
Linden House
55 The Green
South Bar Street
Banbury
Oxfordshire OX16 9AB

01295 752240
jonathan@adoptionuk.org.uk

Website: www.adoptionuk.org.uk

Adoption UK is a charity registered in England and Wales (regd charity no 326654) and in Scotland (regd charity no: SC037892). It is also a registered Adoption Support Agency (service no: 66957), regulated by Ofsted in England.

Adoption UK response

1. What does the family justice system mean to you? What should the purpose of the family justice system be? What should not be included in the family justice system?

For Adoption UK, as a national membership charity for prospective adopters and adoptive parents, the family justice system – at least the side of it that deals with public law cases – is the whole legal apparatus that takes the fundamental decisions about taking children into care, placing them for adoption and then legally finalising that adoption. In many respects, for adoptive parents not going through a traditional conception and gestation process with their children, the family justice system encapsulates some of that, running in parallel as it does with the prospective adopters' own assessment and preparation by social workers and adoption agencies. While the parents' assessment and preparation goes on, their children-to-be will be taking their own journeys through the legal system in preparation for that day when the parents and children come together as a family. The legal permanence of adoption is often said, particularly by children, to be a key part of adoption through the security that the legality of it brings.

As such, the family justice system has a crucial purpose in relation to the future strength, permanence and stability of adoptive families. The legal process itself is also part of the concept of adoptive parents having "permission to parent" their children, because through the due process of law it has been decided that the children's birth family cannot or should not parent their children, and that the children's long-term interests are best served by placement with another family.

Linked with this, it is incumbent on the family justice system to ensure that it carries out this role with fairness, due process and with a view to the long-term interests of the children about whom it makes legal decisions. In particular, this means that lawyers, courts and judges need to have a strong awareness of the long-term traumatising effects of abuse and neglect on children, and the impact that delay can have on exacerbating that damage. In practical terms this can mean damage to a child's developing brain that can lead to long-term psychological, emotional, cognitive, behavioural and developmental difficulties that will affect a child for the rest of their life and can limit their future development and well-being. Some of the long-term impacts are depression, anxiety, high risk behaviour, etc, that mean a child will have less chance forming positive relationships, both with their new parents and also their peers, and increases the parenting challenge for adoptive parents. This has obvious implications not only for the child and its family but for society as a whole.

In terms of what should not be included in the family justice system, while the law is clear that courts should not be making decisions about which family a child should be placed with, in practice, it is a regular occurrence that courts do

look into these issues. Often, courts ask to see details of the families who are being considered as adoptive parents for a particular child, as part of making decisions about placement orders. This should be much more clearly excluded from the family justice system, except in extreme cases where the particular needs of a child are such that there is genuine reason to be concerned that an adoptive placement will not be found.

2. What should the role of the state be when dealing with family-related disputes that do not concern the protection of children or vulnerable adults? To what extent should the state fund this?

No response from Adoption UK.

3. How effectively does the current family justice system meet the needs of its users? For example: Does it have the capacity to deal with all cases comprehensively? How could capacity in the system be increased? How efficient is the system? Does the system ensure equality and diversity?

From the perspective of children in the care system, and particularly those who are placed for adoption, the family justice system does not meet the needs of its users, predominantly due to the general delay in dealing with care order and placement order applications. There is also limited knowledge and awareness among many courts and judges about the traumatising effect of abuse and neglect on children's development (in particular their brain development), and the emotional and behavioural difficulties that this causes, and how this impacts on adoptive families.

This lack of awareness and decision-making also leads to inappropriate decision-making for children in care, mainly through the over-insistence on attempts to rehabilitate children with their birth families, despite the mountain of evidence in many cases from the professionals involved that such attempts are doomed to failure and will merely cause further delay and harm. Similarly, court requests for additional assessments of children and their birth parents usually serve only to delay cases, causing harm for children and increasing the financial costs involved for all.

Furthermore, while delay harms children and costs financially, there comes a point for some children where the delay means that their chances of being placed successfully for adoption are significantly reduced. This can be simply because they become too old to be adopted, or their level of needs have increased so much that, if they are adopted, often the result will be a disruption or family breakdown.

In addition, there is the issue of contact between birth and adoptive families, and the over-insistence of some courts and judges to impose direct contact arrangements with family members whom the child has never met. Of course, contact arrangements involve complex issues and considerations, but it is important that such decisions are driven purely by the children's best interests, rather than particular beliefs in the value or otherwise of contact. After all, taken as a whole, the research literature does not support contact or non-contact in

adoption, but instead stresses the importance of approaching cases on an individual basis, in the best interests of the child concerned.

Finally, consistency of decision-making and approaches to case management are clearly vitally important factors for the family justice system. Currently, individual courts and judges can have different philosophies or views on the cases they are hearing, depending upon their understanding, or otherwise, of the impact of their decision-making.

4. Are there areas within the current system where we could adopt a more inquisitorial approach, whereby the court actively investigates the facts of the case as opposed to an adversarial system where the role of the court is primarily that of an adjudicator between each side? What are the options, and advantages and disadvantages, for: Private disputes arising from divorce or separation? Public matters, where the state intervenes to ensure the protection of children?

Adoption UK is not able to comment on private family law disputes, but in relation to public matters, the system would be greatly benefited by a more inquisitorial approach. What currently happens with the legal system is that the children's case becomes a battleground between the birth parents' human rights and the children's human rights, during which the children's best interests are often overlooked. The adversarial nature of the proceedings pits the birth families against the local authority in such a way that any possibility of joint working or cooperation in the long-term interests of the children involved is lost.

Were courts to have a better understanding and awareness of the trauma of abuse and neglect and to act more inquisitorially, then they would be able to reach better judgements (and probably more quickly) that helped to ensure that the long-term interests of children were met. In addition, a more inquisitorial approach would increase the chances of the birth parents/families being involved and engaged both with support services that they would need and with the future contact arrangements between the birth and adoptive families. Closer involvement would also enable better information for the children about the circumstances around their adoption, which would help their life story work and their future identity needs.

5. How far are users able to understand the processes and navigate the family justice system themselves? Are there clear signposts throughout the system? Do users know how and where to access accurate and timely information and advice? Is it readily available? What are the options to support/enable people to resolve these issues without recourse to legal processes?

Both birth and adoptive families are likely to feel very vulnerable during the legal processes within the family justice, for different reasons. What will be common for both families will be the uncertainty over what will be happening to them and the children who are at the heart of the process. From the perspective of adoption families, Adoption UK often hears of limited information and explanations being provided to families about what will be happening and why, particularly where stated plans or timetables change at short notice.

6. How best can we provide greater contact rights to non-resident parents and grandparents?

No Adoption UK response.

7. How effective is alternative dispute resolution (ADR), such as mediation, collaborative law and family group conferencing? What types/models of ADR are more effective and for which circumstances? Does this differ according to cases? How could we improve it and incentivise its use and what safeguards need to be put in place?

Family group conferencing has been shown to be an effective mechanism for planning for children's future. If this has been carried out in public law cases before the family justice system is involved, then there may be opportunities to continue its involvement once the legal processes have begun.

8. To what extent do issues around enforceability of court orders motivate decisions to go to court? To what extent does it affect decisions within and outcomes of cases?

No Adoption UK response.

9. Are there elements of cases which could be considered outside of a court setting and if so by whom? For what type of cases would this be appropriate and what sort of settings might be suitable alternatives? What are the benefits and disadvantages?

In public law cases, issues around contact could be taken out of the remit of the court. As indicated above, contact arrangements can be very complex and will often involve a number of different participants, inputs and practicalities to ensure that they will work and are realistic. An adversarial court system is not the best place for such discussions to be had, especially if a high quality contact plan is to be agreed. A mediation-type context or a family group conference model, might be more appropriate and lead to more robust and realistic contact plans, and ones that will be easier to review.

10. Would adding a triage stage, whereby cases are assessed as to the appropriate course of action, make the system more efficient; i.e. by speeding processes up, ensuring resource could be allocated appropriately etc? In what areas might this be appropriate?

No Adoption UK response.

11. Do you think the Family Justice System is well organised and managed? What are the strengths and weaknesses of the current governance and management structures? Who should take responsibility for the decision-making process? Who should be responsible for the administrative running of the system?

It is hard to comment on this question, as we are not direct users of the family courts system. However, prospective adopters, adoptive parents and social workers regularly report on the unexplained delays to cases involving children in

public care. Whether this is about organisation and management of the court system or a question of resources is unknown.

12. What systems issues are there? eg how could things like IT, filing and administrative processes be improved?

No Adoption UK response.

13. Who should take ownership of cases when they are in the family justice system? Who is the case manager? And at which point do and should they relinquish responsibility?

No Adoption UK response.

14. How can we ensure that there is sufficient and appropriate accountability throughout the system?

No Adoption UK response.

15. How well do different organisations/partners in the family justice system work together to resolve cases? What can be done to improve this?

Not very well at all, if viewed from the perspective of adoptive parents. In the cases that we seen, all too often the processes and outcomes for cases are dependent on the relevant staff involved, and their own subjective views or beliefs in relation to children and families work. It is not unusual to hear of children's guardians and judges who "do not believe in adoption" or in some other course of action, and stick to this view, irrespective of the facts of the case and the interests of the child involved.

There often seem to be conflicts or disagreement between the different parts of the system, and this can only be to the detriment of children.

16. How clear are the different roles and responsibilities of those who are involved in the family justice system (such as the judiciary, legal practitioners, social workers, Cafcass officers, expert witnesses, administrators, Independent Reviewing Officers, court staff)? Are all these roles necessary? How effectively are these roles fulfilled?

See above answer.

17. How well do different organisations/partners communicate and share information (where appropriate)?

See above answer.

18. Where do you think there is scope to make efficiency savings within the family justice system?

Speeding up cases and reducing delay would make massive savings in relation to not only the costs of managing cases, but also in relation to expenditure

within other organisations involved with the family justice systems (eg, social services departments, Cafcass, etc). In addition, speedier decisions/resolution of cases would reduce the harm experienced by children in care, and thus would reduce the social care, health and educational interventions needed later on in children's lives. Again, this would make for massive expenditure savings, not to mention the impact on children's lives. Were children placed more speedily for adoption, then there would be reduced care costs for those children who would otherwise stay in the care system, either permanently or for longer than they should.

There are also short-term and long-term aspects to these savings. The short-term aspects relate to the reductions in the immediate services needed. However, in the longer term, swifter decision-making is likely to reduce the levels of harm experienced by children, which in turn will lead to more successful placements – whether in fostering, special guardianship or adoption. If placements are more successful, then fewer children in or from care will end up in the criminal justice system and/or in prison, or be excluded from school, or have significant mental health needs and children and adults, and so on. The long-term savings to the state would be huge.

19. What improvements to funding arrangements and mechanisms could be made?

No Adoption UK response.

20. Please tell us about your role in the family justice system. What value does this add to the family justice system?

Adoption UK is not directly involved in the family justice system, other than via adoptive parents' involvement in the adoption process. Via our own legal adviser, we do provide information on legal processes, including within the family justice system, to prospective adopters and adoptive parents. This can provide invaluable help and assistance to those parents and prospective parents involved with the legal system.

The working of the public law family justice system is of great interest to Adoption UK and its adoptive families, given the impact it can have on the future lives of their children.

In terms of value, adoptive parents are part of the solution to helping abused and neglected children overcome their early experiences.

21. Where should capacity and capability in the workforce be improved? How?

No Adoption UK response.

22. What qualifications and experience should be required for the different roles of those who work in the family justice system? What should be included in initial training and continuous professional development?

A detailed understanding of the impact of the trauma of abuse and neglect on children's development, and the need for early intervention in children's lives.

23. Are there sufficient performance management and feedback mechanisms throughout the system as a whole?

No. Too many decisions are not made in the best interests of children and there appear to be no or few effective systems to review the performance of some judges and courts, and the quality of their decisions.

24. How could the system be improved to ensure it meets the needs of users and secures positive outcomes for children?

See above answers

25. How can we ensure sufficient protection is afforded to vulnerable adults through the system?

No Adoption UK response.

26. In what types of cases is it important to hear the voice of the child to assist with decision making? How should the child's voice be heard in the family justice system?

In all cases where children's lives are affected.

Children's voices should be heard in private. Recent legislation to open up further the work of the family courts to the public and media is hopelessly misguided. It is obviously important that the workings of the family justice system and its decisions are transparent, but this isn't achieved by allowing the public and media to hear and report on highly private issues – especially in an era when the internet has massively increased the use and distribution of inappropriate or confidential material and information.

27. How effective are Cafcass and CAFCASS Cymru? What should their role and remit be in the future?

Not very effective.

28. What has guided your response to the questions posed above, e.g. personal experience, feedback from the public, specific research or evidence?

Organisational experience and involvement in the Ministry of Justice's policy-making in this area, and feedback/experiences of our membership of adoptive parents.

29. What can be learned from the way in which other sectors work which could be transferred to the family justice system?

No Adoption UK response.

30. Do you know of any good and innovative practice in the UK that the Review Panel should consider? What wider services could be tapped into (especially in the children's sector) to support the family justice system?

No Adoption UK response.

31. Is there anything we can learn from international examples? 31. Is there anything we can learn from international examples?

No Adoption UK response.

32. What question would you have liked us to ask that we haven't posed and what would your response be?

No Adoption UK response.