

## **Written evidence : Social Services and Well-being (Wales) Bill**

### **1. The Organisation**

BAAF is a UK wide association and registered charity with a distinct national footprint across Wales. BAAF Cymru is also registered as a voluntary adoption and voluntary adoption support agency.

We have been educating, advising and campaigning to improve the lives of children and young people in care and on the edge of care since 1980, identifying permanent families for children unable to live with their birth families whilst working to secure placement stability and optimise outcomes.

Members include local authorities, voluntary adoption agencies, independent fostering providers, local Health Boards, law firms and other organisations/individuals working with our priority groups of children and young people. A Helpline is also available and accessible to all including non-members and members of the public.

Our priority objectives in Wales are underpinned by a policy and legislative mandate set out by Welsh Government and include the following:

1. High quality training, consultancy and information to improve delivery of fostering and adoption services.
2. Accessible and responsive advice and information to members of the public affected by adoption and fostering
3. Enhanced public understanding about adoption and fostering by effective collaboration with partner agencies and the media
4. Provision of specialist advice to Welsh Government
5. Delivery of services informed by the voice of the child

In providing this written evidence BAAF Cymru has sought to represent views from a number of different perspectives based on our experience and work within the field of adoption and fostering and is provided within the context of Q 8 additional comments on specific sections of the Bill. In providing a considered response we have found this to be a fairly challenging exercise without knowing what elements of present legislation are now going to be repealed as a consequence of this Act. BAAF Cymru acknowledges the Welsh Government's long term aim of creating a separate statutory framework for children's law in Wales, and that the present Bill is the start of the journey.

Whilst we welcome the opportunity to look afresh at these provisions we would urge that clarity is maintained in stating which parts of the Children Act 1989 are to be repealed. Furthermore it would be helpful when considering this Act there is an explicit understanding about its interface with new Children and Families Bill for England and Wales that is presently going through the parliamentary process at Westminster.

#### **PART 4 Meeting Needs**

cl 27 We would suggest that regulations ,for a young adult sibling defined as between age 18-20 ,ensure extra support if they care for a sibling who is also a child.

cl 40 We would suggest that portability of assessments has some criteria attached to them. It is of course sensible that a person with long term health needs may not require a reassessment if they move a few miles to another Local Authority Area. However vulnerable children's needs can change when new adults join the household or preventative services are no longer available if the family moves to another area.

#### **Part 6**

##### **LOOKED AFTER AND ACCOMMODATED CHILDREN**

cl 59(4)(a): we would suggest that the term 'independent fostering provider foster parents' is added;

cl 60: this is a reworking of the provisions of s20 Children Act 1989. However, the provisions of s20(4), which relate to short break or respite care are missing from cl 60. It is important that, if the provisions of s20 CA are to be repealed, that there should be a provision reflecting a local authority's powers to provide respite / short break care.

Similarly the provisions of s20(5) are not reflected in cl 60 (the power to provide accommodation in a community home between the ages of 16 and 21 if the local authority considers that to do so would safeguard or promote the child's welfare. It is imperative that, as in all aspects of the Bill that there is implicit referencing to the UNCRC, particularly when considering the needs of young people post 16.

cl 62(2)(a); we suggest that this is amended from 'a duty to promote the child's educational achievement' to 'a duty to promote the child's education', so

reflecting the all-round benefits of education for all looked after children, regardless of academic ability or achievement.

cl 62(3): we would urge that 'the views, wishes and feelings of the child concerned' creates a new subsection (a);

cl 65(8)(a): we suggest that the duty of a local authority to ensure that a child's placement is near the child's home should include the caveat 'if it is in the child's best interests;' There are occasions when, for the child's safety and well-being, he or she is placed at some geographical distance from the family home;

cl65(8)(c): Similarly we would suggest the caveat of 'if it is in the child's best interests' is also included here. There are occasions when the assessed needs of children necessitate a placement apart from their sibling

cl 65(10)–(13): the 'fostering to adopt' provision':

It is BAAF Cymru's view that this provision will not provide any of the outcomes sought by the Welsh government in seeking early permanent placements for children.

Firstly, this is not the same provision as concurrent planning, where dual approved foster carers and prospective adopters agree to a child being placed with them, usually at the commencement of care proceedings. These carers work with the local authority in facilitating contact with birth parents and working toward reunification with birth family, if that is the court's preferred care plan. It is only after the court provides authority to place the child for adoption, by the making of a placement order under the Adoption and Children Act 2002 and the adoption agency makes a decision that that child should be placed in an adoptive placement with these prospective adopters, that the foster placement transforms into an adoptive placement.

The chart below sets out the differences between concurrent care planning and 'fostering to adopt'.

<b>CONCURRENT PLANNING</b>	<b>FOSTERING TO ADOPT</b>
Dual approved carers	Dual approved carers
Child placed with concurrent carers (as a foster placement) at start of care proceedings	Child placed with other short term foster carers at start of care proceedings
Care proceedings	Care proceedings
Should be placed for adoption decision	Should be placed for adoption decision
Placement Order made (authority to place)	Matching panel recommendation and ADM decision
Matching panel recommendation and ADM decision	Child moves to F to A carers (as a foster placement)
Concurrent carers become prospective adopters	Placement Order made (authority to place)

The ‘fostering to adopt’ carers will also have to be dual approved. However, under the provisions of cl 65 a placement will not be made to these carers until a ‘should be placed for adoption’ decision has been made. The child will, therefore, be moving from an established short term foster placement to the dual approved carers after a should be placed decision and matching decision by the adoption agency but before the court has given authority to place for adoption.

Fostering to adopt creates the following difficulties without the concurrency model’s benefit of maintaining the same placement if the care plan for adoption is accepted:

1) The placement with the carers, in taking place before the court gives authority to place, creates uncertainty for the carers and, more importantly, the child. How can the work usually undertaken with children about to be placed with their forever family be undertaken when the court might not approve the care plan for adoption?

2) The child’s move to fostering to adopt carers will take place at a critical time during care proceedings, where the parties, if contesting the local authority care plan, will be marshalling their evidence and filing statements in order to oppose the local authority. There will inevitably be Articles 6 (right to a fair trial) and 8 (right to a private and family life) ECHR arguments by those representing both parents and children that the adoption agency, in placing with foster carers at this stage who are also approved and matched as prospective adopters for this child, is pre judging the decision of the court. If a court does not approve the local authority’s care plan, then the fostering to adopt placement will have to end, in favour of reunification or a friends and family placement. Are these carers best placed, after only a few weeks of caring for these children, to facilitate another move? How will the child be affected by another move?

3) Even if the above concerns can be overcome, it is highly unlikely that an adoption agency will be able to make a should be placed decision and a recommendation from panel followed by a decision on the match with time to spare before the end of proceedings and the hearing for the application of the placement order. With the provisions of cl 14 of the Children and Families Bill

bringing care proceedings into a 26 week timetable, there will simply not be the opportunity to bring about a fostering to adopt placement.

4) The provisions of cl 65(b) specifically demand that the child has been matched, under the Adoption Agencies (Wales) Regulations 2005 with the fostering to adopt carers before placement. Although there is nothing to prevent a matching decision taking place before the placement order is granted, current case law (Re K (Adoption: Permission to Advertise [2007] EWHC 544 (Fam)) warns that permission to advertise a child as available for adoption (in Be My Parent or Children Who Wait) would be unlikely to be granted before a final care order is made.

5) The additional cost and time which would be incurred in approving carers under both the Adoption Agencies (Wales) Regulations 2005 and Fostering Services (Wales) Regulations 2003 is disproportionate to the time a child could be placed before a placement order would be made and so authority given to place with prospective adopters. The time spent with the carers as foster carers would, in most circumstances only amount to six to eight weeks at the most.

Any perceived benefit of an earlier adoptive placement for children under this clause is far outweighed by the many factors militating against it. BAAF Cymru is an advocate of the concurrent model of placement, seeing significant benefits to the children for whom this type of placement is an option. For those children for whom concurrency is not an option, we are cautiously optimistic that the Welsh Government proposals to create a National Adoption Service will ensure consistently across Wales in the timely approval of well trained and rigorously assessed prospective adoptive parents who receive appropriate support during their adopted children's minority in order to meet their immediate and longer term needs.

In summary rather than the foster to adopt provision, we would have preferred a more general duty to be placed on a local authority to be obliged to consider placing any child coming into their care in a placement that could be potentially available to that child throughout his or her childhood if so required. The system as a whole needs to move firmly towards recognising the position of the child and the fact that he or she must not carry the burden of adult or system inertia or hesitancy. But it must do so in a way that is fair and just and retains the confidence of society as a whole. This would have benefitted children being considered for long term fostering, special guardianship or for permanent placement with family and friends as well as that small proportion of children for whom adoption is the plan.

## cl 67: Care and support plans

BAAF Cymru is in support of the creation of well prepared and supported care plans, but would urge that this new duty does not create an additional layer of administrative form filling for over-burdened social workers and ensures that the new care and support plans dovetail other regulatory provisions concerning planning and reviewing for looked after children.

The Welsh Government has the ideal opportunity, in the creation of this new power, to create an additional duty to 'ensure that arrangements for the delegated authority for foster carers is considered at each review'. This provision would ensure that the Welsh Government Guidance, 'Fulfilled Lives, Supportive Communities: delegated Authority for Foster Carers' is followed far more widely and properly than it has been to date.

## Cl 75: Regulations about the disruption of education.

We suggest that any regulations take account of other crucial stages of education in addition to Key Stage 4; for example the move to primary school and to secondary school

## Cl 76: Regulations about the placing of children with local authority foster parents.

Cl 76(d)(i) – we would suggest that the better wording for this would be that the placing local authority gives 'due consideration to the child's religious persuasion, racial origin(s) and cultural and linguistic background', with a specific reference to the needs of children whose first language is Welsh.

Cl 76(d)(ii) – again this provision should be widened to the foster parent giving an undertaking that due regard shall be had to the child's religious persuasion, racial origin(s) and cultural and linguistic background, including those children whose first language is Welsh.

## Clauses 79 and 80: contact provisions

Here the Welsh Government has the opportunity to put right something which has always been missing in the contact provisions set out in the Children Act 1989 – to create a distinct duty to promote contact between siblings who are placed separately. Research is clear that some of the most long standing and enduring relationships in our lives are those with our siblings. We believe that far more focus should be given to promoting sibling contact, with the addition

of a new cl 79(1)(b) and cl 80(2)(b). This is particularly important at a time when siblings are not always able to be placed together.

Clause 88 Young people entitled to support under 89 -96

Whilst we understand the need to distinguish between different categories of young people we would urge some reframing of this clause as an unintended consequence could result in young people being referred to by their category rather than status.

## THE NATIONAL ADOPTION REGISTER

BAAF Cymru accepts and agrees with the Welsh Government that the creation of a separate National Adoption Register for Wales is both desirable and achievable. However, we would urge the Welsh Government to consider the timing of such a departure from the joint England and Wales Register. Current statistics obtained by present Adoption Register for England and Wales evidence that, for every prospective adopter placed on the current register, there are 16 Welsh children waiting for a match. This compares with England where for every prospective adoptive family registered, there are seven children waiting. We are informed by the current Register Manager that within the context of this data more Welsh children are being placed in England than English children being placed in Wales.

Whilst we would all wish to give Welsh children the opportunity to retain their birthright of growing up in their own country, and with the establishment of the National Adoption Service for Wales and intended improvements in the recruitment of adoptive families this may be possible in the future, the current shortfall is very concerning. There are presently no Welsh adopters on the register approved for sibling groups of three or more. We would not wish there to be the unintended consequence of the creation of a Welsh National Adoption Register at this stage to be a further hampering of successful family finding. Of course there will be reciprocal arrangements between the four Nation Registers, but systems do need to be embedded to ensure they are efficiently and operationally robust to respond to need

We would therefore suggest that, for a period of time, the Register is maintained for both England and Wales until such time as the new NAS has been established and we have sufficiently increased our Welsh pool of adopters to meet the needs of more children in Wales.



## **Chapter 2**

### **Co-operation and Partnership**

#### **151 Adoption Service –joint arrangements**

This small section of the Bill which refers to adoption specifically will allow WG the powers if necessary to direct Adoption agencies to join together in relation to specified services without amending the AA's overall regulatory responsibilities. In its broadest sense this is to be welcomed and demonstrates an on-going commitment to have a more inclusive and consistent adoption service across Wales. However the detail provided is limited on what these powers may enforce and what criteria would constitute enforcement. Is it in respect of those AA's that are deemed failing or is it to assist in the formation of national and regional delivery of services under the auspices of a National Adoption Service .For example 3 (d) working in conjunction with registered adoption societies.. What circumstances would necessitate WG directing Local Authority AA's to work with a Voluntary Adoption Agency? 3(f) Does this mean in practice that if necessary the present AA (W)R 3 that restricts more than 2 AA's joining together to hear panel business can be amended through these powers ? If so this is to be welcomed particularly as would provide the legislative mandate to rationalise resources and enable regionalised organisation of adoption panels .Very disappointingly there is no mention of post adoption services in specified arrangements under (3).. one could interpret that this could come under financial arrangements to deliver such services but we would strongly urge that the importance of the provision of adoption support services to be included within this section. Indeed at BAAF Cymru we would very much welcome Welsh Government considering the report recently produced by the House of Lords Select Committee which urges Westminster to include adoption support in primary legislation.

Children adopted from care have complex needs which can persist after adoption despite the ordinary loving care of their adoptive families. Unless these children and their adoptive families are properly supported there is a high risk these difficulties will not improve and ultimately the placement may break down. This can only result in more damage to the child as they return to care. It also leaves the adoptive parents devastated.

Current legislation gives people affected by adoption the right to an assessment for adoption support services, but no duty to provide those

services. There is also a postcode lottery of provision from one authority to another.

The House of Lords Scrutiny Committee Report highlights all of these issues in their comprehensive and important Report. This recognises that in order to increase the number of adopters coming forwards and ensure adoption succeeds, local authorities, health and education should have a statutory duty to provide support. The Committee recommends that birth parents from whom children have been removed should also receive support to break the patterns of behaviour which have led to the removal of the child. This is a fundamental recognition of the plight of many of these women – and for many, time and time again. BAAF wholeheartedly supports the recommendations of the Committee especially at a time when we are considering a once in a generation opportunity to reform adoption services in Wales. We do recognise and accept the significant impact on resources. But when the State has intervened in such a dramatic way in removing and then placing a child for adoption, it is a socially responsible investment that will, over time, reap dramatic rewards.

Evidence provided on behalf of BAAF Cymru by Sarah Coldrick , Legal Advisor and Wendy Keidan Director BAAF Cymru