Association of **Lawyers for Children**

Promoting justice for children and young people

Consultation response:

Public Law Working Group interim report: Recommendations for Best Practice in Respect of Adoption

Response dated 30 November 2023

Response of the Association of Lawyers for Children

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The Association of Lawyers for Children (hereafter “ALC”) is a national association of lawyers working in the field of children law. It has over 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years’ experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office. The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:

i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice.
ii. lobbying against the diminution of such mechanisms.
iii. campaigning and advocating on against any form of discrimination which may affect children within the family justice system.
iv. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health, and development of children.
v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people.
vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
vii. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes this opportunity to provide its views in respect of this consultation.

Chapter 1: Adoption and contact

The ALC has noted the three-stage process recommended and is supportive of this. As to the specific recommendations:

General recommendations

53.There needs to be a sea change in the approach to the question of face-to-face contact between the adopted child and the birth family or other significant individuals.

The ALC is very much in favour of the premise that post-adoption contact must be fulfilling, and child focussed. The ALC is concerned by what appears to be the "standardised" current approach to post-adoption contact, that being that a birth parent should have only letterbox contact, with very little consideration to that specific family. This recommendation is therefore welcomed.

54.There should be consistent training for prospective adopters throughout England and Wales.

The ALC fully supports this recommendation and agrees that training prospective adopters is vital to ensure any post-adoption contact is accepted and promoted throughout the child's life.

55.There should be on-going training for social work practitioners and lawyers as to the benefits of open adoption.

The ALC agrees that no real shift in thinking will be achieved without training professionals across the board. It would seem prudent to engage with local FJBs to arrange consistent training in DFJ areas. Joint training of social work teams, lawyers and judges within local areas would encourage a consistency of approach and would be more likely to lead to change. Where local areas have more than one LA within a court, a "lead" professional should be considered within local areas (for example one LA lawyer per area), to ensure that any updated research and policy is cascaded quickly to all within that area, summarising any salient points.

There needs to be better communication between LAs and their adoption agency as, anecdotally, since regionalisation of adoption removed this duty from the LA themselves, communication is less easy. The training should be delivered across the

board as a joint piece of work, and it must be reiterated that the workers identifying the families must have direct contact with the allocated social worker for the child. An agreed narrative about contact could be prepared relating to consistency of attendance and quality of contact throughout the proceedings.

56. Birth parents should be signposted to independent support which can provide support workers to enable birth parents to understand how they can continue to be involved in their child's life through different types of contact as soon as adoption is identified as a possible outcome.

The ALC supports this recommendation.

59.Consideration should be given to a best practice guidance which deals specifically with the approach of practitioners to post adoption contact and encompasses the recommendations set out below.

A best practice document would be welcomed by the ALC as this contributes to consistency of approach and better practice in this area.

Recommendations pre-proceedings

60. Identification of those persons who are/may be important to a child should be undertaken at the Family Group Conference and during any pre-proceedings kinship assessment stage.

The ALC is supportive of this recommendation, which would be easily implemented and yet prove invaluable the child's long term care plan. This will require a shift in thinking which will require particular emphasis in any training programme.

61.When preparing the MANDATORY Genogram for the SWET there should be an eco-map for 'important relationships'.

The ALC supports this recommendation; training will be important to this point. Social work professionals are often focussed on "family" as opposed to significant people. For a true and real shift, less emphasis on the term "genogram" is required, and a renewed focus on a "child's network eco-map" which would include familial relationships but also wider ties.

62.There should be specific guidance as to the prospective roles of child protection social workers and adoption social workers including a clear expectation of when they will begin liaising.

The ALC is keen to ensure good and positive progression in this area, however this recommendation requires some care in implementation. The ALC would be concerned that any liaison would need to be shared with the birth parents at a time when, perhaps, adoption proceedings have not been considered necessary and, ideally, parties are working towards positive change for the parents to enable them to better parent their children. LAs spend great periods of time in pre-proceedings explaining to parents that this is a period of assessment and change, and very early liaison would seem to be contrary to that. The ALC is also of the view that as parallel planning cannot truly take place until proceedings are issued (if adoption is being considered), no time is saved by this recommendation. It would seem better placed at point of issuing proceedings and the LA would bring confirmation of the liaison to the court prior to the CMH.

Recommendations for practice during proceedings

63.The full range of contact options (including digital options) should be actively considered by professionals and the court during care and placement proceedings rather than an assumption that contact will be via letterbox only.

The ALC supports all the recommendations made within this section, however, raises one issue for consideration which is that of any siblings born post-order. The ALC would like to ensure that there is promotion of contact for any future siblings born to the family who are not considered as part of the plan at the time of placement order (or adoption order) being made.

Additional recommendations

64.Adoptive parents should, as a matter of course, write a settling-in letter to the birth family.

The ALC agrees with this recommendation.

65.Consideration should be given in every case to a meeting between the adopters and members of the birth family.

The ALC supports this recommendation.

66.Later life letters from the birth family (in addition to the one prepared by the social worker) to the adopted child should be considered and timetabled (subject to the view of the child at the stage when the letter is to be sent).

The ALC supports this recommendation.

67.Life story books should be available by the time the adoption order is made and should include reference to all those people who have been identified as important to the child.

The ALC supports this recommendation and would also suggest that specific consideration is given to the birth family and adoptive family meeting to discuss the book prior to placement to enable them to understand the child's life story before they are placed where possible.

68.Examples of post adoption agreements and future contact plans should be drawn up and circulated nationally at this stage. They should be available to each adoption agency/local authority as a flexible pro forma which can be tailored to the specific needs of the case.

The ALC supports this recommendation.

69. There should be a continued line of communication between the adoption social worker and the birth parents so that the adoption social worker can reassess the ability of a relative/other to have contact post proceedings

There is no additional resourcing identified for this and given this is not just a communication but potentially assessment, this would need proper resourcing.

70.Any documents shared with prospective adopters about the birth family should be balanced in their approach.

The ALC supports this recommendation however it should be reiterated in training materials that SWETs should be completed focussing on both positive attributes of the parents along with areas of concern. It is more than rare for a case to be heard where positives do not exist, and these should be included. Social workers should be reminded that including positives will not detract from the overall assessment of a parent's ability to provide safe, long term, care to a child, but rather fulfils the social worker's professional duty to provide a fair and balanced assessment of a parent.

71.After the adoption order is made, periodic reviews of contact plans should be offered by the adoption social worker to ensure the plan is still meeting the child's needs and to consider any changes to the contact or support for contact that might be needed.

The ALC supports this recommendation, but again considers that resources would need to be firmly identified for this additional work, as this is presently not available.

***72.Exploration of use of digital platforms to enable indirect contact to be undertaken in that manner if appropriate*.**

The ALC supports this recommendation.

73.Direct contact should be expected to continue in early permanence placements

The ALC supports this, although would recommend that this has specific focus in the training programme for social workers, who may have limited contact with the birth family and have unnecessary anxiety about them. This would potentially mean that adopters are more willing to embrace post-adoption contact as they have understood the journey through proceedings better.

74.Social workers should where necessary manage and support direct contact

This is supported by the ALC, although training again will form a basis for this, as this will be a significant shift in professional thinking which will need to be embedded.

***75.Adoptive and birth families should have a named worker they can approach in respect of letter box contact provisions*.**

This is supported in the same way as the above points, with the caveat regarding resourcing.

76.More courts judgments to be published in full where contact has been a feature.

The ALC supports this recommendation, but also advocates an ongoing cross LA discussion within DFJ areas where LAs can share their experiences and discuss good practice, and positive outcomes. Challenges can also be discussed in order that these are not repeated in other cases. This must be a safe space for sharing of experiences,

and it might be that the local area LA performance meetings might be the best forum for this. This should be a standing agenda item for the first 12 months post changes being implemented.

***77.As a minimum, all siblings who are not placed together should receive the information suggested in the "Charter for Siblings" set out in Beckett's 'Beyond Together & Apart' practice guide*.**

The ALC supports this recommendation.

Chapter 2 – access to records

Do you agree with the recommendations?

ALC members represent all parties in proceedings, including children and prospective adopters. It is essential for both placement stability and long-term outcomes that identity needs are recognised and met. This is illustrated most starkly in adoption breakdowns, typically when young people reach adolescence and struggle with their early life experiences. Identity needs to be considered at all stages of the process. There must be more than a generic line in a *Re BS* analysis. Rather, professionals and the courts must grapple with how birth identity can and will be promoted for the individual child.

For those working within the system, there should be greater recognition that adoption is a lifelong process, it does not cease with the making of the adoption order. While the focus of many practitioners is properly on family finding, matching and transitions, more attention is needed upon the longer term trajectory and experiences of adopted children. Courts and practitioners should have an eye to the longer term, in particular that the child may read court documents in the future.

The ALC shares the Working Group's concerns about the complex and confusing system for obtaining adoption records and the impact upon adopted people and their families of the consequent delays and difficulties in accessing their records. The ALC acknowledges the extensive research that has been undertaken. The disparity in experiences and lack of capacity in the system for increasing applications is troubling. The ALC endorses the recommendations in full.

Do you have any other proposals?

As the Working Group identifies, training and access to information are crucial. The ALC is acutely aware of the pressure on resources within local authorities and the family justice system as a whole. A government commitment to funding for training, recruiting and retaining personnel to manage requests, and for intermediaries will be essential if the Working Group proposals are to be realised.

Allocated social workers typically write ‘later life’ letters for adopted children to read when they are older. Consideration should be given to whether information about accessing records may accompany such a letter. While we recognise that some information may be out of date by the time the child reaches adulthood, the details of the Regional Adoption Agency and the entitlement to records, would provide a useful starting point.

The issue of accessing records should also be including within the training for prospective adopters. Support groups for adoptive parents may also be a key avenue for information sharing.

There is increasing digitisation within the family justice system and government services. While experience of IT projects, such as the FPL portal, are mixed, digitisation may offer a means for adopted people to access records more easily. This may assist in future where records may be held centrally rather than in storage by individual courts, which may close. We invite consideration of this within the compilation and maintenance of the national register of court files.

What further public information is required?

The recommendation for better public information on all relevant websites, is endorsed. Further, there should be a central hub of information within gov.uk offering advice for adopted people.This should provide simple, clear advice and contact information, including links to intermediary services and regional adoption agencies as well as linking to support groups. This site should be regularly maintained and updated. Regional Adoption Agencies, local authorities and third party groups working in the sector should be encouraged to link to the central site to ensure that information is accurate and consistent. This should include any legacy webpages for former adoption agencies or closed court.

How should applications to court be approached?

The lack of guidance and consistency in the approach to court applications is concerning. There is a need for urgent guidance from or endorsed by the President of the Family Division.

Consideration should be given to nominating a named judge within each court centre to act as a lead and liaison for disclosure applications. This would allow for specific training and expertise to develop within each centre (akin to nominated judges within the FDAC model). This would provide a gatekeeping service to ensure that applications are reviewed and allocated promptly. This may be a role for a district judge on the basis that cases would be allocated to a circuit judge according to the issues raised.

Should there be a national protocol?

The ALC agrees there should be a national protocol and standard procedures for applications for disclosure of court documents. We endorse the draft protocol and application form set out in Appendix C. The application form is clear and straightforward, facilitating use by litigants in person. In so far as possible, all documents should use plain language.

Chapter 3 – Practice and procedure.

Placement and adoption orders:

• What final recommendations should be made in respect of leave to oppose adoption orders applications?

• What changes, if any, should be made to the core documentation and reports?

Applications for leave to oppose the making of adoption orders.

The ALC agrees that there would be benefit in reviewing the position in respect of these applications after allowing a period of time for recent legal aid changes to take practical effect before any recommendations in respect of changes to primary or secondary legislation are proposed. We very much welcome the changes to the legal aid position.

The ALC has considerable reservations about any guidance/change to the FPR 2010 leading to leave to oppose applications being considered on paper and, if dealt with on the papers, without automatic right to an oral hearing.

Whilst we note the wording "if the judge considers it appropriate" we anticipate that the position may become a default position. The report identifies that these applications are almost always unsuccessful, that is our experience. There is a manifest risk that the likely outcome will become the test for whether to have the matter heard on the papers i.e. a prospects of success test. A significant proportion of parents in the Family Court are vulnerable, some with mental health problems, cognitive impairment even if not amounting to a disability, many have literacy difficulties and attention deficit disorders, to many are addicted to drugs. It is difficult to find a cohort of parents in care proceedings, who have lost their child to an adoption care plan and placement order, or whose child is the subject of an adoption application, who can marshal their arguments and thoughts on paper and explain their changes even with helpful prompts on a document. On many of these applications where a parent attends unrepresented the learned judge has to ask questions to help the parents elicit what they wish to say about the facts which would address the legal test. This is a fair approach. The danger here is that the paper procedure will lead to incomplete information put forward and where a parent is unable to express themselves on paper, they will either not do so at all or not address the requirement of the test. Those with learning difficulties or

illiteracy or mental health difficulties will have little or no access to support to help to them commit to writing their position. It is potentially unfair and/or indirect discrimination to proceed with such changes without an equality impact study.

We do not underestimate the anxiety and distress to the prospective adopters and the delay caused. A balance is required, and we welcome the robust and imaginative approach that has been taken. The children's welfare is inextricably bound up in the emotional state of their prospective adopter carers, but their wider welfare interest requires robust decision making which has scrutinised the evidence that informs if adoption continues to be in their best interests. The case law strikes a very careful balance. Whilst we recognise the considerable resources and time taken to deal with these applications and would support a scheme that strikes a balance between the rights of the children to have decisions made without delay with accurate information underpinning those decisions and the parents to place any change of circumstances that they consider has met the relevant test.

The terms of section 47 (6) and (7) of the ACA 2002 were intended to reduce the number of cases in which defences to an application can be made nevertheless the drafters plainly intended to keep the door open to a deserving application which met the relevant criteria. This is consistent with the imperatives behind the Act enshrined in section 1: adoption is life long and before making an order being brought up within one's family or origin must be fully explored.

Whilst the Court of Appeal from time to time has identified a case where the parent has achieved the necessary level of change the application has not been allowed as the children have moved on or their needs have developed which has led to an unsuccessful attempt to prevent the adoption. Whilst in the context of an application to revoke a placement order we note the dicta of Baker LJ in **Re C (Children) (Revocation of Placement Orders) [2020] EWCA Civ *1598*** *"I recognise that this outcome is a tragedy for the mother who has achieved such a remarkable transformation in her life, on a scale which I have rarely seen in many years' experience of the family justice system.*" It is right that cases where the 'transformation' has been made are anxiously considered by a court, such that the right decision is made for the child. We would wish to ensure that any changes do not present practical

barriers which parents with cognitive, mental health, educational and emotional vulnerabilities cannot fairly meet.

The ALC identifies that most of the parents who apply make applications without having obtained legal representation. Some of those may make the application unfunded under the new legal aid provision, on an expectation that they would have representation in place by the time of an initial hearing. A paper consideration of an application prepared by an unrepresented parent may deny that parent the representation they anticipated, and which is intended to be available to them under the changes to legal aid provision.

The proposed continued existence of appeal procedures does not necessarily remedy this issue as legal aid for appeals against refusal of leave to oppose will, we understand, remain fully means and merits tested rather than non-means and light-touch merits tested.

The review period is necessary to see if the changes to legal aid have changed the position before the proposed changes in paragraph 159 are implemented. At this stage regretfully the ALC cannot support those changes absent an equality impact study.

Fairness of the procedure for parents is central to the wider welfare of their children. It may be that revised recommendations should include express exclusions of an on-paper procedure where there are reasonable grounds to believe that the circumstances or needs of parents will be unlikely to be able to articulate in writing fully and clearly their position by reference to the legal test and/or require adaptions or support to do so. The ALC recognises that there are likely to be vulnerabilities missed by this exclusion and it will create greater work for the gatekeeping judge who will need to consider the evidence about the parents' vulnerabilities in the care proceedings in the case management decision.

Removing the right to an oral hearing if the application is refused on the papers reduces the prospect of identifying those truly unfair cases where the parent has struggled to articulate their case in writing.

We note the observation at paragraph 116 of the expectation that once the statutory time limit for the child to have his/her/their home with prospective adopters has passed the adoption application should follow shortly. It does not in our members experience.

It may be helpful for data to be gathered on this and whether there is any correlation to the delay here and the number of defending adoption applications there are. It is our experience that children are matched and placed fairly promptly. That area has improved substantially over time. Typically, at least a year passes often two before applications for adoption orders are made. This delay is unacceptable and must be considered when looking at the delay caused by a parent's application to defend. It is this delay which allows for the parents lives to move on whereas applications following within 6-9 months of the care proceedings are far less likely to result in any meaningful change from the position at the close of the care proceedings. Some work is required with adoption agencies to ensure prompt and thorough applications for adoption orders after a suitable time for settlement has passed, in the view of the ALC.

We note the observation at paragraph 159 that the working group are considering a power to strike out a statement of case being implemented for part 14. We are unclear how this power would operate and if what is contemplated may include striking out an unmeritorious application for leave to defend an adoption order. We would wish to consider the particulars of the proposed changes to the scheme before commenting but have considerable reservations about strike out being placed into the armoury in adoption cases if it includes the application to defend or to apply to revoke a placement order.

Likewise, we agree with the conclusion that there appears to be a gap in FPR 2010 regarding the procedure for wider family members, paragraph 121. We agree with the suggestion to amend rule 14.21 of the FPR 2010 to address this, at paragraph 171.

The ALC otherwise supports the recommendations set out in this section – particularly the proposals in para 161-163 aimed at providing prospective applicant parents with information and steers as to the issues that will be considered in an application for leave to oppose.

Part 19 applications for declarations as to notifications to birth fathers and extended family members

The ALC supports the recommendations made in paras 166-171. In particular the recommendation that these cases will in the first instance be considered by the DFJ

who will allocate in consultation by the Family Presider. By reference to paragraph 169 we agree with these suggestions. We emphasise that in such cases it is likely to be necessary for the child to be a party as it is the child's rights that run into conflict with the mother or the local authority who is seeking to not give notice to the child's biological father and extended family. It is difficult to conceive of how the conflict can be addressed without party status and a guardian appointed. The tandem model in such cases is a means of promoting the Article 9 UNCRC rights of the child.

Placement order and leave to revoke applications.

The ALC supports the recommendations made in paras 183-184. These are practical, sensible and carefully targeted suggestions.

Annex A and B reports

Our members continue to see issues such as the confidentiality of the adopters' personal details and addresses being disclosed inadvertently to the parents. These mistakes are highly distressing and can lead to adoptive families having to move house. Very clear structures for redactions inside the adoption agency and the legal department must be kept. Am emphasis on confidentiality and policies as to double checking what goes out to where is essential and we hope may addressed by the group going forward.

We agree that there should be a streamlined report process provided that no corners are cut in the provision of essential information about the birth family and the child and that this approach does not compromise confidentiality. The CPR is often a necessary document to be considered by all parties in care proceedings and a combined report ought to be capable of being scrutinise din the same way- even if a particular section must be removed.

Further, we respectfully suggest that during the 12-month review period being allowed to address the impact of legal aid changes on the defending adoption applications, there should be monitoring of the use of the report and the quality of them with thematic feedback to identify any gaps and improve the template in the future.

Adoption pre-issue and issue

The ALC supports the recommendations made in paras 187-199. We note at paragraph 192 the proposed changes to the forms. We suggest that included in the statement might be notice of issues giving rise to concern about the capacity of the parent to take a decision as to the consent to their child's adoption and/or which may affect their decision-making capacity as to notification about the adoption application.

Case management of adoption applications

Standardised orders are helpful in these highly procedural applications, we support the suggestions at paragraphs 178- 182. All are practical, helpful and well targeted ideas. Additionally, consideration should be given to the fact that the standard orders are long and unwieldy and hard for birth parents to understand. The headings and sections are unhelpful to birth parents and seem to prioritise the details of the lawyers over what is happening to their child. Some consideration ought to be given to a revision of the language and structure where the parents are in person which uses plain and simple language, with incidental information at the end *"Upon hearing counsel for…" "Upon considering the papers".*

Further, the ALC supports the recommendations made in paras 204-208 – particularly noting the importance of achieving separation of birthparents and adoptive parents and children at court at para 208. Some courts have good provision for this like children's rooms or waiting areas for adoption cases, the Manchester Civil Justice Centre is a good example.

Other areas of concern & postscript

The ALC supports the recommendations made in paras 209-214 but not paragraphs 215 and 216, at this time and as drawn.

We assume that at paragraph 213 there is a typographical error that it refers to section 44(3) ACA 2002 not section 43(3). We seek to add to the recommendation at paragraph 213 that there must be an obligation on the party giving notice under section 44(3) ACA 2002 to ensure that where the applicant cannot through their own hand give written notice perhaps because of disability such adaptations and support is given to enable effective notice is given.

We do not support the accommodation at paragraph 215- The caselaw about section 47(7) ACA 2002 applications is carefully crafted, revisited by the Court of Appeal, from time to time, and is clear about the test to be applied. The test has withstood careful scrutiny. It is a test that does not in fact allow through many, if any, parents who seek to invoke its terms. The test itself is clear and well-drawn. The section as now drafted coupled with the case law is a clear and unambiguous scheme. Moreover, there is no suggestion from the working group or our members that when properly applied the balance is erroneous. Almost all applications of the test lead to a negative result. The applications of the test very often do find that the parental change is sufficient but when the case law as to welfare is applied the application fails. That is not because the first limb is set too low. Rather it is an accurate reflection of the position. The issue, if there is any, with the statutory wording is the absence of a reflection that the child is on a process of change also including their needs may have developed. Nevertheless, the Court of Appeal case law has redirected the balance for those matters to be carefully considered in the welfare stage, limb 2.

The driver to change the test, as we understand it, is to discourage parents from making the applications when in reality they cannot begin to meet the statutory test. Raising the bar of one limb of the test is no answer to that. The parents themselves rarely consider the wording of the statute. To them the fact of any change may be profound and very significant. The sort of language proposed in paragraph 215 is not likely to meet the mischief to which it is aimed. We do not support changes to the primary statute.

We do not support the recommendation at paragraph 216- we have set out above under the heading “Applications for leave to oppose the making of adoption orders” the reasons for the ALC not supporting a new summary procedure on this evidence base at this time. There is no equality impact assessment and the impact of the new changes of legal aid on the number of applications has not been assessed. The change to a summary procedure appears not to pay due regard to the profound vulnerability of the parents against which this procedure will bite and the potential for disadvantage to the child of the correct, fair and accurate information not being placed before the court in a written format. We would welcome further evidence and consideration given to the impact upon vulnerable adults of adopting a summary procedure as identified herein.

Chapter 4: Adoption with an international element

Do you agree with the recommendations?

The ALC agrees that the legal process for seeking an adoption order in the UK is a complex one and that legal advice is not often sought, with prospective adopters often representing themselves. Therefore, there is a strong argument to recommend that the statutory framework for all international adoptions should be contained in one single Act, with similarly composite regulations. As it is acknowledged that this will take some time, we agree that the Department for Education and Welsh Government should prepare new guidance for interlocutory adoptions. As there is a clear difference in recognising adoptions that fall outside the 1993 Hague Convention which are often more complex, we would agree that it would assist all lawyers and professionals to have a specialist referral unit for international adoptions which are outside the 1993 Convention.

We note that there can be difficulties experienced due to the immigration status for a child which often results in delay which can in turn result in harm to the child. We consider it is essential that there is close and streamlined communication between the DfE/Welsh Government and the Home Office.

We agree that there should be an amendment to the current legislation in relation to s84 ACA 2002 to clarify that adopters may be assessed in their home without committing an offence under s85 ACA 2002. Currently if an application for parental responsibility under s84 of ACA 2002 is not made and the child is taken to or from the jurisdiction for the purposes of adoption this would constitute a criminal offence. It is necessary to be aware that if the correct order is not sought before removing or bringing a child to the jurisdiction this may hinder the making of the order later.

We note that the consultation recommends that the regulation is reviewed for inconsistencies and provides the example of regulation 46 of AFER 2005. This deals with the preparation of Art 16 Report by local authorities and refers to the current practice differing from that drafted. We believe that careful consideration needs to be given as to why there is deviation from the regulations without a proper consultation and amendment to the regulation.

As we have agreed that the process needs to be reconsidered, we also agree that the Practice Direction should be redrafted for applying for leave under s19 of Schedule 2 to the Children Act and s28 ACA 2023 for permission to place a child abroad in order that the local authority, in whose area the home is, must have sufficient opportunity to see the adopters with the child in their home environment. However, we agree that given the child is being taken or being brought to the jurisdiction for the purpose of the assessment it is important that proper applications with supporting evidence is provided before such an order is made. There will also need to be a mechanism to ensure the child is returned once those conditions are met.

Although we agree that the process is currently complex, we do not believe that it should be "easier" and there should be critical and significant overview of the processes given concerns regarding issues such as child trafficking.

It is not clear what resources the consultation is seeking to provide lawyers in these cases, so clarification is sought regarding this recommendation.

The ALC agree that Home Office procedures should be fast tracked and streamlined for visa approval when the applicants have satisfied compliance with relevant regulations. There should be a special status for adopters with the Home Office who are issued with a Certificate of Eligibility by the DfE at the visa application stage to ensure his type of visa is expediated.

Do you have any other proposals?

If an order is sought for recognition of adoption order made out of the jurisdiction it is important to note that British citizenship is not conferred on the child when that order is made. However, the Home Office policy guidance on the registration of children as British citizens states that the Secretary of State will 'normally' agree to register children adopted by at least one British adoptive parent via a recognised adoption. This registration is made by reference to section 3(1) of the *British Nationality Act* 1981 which provides that the Secretary of State can register any child as a British citizen "if he thinks fit". Therefore, if a foreign order is recognised, there is provision for the child obtain British citizenship by registration, but this is discretionary. There should be dialogue with the Home Office to ensure that if an adoption order made out of the jurisdiction is recognised that there should not be any issue with a child being recognised as a British citizen if at least one or his adoptive parents are British citizens.

If the adoption is not a Hague adoption under 1993 Convention a significant delay can be caused by issues such as difficulties in obtaining papers from aboard. As there is a difference between adopting a child from a Hague and non-Hague country, we believe that when guidance is set out there should be separate guidance for each type of adoption due to the added complexities in adoptions outside the convention.

What should be the focus of any written guidance provided?

The focus of any written guidance should be to clarify and seek to provide clarity about the process. Currently the process is complex with reference to different statutes and regulations.

What, if any, amendments should be proposed to the primary and secondary legislation?

We agree as discussed in the consultation that a single Act should set out the process of Adoption with an international element to include reference to the regulations.

Chapter 5: Adoption by Consent

The ALC recognise that adoption by consent is an important sub-section of adoption practice with distinct considerations. The benefits to the child of there being a process which allows them to be placed swiftly with their 'forever family' are significant, however if the correct process is not followed there is potential for significant delay and instability.

What should be the focus of any national strategy and training?

The ALC agree with the need for a national strategy and training of relevant professionals to ensure that best practice is followed. The ALC suggest the following issues should be considered.

- The early identification of mothers who are considering adoption by consent and a strategy to provide them with the resources necessary to make informed decisions. This should include counselling and a pre-birth assessment to assist them in reaching the decision and ensuring that any consents under section 19 & 20 Adoption and Children Act 2002 are informed and with knowledge of the alternatives and support available. Training should be targeted at considering

the issue of mental capacity and any cognitive deficit that may impair the ability to give informed consent. Training should also be provided as what is meant by 'unconditional consent'.

- Greater clarity is required for professionals regarding the legal status of the placement of child directly upon being relinquished. As section 19 consent cannot be given until 6 weeks following birth it must follow that children relinquished before that date are voluntarily accommodated under section 20 Children Act 1989. Local Authorities will have separate procedures for the voluntary accommodation of children and the delegation of parental responsibility, which will include consent documents which need to understood and signed by the birth parent. The Local Authority should create a care plan for the child voluntarily accommodated under section 20, and we would encourage the use of this document to record any proposals for the gathering of life story materials, discussions around post-adoption contact and provision of counselling services and to focus on the life-long element of the decision making that is being made for the child. We would also encourage the practice of a care plan for a child placed under section 19 of the Adoption and Children Act 2002 for the recording of similar information which can be documented in one place and shared with the birth parents.

- Training should focus on delivering key information in an accessible manner which is easy to understand and that is non-judgemental, with an acknowledgment that the recipient of the information, whether mother or father, is particularly vulnerable. Training should focus on providing empowering discussions regarding the lifelong implications of adoption for the child. The birth Mother should understand that some form of contact may be in the best interests of the child in the longer term and there should be a process to review and support appropriate discussion around post-adoption contact. The Mother should know how to contact post-adoption services at a later stage should she wish to do so. Training should also consider how to collect Life story materials effectively and sensitively, as a coherent narrative for the child.

- Training needs to cover the important issue of obtaining information regarding the child's birth father and wider family members, and when to apply under the inherent jurisdiction of the High Court for a direction that the Local Authority is under no obligation to notify other members of the maternal and paternal families. This has the potential to lead to delay in the permanent placement of the child if not identified as an issue at an early stage. The legal considerations in informing the Father, or any other members of the birth family are complex as set out in Re A, B and C (Notification of Fathers and Relatives) [2020] EWCA & R and S [2003 EWC 1971 (fam) and need to be well understood by those professionals involved at an early stage with the mother. Specific training should be undertaken by the those making these decisions.

- If birth parents withdraw consent or indicate that they may wish to do so there needs to be a clear strategy for considering how and if the child will be returned to the birth parents and on what steps need to be taken by the Local Authority.

- There should be consideration of when early permanence placements would be the most appropriate placement. When used, these placements have the benefit of the child being placed in their 'forever family' at the earliest available opportunity. Training should focus on balancing the factors to consider in decision making about foster to adopt placements, and what support foster carers would require to make these placements successful.

- There needs to be greater clarification of who will deliver pre-birth planning and support services/counselling both before and after the birth, with dedicated professionals being identified to provide appropriate support at each step. An essential aspect of this support is access to free and impartial Legal Advice which should be available under the Legal Aid scheme on a non-means/merits basis. Additionally, there should be provision of detailed and easily accessible information of government websites as a first point of contact for those birth parents considering adoption by consent, which should signpost to other support services.

- It is noted that a proportion of birth Mothers considering adoption by consent are foreign nationals where there are likely to be additional legal considerations regarding nationality and the need (possibly) to inform the relevant embassy of any adoption application. Tailored training needs to be provided in these circumstances.

Do the consent forms require simplification?

There are three separate forms that can be used in relation to providing consent to adopt under section 19 of the Adoption and Children Act 2002. The A100 which provides consent to placement of the child with any prospective adopters chosen by the adoption agency. The A101 provides for consent to placement for adoption of the child with identified prospective adopters. The A102 provides for consent to the placement of the child with identified prospective adopters and if the placement breaks down with any adopters chosen by the adoption agency. There are two further forms that may be signed to provide consent to the Adoption Order being made, firstly the A103 which provides consent for named prospective adopters or anyone identified by the adoption agency, and A104 which is advance consent to the making of an Adoption Order within proceedings where a serial number has been issued.

The current process requires that at least two separate forms are signed for section 19 and section 20 consent to facilitate adoption by consent. There should be recognition that requiring the birth parent to sign two separate forms, possibly on separate occasions may increase any trauma that they experience. Consideration should be given to a composite form.

The ALC also suggest that consideration could be given to assimilating the section 19 forms (A100, A101 & A102) into one form, but providing for the relevant options to be completed and others struck through. The possibility of human error on the part of professionals is increased where there are number of very similar forms, and if the incorrect consent form is completed in error this may lead to delay at a later stage.

The forms contain dense legal language and there is scope for the information to be written in a more accessible format. Whilst birth parents need to be clear regarding what consent they are giving, and the gravity of the decision they are making, they may also need to revisit the information provided on the form which needs to be clear and understandable by lay people. We would also suggest that the consent and

signature pages should be separated out from the information about the consent given so that it is clearer and propose that the consent itself is on the front page with additional information on the subsequent page/s, this would make the forms more ‘user friendly’ for both the birth parents and the professionals and reduce the scope for mistakes.

We would also suggest that the information regarding withdrawing consent should be clearer on the consent forms and include contact details for a named professional or social work team with whom the birth parents can easily speak to should they have any questions or want to discuss withdrawing their consent.

29.11.23