

SECTION TEN

Non Agency Adoption

Overview

This procedure relates to all adoptions where the Local Authority and Adoption Tees Valley do not have a role in placing the child for adoption.

These include:

- Partner adoptions, previously known as “step parent” adoptions
- Adoptions by anyone who has had care of the child, for any 3 year period in the last 5 years.
- Local Authority foster carers who are proceeding to adopt the child, who has been in their care for over 12 months, and for whom the Local Authority does not support the plan for adoption. This may include circumstances where Adoption Tees Valley has not concluded an adoption assessment with a positive decision on suitability to adopt.

The procedure applies to those living within the area of the Regional Adoption Agency area of Tees Valley.

This procedure does not include intercountry adoption, where an applicant is proposing to adopt a child from outside of the UK.

Relevant Legislation

Primary Legislation

- The Children Act 1989
- Adoption and Children Act 2002

Secondary Legislation

Restriction on the Preparation of Adoption Reports Regulations 2005

Adoption Support Services Regulations 2005

Family Procedure Rules 2010

Statutory Guidance:

- Court and Pre Proceedings Statutory Guidance for Local Authorities (DfE: April 2014)
- Statutory Guidance on Adoption For local authorities, voluntary adoption agencies and adoption support agencies (DfE: 2013)

Related procedures: [Recruitment and Assessment of Prospective Adopters; Guidance for Assessment of Foster Carers](#) are held within different sections of ATV policies and procedures.

Scope of this Procedure

Application

This procedure only applies to children who are under the age of 18 at the time of application as per sec.49 of the Adoption and Children Act 2002.

On receipt of notification by the person wishing to adopt, and except in a case where the applicant is a close relative, e.g. Parent/Aunt/Uncle, where the child lives with birth parent and partner or where there is a Special Guardianship Order or Child Arrangement Order, or any other Order which confers parental responsibility on the applicant for the child, the child will have the status of a Privately Fostered child, until an Adoption Order is made. A privately fostered child is a person under the age of 16 (or, if disabled, under the age of 18) and who is cared for, and provided for accommodation in their own home, by someone other than their parent; or a person not a parent but with parental responsibility; or a relative; and who is caring/providing accommodation for less than 28 days and does not intend to do so for any longer. Relative means a grandparent, brother, sister, uncle or aunt (whether full blood or half blood) or by marriage or civil partnership or step-parent.

1. Partner Adoption.

Partner Adoptions are those circumstances where an adult partner who is not a birth parent, but who has lived with the child and one birth parent for a period not less than 6 months, wishes to formally adopt the child. The adoption has the legal effect of dispensing with the parental responsibility of the non-resident birth parent and giving legal and permanent parental responsibility to the partner of the child to be adopted, in addition to continuing the parental responsibility of the birth parent with whom the child lives.

This legal non-agency adoption is a significant legal measure and should be considered carefully by those wishing to undertake the adoption. It confers on both the parent and partner legal responsibility for the child, including all financial and other parental duties and responsibilities.

Investigation and assessment for a partner adoption will be undertaken by Adoption Tees Valley (ATV). The preparation of a report on a non-agency adoption case will require compliance with the Restriction on Preparation of Adoption Reports Regulations 2005. In some cases, ATV may refer the assessment to another social worker, who will be supervised by a suitably qualified and experienced social worker/manager within ATV.

Before making an application to adopt, the birth parent with whom the child lives, and their partner should carefully consider the impact of the adoption, on the child, and themselves. The birth parent and partner should consider matters around informing the non-resident birth parent about their intention to adopt. This will be further

discussed with a social worker from ATV. They will also be asked to provide the address and known wishes and views of the non-resident birth parent to ATV, where it is possible.

This applies to a birth parent, whether or not they have parental responsibility.

1.1 Enquiry

Those wishing to undertake an investigation/assessment for a partner adoption can make enquiry to ATV via telephone on 01642 526400, or through the agency e mail at info@adoptionteesvalley.org.uk or through the agency website on Request a Call Back

The duty worker will take details, and a record of the enquiry will be made.

The enquiry will be forwarded to the ATV social worker with lead responsibility for Non-Agency Adoptions, or a social worker delegated with this responsibility.

Initial Conversation:

The initial details to be considered and recorded on the case record are:

- Circumstances of the child, and family now.
- Whether the partner has been living with the child and birth parent for more than 6 months, and for how long.
- Why the parent and partner wish to consider adoption
- Whether other orders have been considered such as Child Arrangements Order, or Parental Responsibility Order
- Contact arrangements and plans
- Lifelong implications of adoption
- The position of extended family members, and anyone else with Parental responsibility
- Whether there has been any involvement with Children's Services.
- Inheritance and financial issues

The social worker will provide information about the lesser order principle, i.e. that Courts are required to consider the least order necessary.

Enquirers are informed that some factors would make it difficult to make a positive recommendation to court by Adoption Tees Valley where:

- The child has a relationship with the non-residing birth parent and has ongoing contact.
- The applicant has not been in a relationship with the residing birth parent for at least 6 months. As this is a short period of time consideration needs to be given to how the stability and longevity of the relationship can be evidenced, as well as the motivation to adopt the child. We cannot positively support an application where there are concerns about relationship stability e.g. periods of separation.

- There is no plan in place to inform a child that they are adopted, or if the child is of an age and understanding where they express the view that they do not want to be adopted.
- The residing birth parent does not agree to their partner adopting his/her child.
- The applicant has been convicted of criminal offences that may prevent him/her from adopting. The court will exercise its discretion after taking the offence into account.
- The applicant has children from previous relationships that he/she has not parented for safeguarding reasons (will require more detailed understanding of the current circumstances).

In any of the above circumstances, should the applicant confirm their wish to proceed with the application, the social worker will present to court a report and court will determine whether to make an adoption order, based on whether the granting of an order would be in the best interests of the child. If a parent's consent is required to be dispensed with, in order to make an adoption order, it can only do so if it is necessary and proportionate to do so to secure the child's welfare.

The social worker will detail to the enquirer all information about the assessment process, including checks and references required, and that the views of the non-resident parent will be sought, and form part of the assessment/investigation. The Court will not lightly dispense with the parental responsibility of a non-resident parent, and the assessment will need to demonstrate the investigation of circumstances, and views of the non-resident parent.

Taking account of the information provided, where the partner living with the birth parent, wishes to give notice of intention to adopt, they must do so in writing, and at least 3 months prior to the application to adopt. The notice must be given not more than two years, or less than three months, before the date on which the application for the adoption order is made. Where time has lapsed between the initial notice of intention to adopt, and the commencement of the assessment, renewal of notice of intention to adopt will be required.

The effect of formal notification of intention to adopt is that there are restrictions to the right of a birth parent and others to remove a child from the care of people who have applied, or in some cases have given notice of intention to apply, for an adoption order without leave of the court. These do not prevent the removal of the child under child protection provisions by a Local Authority, or by an authorised person. The notice of intention expires after 2 years if no application to adopt is made.

Where there is delay, and no application is lodged, the parent and partner may be asked to clarify their intentions. If no response is received, it will be assumed notification is withdrawn, and this will be recorded on the case record.

1.2 Initial Visit – Counselling

The initial visit and counselling will be made by a qualified and experienced social worker in ATV, with experience of non-agency adoptions, or a social worker who is supervised by a manager with experience in this area.

Counselling will include:

- Information about the effect of an adoption order
- Details of other orders available
- Information that the court will expect to know why the family see adoption as the only order, and why this is most appropriate.
- The wishes and feelings of the child.
- Details of alternative means by which a parent or person may acquire parental responsibility, including where the applicants are married or are in a civil partnership.
- The purpose of counselling is to ensure that nature and implications of adoption are fully understood by the child, the prospective adopters and the birth parents.
- Details of the assessment, including that full personal and family details will be required for the Court Report (Annex A report).
- Consideration of the impact of the order, and information which will be gathered from others with parental responsibility, or who have a role in the child's life.
- Consideration of future contact between the child and their non-resident birth parent, including future identity needs of the child, and their potential changing wishes in respect of contact as they grow up.
- Possible other legal orders which may be required in the event of a dispute in respect of contact.
- Whether the enquirer is a British citizen and/or have been ordinarily resident in the British Isles for at least one year. If not s/he should be advised to seek legal advice before proceeding any further as this is likely to have a bearing on how any adoption order application they make will be dealt with.

Where following discussion, the applicants confirm that they wish to proceed with their application, the social worker will make a plan with the applicants for the completion of the investigation/assessment, including timescales, and all requirements expected.

1.3 Assessment

The assessment will require consent for the following checks and references to be undertaken:

- DBS on the partner proposing to apply to adopt, and any other non-related member of the household who is over age 18.

Applicants are encouraged to be open about criminal history, and any prior offences, however, these do not rule out applications in most cases. Prohibited offences will make it difficult to make a positive recommendation from ATV and should the applicant

confirm their wish to proceed with the application, the social worker will present to court a report and court will determine whether to make an adoption order based on whether the granting of an order would be in the best interests of the child.

Where applicants have spent considerable time abroad, there may be a requirement to consider foreign police checks or a Certificate of Good Conduct, requested from the relevant Embassy.

- Local Authority checks on the residence where the applicants live, and where each partner has lived within the last 10 years.
- 3 personal referees will be requested, with at least 2 of these being nonfamily members. Referees should have known applicants for some time and be able to comment on the stability of the relationship, the relationships with the child whom they propose to adopt, and any other relevant family details, and relationships, including where possible, information on the non-resident birth parent, and any other extended family members, and their relationship to the child. Please also see Adoption Statutory Guidance (2013) 8.69.
- Where the child is of school age, or in nursery, a reference will be sought from the education setting.
- Where there is a previous partner of the applicant and any adult children, questionnaires will be sent to them.
- Employer of the applicant
- Medical reports on the adults are not required unless a particular health issue is identified. A medical report is not required in respect of the child for a partner adoption.

All references form part of safeguarding duties to the child and should be robust and thorough. The assessment will evaluate the information provided to the agency through checks and take account in providing a report to the Court.

Personal references are confidential, and will not be made available to the applicant, other than with consent of the referee.

The social worker must undertake as follows in the assessment:

1. See each adult- the birth parent with whom the child lives, and his/her partner proposing to adopt separately, at least once, to establish any issues, concerns, wishes and feelings regarding the proposed adoption.
2. See the child separately, if age appropriate and ascertain their wishes and feelings regarding the proposed adoption, including that they understand the impact of adoption, appropriate to their age.
3. See the child within the family and assess how well they are assimilated, and relationships with both their birth parent, and the partner.
4. Details of the applicant's relationship together, including any marriage, dates and where married. The stability of the relationship should be assessed, as part of forming an overall opinion on suitability to adopt the child.

5. See other family members including with the child, where relevant and appropriate.
6. Meet referees in person, away from the family home.
7. Ensure that information is obtained about how the child came to live with them together, and that this is backed up with evidence, including from referees.
8. Meet the non-resident birth parent, and gain their views on the proposed adoption, including giving an understanding of the legal and lifelong implications of an adoption order. Ensure the non-resident birth parent is aware of the need to provide consent to the adoption, or their rights and following procedures if they do not consent. It is not the role of ATV to gather consent. This will be undertaken by the Court Reporting Officer.
9. Where the non-resident birth parent indicates they are not satisfied, or that they wish to oppose, they should be advised to seek legal advice, and provided with information about how to seek a local solicitor. NB ATV does not pay for legal advice to parents in non-agency adoptions.
10. Ensure that the non-resident birth parent has full information about the adoption and is provided with counselling about this.
11. Meet any other person with parental responsibility, to understand their relationship with the child, and the impact of the order. Provide counselling to any other person with PR, in relation to the proposed adoption.
12. Meet wider family, who have an interest in the child's future and welfare and are special to the child.

1.4 Where the non-resident birth parent's whereabouts are unknown

As detailed above, it is the responsibility of the parent living with the child to give to the social worker details of the address and views of the non-resident birth parent, where possible. They must use normal channels of enquiry to provide these details, including family networks where possible.

When the application is submitted to Court, where the address and whereabouts of the birth parent are not known, the Court will direct a DWP search, which will identify the address and whereabouts. This will be provided to ATV, to make further enquiries. There is no duty on ATV to trace an absent parent.

1.5 Recording and supervision of the assessment

A record of counselling provided must be held on the case record.

The outcome of all checks must be recorded on the file of the adult to whom they relate.

A record of the assessment must be made, detailing the information above. In particular, evaluation of information and assessment of the suitability of the applicants to adopt the child, in order that a recommendation can be made to the Court.

The case should be supervised by a suitably experienced manager, and in each supervision consideration given to the seeking of legal advice (*ZH v HS & Others* (

Application to Revoke Adoption Order: Procedure in Non-Agency Adoption Placement) 2019) . Supervisions should be recorded on the file, and reference to consideration of legal advice.

The final Court Report, the Annex A report, must be signed by the Manager who has supervised the case.

The Annex A report should be shared with the applicants only. The social worker is responsible for redacting all information which should not be shared with the applicants, and for which consent has not been provided. The sharing is for the purposes of confirming factual information only.

1.6 Court and Preparation of the Annex A Report

After 3 months following initial notification of intention to adopt the applicant may make application to the Court, using form A58.

The applicant will be responsible for court fees.

Applicants are advised to work together with ATV in timing of submission, to ensure that the Annex A assessment is completed.

The application is submitted in triplicate with the long birth certificate of the child and 2 forms of photographic ID.

If the application is likely to be contested, the social worker will liaise with the applicant (and where applicable the applicant's solicitor) regarding timings and submission of application form and reports.

Where possible the Annex A report (3 copies) should be submitted at the same time as the application. However, in most cases the Court will request that the Annex A report is filed 6 weeks from the date of application.

1.7 CAFCASS

The Court will appoint a Court Reporting Officer to the case, who will be independent of the court and the agency.

The role of CAFCASS Court reporting officer is to gain consent of the birth parent/s.

The reporting officer may appoint a solicitor for the child.

The ATV social worker should attend court.

1.8 Applications by local authority foster carers

It should not normally arise that a local authority foster carer gives formal notice of intention to apply to adopt without this issue having previously been discussed with the local authority. If the issue is raised, the local authority must give it serious consideration and, in its role as an adoption agency, ensure that the foster carer is offered information and counselling, where the agency considers it necessary under AAR 24. If adoption is already the plan for the child, and the local authority considers

that the foster carer may be suitable to be approved as an adoptive parent, the foster carer can be assessed using the fast-track procedure ([See Recruitment and Assessment of Prospective Adopters procedure; Guidance for Assessment of Foster Carers](#)) . It is not usually appropriate to leave it to the foster carer to make a 'non-agency' adoption application. There will be cases where the local authority is clear that it considers it inappropriate to pursue the foster carer's interest in adopting the child. In such a case, the Local Authority must respond promptly to the foster carer explaining the reasons for their views and ensure that the carer has access to their own independent legal advice. See, for example, the case of *Re A, TL v Coventry City Council* [2007] EWCA Civ 1383. A failure to take the foster carer's representations seriously may lead to a risk of delay to a placement with other prospective adopters when they are identified.

If a foster carer gives notice of intention to apply to adopt a child whom the local authority is not authorised to place for adoption, it will be necessary immediately to consider the plan for the child and to ascertain the child's and birth parent's wishes and feelings. If the local authority considers that adoption may be appropriate, it will need to follow the procedure set out in Part 2 of the Adoption Agencies Regulations (AAR 2005 8.55). Because of the time needed to complete the procedures under the AAR, it may be that the three months period of notice of intention will expire before the agency has reached its own determination, and the foster carer may have issued their adoption application before the local authority has been able to issue a placement order application. The local authority will need to consider all the circumstances, including the age of the child, and the degree of parental opposition (if any) to the adoption, in deciding the most appropriate course of action. Even if the local authority issues a placement order application before the foster carer's adoption application has been heard, it would be open to the court to adjourn the placement order application and proceed to hear the foster carer's adoption application. In this case the foster carer's application will still technically be a non-agency one. It should be borne in mind, however, that for the purposes of adoption support, the child in these circumstances falls within the definition of an 'agency adoptive child' unless the local authority opposes the application, see Adoption Support Services Regulations (2005) 2.1. Alternatively, the court may adjourn the foster carer's adoption application and hear the placement order application first so that, if the placement order is granted, the foster carer's adoption application can proceed as an agency application

2. Adoption by Others

This circumstance is where anyone who has had care of a child for 3 years out of the previous 5 years and is not a birth parent or foster carer of the child and is proposing to adopt.

This may be a relative, or friend, or a private foster carer.

It may include a child freely “given” to the applicant. If this is prior to, or soon after the birth of the child, adoption without the leave of the court is not possible.

In all cases the enquirer should be directed to a family solicitor.

Where the child has been in a private fostering arrangement, for at least 3 years, the carer(s) may make an adoption application if they have given notice to the Local Authority, who will direct them to Adoption Tees Valley.

In these circumstances the Local Authority will have knowledge of the family, and of the circumstances of the case.

If the family has not complied with private fostering arrangements, ATV will notify the Local Authority (private fostering team) and will share this information with the family.

It is a legal requirement for the family to notify of a private fostering arrangement and this should be taken into account when considering the suitability of the person to adopt.

If the family come under the private fostering regulations, but are not known to the LA, they should be referred immediately, and assessment and monitoring processes complied with alongside the adoption process.

In these cases, the role of the ATV social worker is to ensure that all parties know of the legal, emotional and financial implications of an adoption order, including the prospective adopter, the birth parents, and the child, and anyone else with PR.

2.1 Enquiry

The same process applies as in 1.1 above, with the following changes:

- The applicant is the carer of the child who wishes to adopt that child.
- The views of both non-resident birth parents will be sought.
- Consideration should be given as to whether this child is, or should come under private fostering regulations, and the relevant Local Authority notified.

2.2 Initial Visit and Counselling

The same process applies as in 1.2 above.

Sufficient time should be allowed to enable the applicant to consider the lifelong implications of adoption.

In this case, Special Guardianship and Child Arrangements Orders should be discussed and considered.

The importance of social work involvement and assessment should be explained.

Dependent on the relationship of the prospective adopter to the child, the impact of the adoption order should be fully explained on all concerned, for example, if a family member is applying to adopt.

The social worker should obtain information as to whether the applicant has notified the birth parents of their intention to adopt, and further discussion around this decision will need to be understood.

The family should be guided to seek legal advice.

The social worker will advise the applicant of all required checks and references, as in 1.2 above. In these cases, measures to obtain information about the whereabouts of both birth parents may be required.

2.3 Assessment

The social worker should have a case supervision with the Team Manager, where consideration to legal advice is considered.

Consideration to the circumstances of the child, and referral to the local Authority to inform of the child's circumstances, possible consideration under private fostering regulations, and a check on whether known to the Local Authority should have been considered and recorded on the case record.

The assessment should consider all aspects in 1.3 above.

In addition:

Health Reports

Health reports are required in cases on non-agency adoptions by those other than a case where the child will continue to live with one birth parent.

The prospective adopters will require a medical report on themselves, which can be obtained from their GP. The report should be completed using the Coram BAAF form AH1. The cost of the GP report will be met by the prospective adopter. This will accompany their application for the adoption order to the Court.

The carers will also arrange for the child to have a medical with their GP, and for a report to be produced which will accompany the application. The cost of the GP health report will be met by the prospective adopter.

The social worker should attempt to obtain medical information on the birth parents, and where possible a neo natal report on the child, where the child is under 5 years old.

Birth parent consent will be required to provide details of their health and should be obtained using form PH in conjunction with the birth parent.

All medical reports-

- Those on the prospective adopters
- Those on the child

Should be provided to the Court by the applicant

Where birth parent health reports or information is obtained this will be provided to the Court by the social worker.

The Medical Advisor to the Adoption Agency will be asked to provide a summary of the health of the child and applicant(s), and of any relevant birth parent health information.

The assessment procedure is as set out in 1.3 above.

2.4 Whereabouts of parents

The procedure applies as in 1.4 above, in respect of each of the birth parents.

2.5 Recording and Supervision of the assessment

As in 1.5 above.

2.6 Court and Preparation of the Annex A Report

As in 1.6 above.

2.7 CAFCASS

As in 1.7 above.

