

## **BARNARDO'S SCOTLAND RESPONSE TO ADOPTION POLICY REVIEW CONSULTATION**

### **Background:**

Barnardo's Scotland provides 62 children's services throughout Scotland, employing 600 staff and assisting over 7000 children, young people and families. The services provided are diverse, covering all age groups from early years through to young adults. Services include working with children's behavioural difficulties, providing educational support, providing family support, assisting families affected by disabilities, HIV, youth offending and homelessness and working with looked after children and those leaving care.

Barnardo's Scottish Adoption Advice Service (SAAS) has for 25 years promoted understanding of the lifetime issues in adoption and encouraged openness and reconciliation amongst the parties to adoption through helping:

- Adopted children and adults to gain an understanding of their adoption and background.
- Birth parents to grieve for the loss of their child and to move on in their lives.
- Adoptive parents with the unique aspects of adoptive parenting in the best interest of the child.
- Professionals in their understanding and practice.

There are also three fostering services run by Barnardo's Scotland which focus on finding permanent places for children and others that arrange short term breaks. Barnardo's offers a specialist service finding carers for some of the hardest to place children. We currently support around 150 foster carers in Scotland.

### **General points:**

**1.** *The Executive welcomes general comments on the recommendations of the Group and the Executive's proposed responses. Views on those recommendations requiring legislation are particularly welcome.*

Barnardo's Scotland generally welcomes the consultation and the recommendations of the Review Group and the resultant Executive position. We appreciate that the Review Group has taken steps to be in touch with practice issues, resulting in a well informed document.

We welcome the proposal to retain adoption as an option when it is in the child's best interests, and believe that there will be occasions when the new Permanence Order will be of benefit. However it is clear that we need good assessment skills to identify the specific interests of each child.

Our main concern lies with the issue of birth parents being able to push for contact following adoption. The defining characteristic of adoption remains the full transfer of parental rights and responsibilities to the adoptive family. Attachment with the adoptive parents must be the priority and whereas evidence suggests that well managed parental and birth family contact can be beneficial to even adopted children (and our SAAS service facilitates contact with birth parents, where appropriate) this should be on a voluntary basis and with the full acceptance of the adoptive parents while the adoptee is a child.

Barnardo's supports the conclusions of a recent report highlighting the need for adequate resources to promote positive outcomes for looked after children and young people- "The Cost of Foster Care: Investing in our Children's Future" by R Tapsfield and F Collier (2005) (BAAF and Fostering Network):

“This report identifies that foster care is in the process of significant change. The demands and expectations on foster carers are rising, the complexity of the fostering task is increasing and as a consequence there are increasing expectations regarding support and training. We are seeking a move from foster care as a voluntary activity to foster carers being identified as members of the child care workforce...Fostering Network and BAAF demonstrate that new investment in the order of £748 million is urgently required to address the recruitment and retention crisis, and provide the high quality care that the children and young people in our public care system so badly need.” (page 3)

Barnardo’s is an organisational member of the Fostering Network, and all our carers are individual members.

*2. The Executive welcomes views on any aspects of adoption and permanence law not covered in the Group’s report which should be reflected in future legislation.*

We believe that accredited agencies working on behalf of birth parents should have access to records. These agencies should be non-profit and subject to inspection.

The current situation where agencies can only assist birth parents and relatives if they have access to the agency record is unfair. Where a record does not exist (eg private adoption) or has been destroyed or lost, we would welcome legislation that would allow release of information to approved agencies.

## **Adoption**

*3. The Executive would welcome views on the appropriate definition of an unmarried (or unregistered) couple for a Scottish court to apply in deciding whether to make a joint adoption order, bearing in mind the Executive’s intention that the court should consider the enduring nature of the relationship. (Recommendations 6 and 7)*

Barnardo’s Scotland agrees that joint adoption should be extended to all unmarried couples, same and opposite sex. This supports the Executive’s position on equality and reflects the reality of the current situation where a child officially adopted by one person can in practice be cared for by the couple. Despite this accumulation of experience, no evidence has been produced to suggest that such arrangements are harmful to children.

There is a risk of stigma for children adopted by same sex couples and some may struggle with a sense of being different. However other children may prefer this solution, for example if they have previously been abused. The matching process will be crucial in finding the right caring environment for each child.

*4. The Executive would welcome views on whether there should be a power for Ministers to make regulations to ensure that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship. (Recommendations 6 and 7)*

The key criteria in determining the eligibility or otherwise of a couple is the stability of the relationship. In order to provide a secure basis for the adopted child, this has to endure over time. While we accept that defining a specific minimum time period is too restricting, the current onus on the couple to evidence commitment has produced a range of measures (including time spent together and making a joint will but also through a range of measures such as joint bank accounts or mortgages) which might usefully be included in guidance to help define “enduring family relationship”.

Barnardo's Scotland believes that clarity in the rules governing adoption and fostering helps in recruiting adoptive and foster parents. We would therefore welcome national guidance standards as to the need for stability and permanence in the relationship.

**5. The Executive would welcome views on:**

*There are other issues raised by the proposal on which the Executive would welcome views:*

- *What other factors should the court take into account in deciding whether an unmarried couple should adopt a child? For example, should the views of birth parents or the child be considered?*
- *Should there be any exceptions or special rules, for example for faith-based adoption agencies?*
- *Should the Executive issue guidance on considerations to be examined in determining the best interests of the child, and what might such considerations be? (Recommendations 6 and 7)*

Barnardo's Scotland believes that parental views should be taken into account, without being allowed to be prescriptive. Adoption is about transferring legality, so the new family must be free to make decisions. However our experience is that it is better for parents to support a placement, as this makes it easier for the child to form attachment to the new adoptive parents.

All assessments should be carried out with the best interests of the child as the paramount consideration. The legislation should allow adoption by unmarried couples, but to allow space for individual conscience, each agency could set its own internal rules about who it is prepared to assess. Legislation would have to put parameters around this and specify the circumstances when internal rules are allowed (eg to conform to an accepted belief system) so that it is not randomly applied. Making these rules explicit in recruitment literature would mean that potential adopters could choose who to approach.

We already have legislation and guidance on taking the child's views into account. While this generally exists in theory, it needs to be reinforced in practice.

**6. The Executive would welcome views on the issues on which parental views should be sought in placing a child for adoption. (Recommendation 11)**

We believe that religion, language and culture are all issues on which views could be sought. Views of children where appropriate should be taken into account regarding these areas.

**Permanence Order**

**7. The Executive would welcome views on the principle and details of the Permanence Order, in particular any practical or procedural issues that might arise from use of the Orders, and how these can best be addressed. (Recommendations 19 – 25)**

Barnardo's Scotland welcomes the proposed Permanence Order and believes that there are occasions where it will provide a useful addition to the current arrangements. Yet while the intentions are good there are questions that remain over the potential for conflicts over where rights and responsibilities will lie in any case. For example, the Permanence Order might give lawyers the scope to create difficulties on behalf of unhappy birth parents.

There are cases where foster parents have been involved in a child's life for a long time yet they still have no say in the child's future. A Permanence Order could give them more rights, so their wishes can't be ignored even if the placement has broken down.

Overall, the simpler the approach the better as the more orders there are then the more time that can potentially be spent in court. More detail is needed on what the new proposals would mean in practice. We would particularly welcome clarification as to the nature and role of Pre-adoption Orders.

**8.** *The Executive would welcome views on the role of the hearing system in Permanence Orders, in particular any practical difficulties that would be raised by the recommendations and further suggestions on how the special arrangements that have been made for children on permanence orders can be recognised by the hearing system. (Recommendations 28 and 29)*

We would support Recommendation 28 rather than 29, ie the majority view. In our experience Children's Panels may at times make decisions, sometimes reversing decisions made at Looked After Reviews or previous panels. These decisions, eg to increase contact with birth family members when the plan is for permanency, may not be in the child's best interests.

### **Support for adoption**

**9.** *The Executive would welcome views on what additional adoption support services might be prescribed. (Recommendations 33 – 36)*

Barnardo's Scotland believes that the support listed in the English regulations is adequate. It is essential that post adoption support is properly resourced.

Barnardo's Scotland believes that it is crucial that help be offered at the point where the adoption order is granted, and subsequently, and families made aware of services at this point.

**10.** *The Executive would welcome views on the recommendation that local authorities should have an adoption support officer within the senior management team. (Recommendation 38)*

Barnardo's Scotland supports this proposal. It allows for the consolidation of necessary knowledge and expertise and highlights the need to give this responsibility to a named contact.

**11.** *The Executive would welcome views on the recommendation that a local authority placing a child for adoption should have responsibility for providing adoption support services to the child and the adoptive family for three years after the adoption order, in particular whether the period of three years is appropriate. (Recommendation 41)*

Barnardo's Scotland supports this proposal as it would give clarity to a situation where there is currently confusion and inconsistency over the provision of support. Consideration should be given as to whether any longer term commitment might be needed, so that the figure of three years should be taken as a minimum.

**12.** *The Executive would welcome views on how widespread any entitlement to adoption support should be – for example, should grandparents and siblings have a right to support – and on what services different groups of people should receive, for example should birth relatives have a right to any services beyond counselling. (Recommendation 42)*

We reiterate that adoption transfers all rights with regard to the child and hence we are wary of any proposal to provide birth parents with rights which go beyond assessment of their personal needs and counselling where needed. Services to those other than birth parents should be discretionary but available throughout Scotland. There should be national guidance, so that birth parents are entitled to an assessment of needs, regardless of the local availability of resources.

The potential role of the independent voluntary sector, where specialist skills have been built up over a long period and which can be particularly helpful as a mediator, should be noted.

### **Improving court rules and avoiding delays**

**13.** *The Executive would welcome views on whether a system of leave to apply to court would be effective in providing the protection from repeated or vexatious applications for children and adoptive families. (Recommendations 26, 51 and 52)*

If birth parents are able to apply for contact then we believe that this measure should be included as a protection against repeated or intrusive applications.

Currently Barnardo's Scottish Adoption Advice Service (SAAS) arranges contact on a voluntary basis. This minimises the intrusion into the life of adoptive families. We are concerned that if requests for contact from birth families enter the court arena, it will have implications on the discretionary facilitation of contact by agencies such as SAAS. We also have concerns that such changes could also make it harder for the birth parent to face the reality and grieve the loss of the child. Also, how would the child's view be considered and what might the implications for the placement be?

**14.** *The Executive would also welcome views on whether other statutory measures would make the system of leave a more effective safeguard. For example:*

- *Should the legislation require the applicant to produce new evidence, or evidence of a significant change in circumstances to support an application for leave?*
  - *Should there be a minimum period between new applications for leave in respect of the same child?*
- (Recommendations 26, 51 and 52)*

The issue of birth parents being allowed to ask for contact is a contentious one. Our SAAS service already facilitates such contact on a voluntary basis and we are concerned that new legislation should not limit this delicate work. The courts cannot substitute for the role that the voluntary sector can play here.

The need for parental and birth family contact for children adopted or in permanent placements needs to be carefully considered, taking into account the views of all concerned including adoptive families and long-term carers. Primary consideration should be given to what is in the long-term best interests of children and young people; their views and potential future needs as well as the impact on their care and support system and networks. Where necessary independent views/assessments, mediation and use of neutral venues (such as those provided by voluntary organisations) should be considered.

Barnardo's Scotland agrees with both of these suggestions. If the adopter is not in agreement with contact then it is hard to see how contact can be considered to be in the best interests of the child. The onus should therefore be on the applicant to justify their case.

**15.** *The Executive would welcome views on whether legislation should limit the circumstances in which an applicant could seek information about an adopted child in support of an application to court. (Recommendations 26, 51 and 52)*

We are sympathetic to the needs of the birth relatives, but we believe that an informal approach to the adoptive family for information as to the child's health and progress is better than an approach via court. A sensitive worker is then able to balance the needs of the different parties whilst maintaining the best interests of the child.

### **Curators, reporting officers and safeguarders**

**16.** *The Executive would welcome views on the recommendation that there should be a centralised national system to appoint and train curators, reporting officers, and safeguarders from which individual case appointments are made locally. (Recommendation 61)*

Barnardo's Scotland agrees with this recommendation, which will help to guarantee the highest standards in decision making.

### **Role of the children's hearing system in permanence cases**

**17.** *The Executive would welcome views on the stage in permanence planning at which there should be a statutory requirement on the local authority to inform the children's hearing of its intention. The Executive would also welcome views on the steps to be followed after the hearing is informed of the local authority's intention, for example the model currently used when a decision is taken to place a child for adoption. (Recommendations 62 – 71)*

It makes sense to inform the Hearing when a permanency decision has been taken by the agency decision maker, following a recommendation from the local authority permanence panel. That is the point we currently use as an indicator of when permanence is the firm option for the child.

### **Fostering issues**

**18.** *The Executive would welcome views on the options for a national scale of fostering allowances. (Recommendation 76)*

There is already a national scale produced by the Fostering Network. Barnardo's Scotland supports the adoption of this framework.

We believe that fees for being a foster carer, which can be considered as "wages", should be at least equitable to those of residential workers and should allow fostering to be a full-time occupation. The continuing professionalisation of foster care brings with it a need for increased training. Barnardo's Scotland supports the principle of a national pay level so that foster services have to attract carers on the level of support they provide (e.g. training, babysitting...) rather than the amount they pay.

**19.** *The Executive would welcome views on the proposed working group on private fostering, and what the remit of such a group might be. (Recommendation 85)*

We do not have any specific points to make at this time.

### **Procedures within local authorities and agencies**

**20.** The Executive would welcome views on the detailed proposals of the Group on local authority and adoption agency procedures, particularly on the issue of independent appeals and complaints. (Recommendations 88 – 99)

Barnardo's Scotland generally agrees with the recommendations set out in the report.

### **Access to information**

**21.** The Executive would welcome views on the proposal that medical information about birth parents and families should be shared, without consent, to plan properly for a child. Particular issues include: what sort of information could be shared; who could have access to the information; and whether any information should be communicated to the adopted person or the adoptive parents. (Recommendations 103 – 106)

The medical information pertaining to the child belongs to the child so the child, or those caring for the child, should not be denied access. The communication of medical information should be carried out by medical establishment using the usual medical procedures. Adoption should not stop information being shared so should not impact on how far back consideration goes.