



# **Office of the Children's Commissioner's response to the Department for Education consultation**

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## **Adoption: Getting It Right, Making It Work**

**April 2014**

## About the Office of the Children's Commissioner

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the OCC to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those receiving social care services. The Bill also allows us to provide advice and assistance to and to represent these children.

### ***Our vision***

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

### ***Our mission***

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

## The United Nations Convention on the Rights of the

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## Child

The UK Government ratified the United Nations Convention on the Rights of the Child (UNCRC) in 1991.<sup>1</sup> This is the most widely ratified international human rights treaty, setting out what all children and young people need to be happy and healthy. While the Convention is not incorporated into national law, it still has the status of a binding international treaty. By agreeing to the UNCRC the Government has committed itself to promoting and protecting children's rights by all means available to it.

The legislation governing the operation of the Office of the Children's Commissioner requires us to have regard to the Convention in all our activities. Following an independent review of our office in 2010 we are working to promote and protect children's rights in the spirit of the recommendations made in the Dunford report and accepted by the Secretary of State.

In relation to the current consultation, the Articles of the Convention which are most relevant to this area of policy are:

- Article 3**                      The best interests of the child must be a top priority in all actions concerning children
- Article 7**                      Every child has the right to a legally registered name and nationality, as well as the right to know and, as far as possible, to be cared for by their parents
- Article 8**                      Governments must respect and protect a child's identity and prevent their name, nationality or family relationships from being changed unlawfully. If a child has been illegally denied part of their identity, governments must act quickly to protect and assist the child to re-establish their identity
- Article 9**                      Children must not be separated from their parents unless it is in the best interests of the child (for example, in cases of abuse or neglect). A child must be given the chance to express their views when decisions about parental responsibilities are being made. Every child has the right to stay in contact with both parents, unless this might harm them
- Article 12**                     Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

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<sup>1</sup> You can view the full text of the United Nations Convention on the Rights of the Child on the Office of the United Nations High Commissioner for Human Rights website at: <http://www2.ohchr.org/english/law/crc.htm>. A summary version, produced by UNICEF, is available at: [http://www.unicef.org/crc/files/Rights\\_overview.pdf](http://www.unicef.org/crc/files/Rights_overview.pdf)  
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- Article 16** Every child has the right to privacy. The law should protect the child's private, family and home life.
- Article 20** If a child cannot be looked after by their family, governments must make sure that they are looked after properly by people who respect the child's religion, culture and language.
- Article 21** If a child is adopted, the first concern must be what is best for the child. The same protection and standards should apply whether the child is adopted in the country where they were born or in another country.
- Article 30** Every child has the right to learn and use the language, customs and religion of their family whether or not these are shared by the majority of the people in the country where they live.
- Article 39** Children neglected, abused, exploited, tortured or who are victims of war must receive special help to help them recover their health, dignity and self-respect.

The response below has therefore been drafted with these Articles in mind. We do not propose to respond separately to every consultation question. Rather, we will respond where we feel the UNCRC gives us a locus to do so, and where our existing evidence base gives us a perspective. Throughout, we use the same section headings as in the consultation document.

# OCC response to Adoption: Getting It Right, Making It Work

## Introduction

The consultation seeks views on amendments to statutory guidance and Regulations about: fostering for adoption; consideration of ethnicity when matching children with prospective adopters; placing siblings with an adoptive family; information to be provided about adoption support, the Adoption and Children Act Register and contact in respect of children in care and adopted children. The consultation also concerns the revision to the second outcome in standard 13 of the adoption National Minimum Standards and the revamped statutory adoption guidance.

OCC carried out a Child Rights Impact Assessment of the Children and Families Bill (Parts 1–3) and gave evidence to the Lords Select Committee on Adoption Legislation as part of the pre-legislative scrutiny process. In that we commented upon the issues we considered important concerning fostering for adoption. We would like to suggest that the proposals in the submission from the Family Rights Group and BAAF in response to questions 1–3 are considered most seriously in the follow up to this consultation.

We propose to comment only on four areas of this consultation and will refer to points made in other submissions which have been shared with us.

## Ethnicity and placement decisions: Question at 4.14

While we understand that the separate requirement in the Adoption and Children Act 2002 to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when placing a child for adoption was removed on the basis that this was seen to delay adoption placement, we remain concerned that these important considerations be given careful consideration in addressing all the needs of the child while planning and preparation is in progress.

Article 8 of the UNCRC focuses on the importance of a child's right to preserve his or her identity. This is complemented by Article 20, which specifically provides that where a child cannot be allowed to remain in his or her family environment in his or her own best interests, due regard shall be paid to:

*...the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

Further, Article 30 provides that a child belonging to an ethnic, religious or linguistic minority:

*...shall not be denied the right, in community with other members of his*

*or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*

While the paramount consideration in each case remains the child's best interests (as required by Article 21), the requirement to give due regard to these considerations underlines their importance as part of the best interests assessment. We therefore make the following suggestions.

- That the consideration of the child's ethnic, religious and cultural background is specifically mentioned in guidance as part of a list of matters to which regard should be had in decision-making on placement. This would relate to Section 1(4)(d) of the Adoption and Children Act 2002 ('the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant').
- That prospective adopters are not just trained to assist the child in understanding their heritage and helping them to deal with racism, but also that they undertake to support the child's developing understanding of their identity, for example by making links with those with a similar heritage and in providing opportunities to learn the language of their birth family members. They also need to be advised so that they understand the importance of positively valuing their child's heritage. At present the draft guidance is inadequate in making clear the importance of this. Its references to 'challenges' and to 'coming to terms with difference' (p.10) emphasise potential problems but do not include the need for a positive approach which embraces the child's heritage.

### **Sibling placement: Question at 4.19**

Article 8 of the UNCRC underlines that a child's 'family relations' are a constituent part of his or her identity. This goes beyond the right protected by Article 7 to know who one's parents are and includes sibling relationships.

The best interests of each child must be the focus on decision making on placement. However, we do not think it is inconsistent with this to have the presumption that siblings should be placed together. There will be children whose needs are such they are best placed separately, while contact is retained and carefully supported. However, we believe that the significance to children of sibling relationships – likely to be the most long-lasting in a child's life – is such that very careful justification should be made of any decision to separate them. These are very difficult decisions, and the assessment and decision making requires knowledge and professional judgement of a high order. The significance which children themselves place on sibling relationships has been reported upon by the Children's Rights Director, as has the experience of losing contact following separation<sup>2</sup>. The views and experiences of the children concerned are central to this decision making, in

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<sup>2</sup> See Morgan, R. (2014) The Children's Views Digest  
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line with Article 12 of the UNCRC.

We concur with the position on this issue presented in the response to this consultation from the Family Rights Group and BAAF. We consider this to be in line with the UNCRC.

We therefore urge that the presumption should be that siblings are placed together unless this is contrary to the best interests of one or both children and that their views, where possible, or an understanding of their experience, are taken into account in making these decisions.

### **The Adoption and Children Act Register: Question at 4.37**

We welcome the emphasis on the importance of the safety and privacy of children in the operation of the Register and would wish this to be very carefully considered as the pilot is established. It is essential to broaden opportunities for children to be adopted but also vital that this is done with due regard to their rights to privacy under Article 16 of the UNCRC.

### **Contact post adoption: Question at 4.44**

In post-adoption contact decisions the best interests of the child (which may change over time) should be paramount. The child's views should also be given due weight in accordance with Article 12 of the UNCRC.

In framing guidance on the child's access to contact orders under 51A of the Adoption and Children Act 2002, we consider it essential that support, legal advice or advocacy is made available to children so that they can utilise this right. It may be that children will wish to retain or resurrect contact with siblings in particular, or other relatives, and that the adoptive parents will not pursue this on their behalf.

The research which is relevant to this issue, and more so perhaps than that quoted in the present consultation, is the follow up study by Neil, E. Beek, M. and Ward, E. (2014) *Contact After Adoption: A follow up in late adolescence*. Centre for Research on Children & Families/University of East Anglia.

### **Office of the Children's Commissioner April 2014**

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