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 **Adoption
England**

regional adoption agencies working together

**Agency decision maker
resource two**

Adoption Agency Decision-Making (England)

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Introduction

The decision-maker plays a vital and unique role within an adoption agency.

Adoption plans for children/Best Interest Decisions (BIDS)/Should be placed for Adoption Decisions (SHOPFA) all used to be considered by panels for recommendation prior to the agency decision-maker making a decision.

As of September 2012, the Adoption Agencies Regulations (AAR) 2005 were amended so that any cases 'where there will be court involvement and scrutiny' are submitted directly to the decision-maker for a decision. These cases will require an application for a placement order, and are cases where the child's birth parents do not consent to adoption, where care proceedings are ongoing or where a child has no living parents.

However, there was no guidance given as to the process by which this should be carried out, and each local authority therefore developed a process for "agency decisions" for themselves. Subsequent legal cases, such as *Somerset County Council v NHS Somerset Clinical Commissioning Group & Anor* [2021] EWHC 3004 (Fam), have brought the process under increasing scrutiny, resulting in any non-compliance in the process of decision-making leaving the decision open to challenge in proceedings.

This Practice Note is part of a series of training materials commissioned by Adoption England to support consistency and good practice in decision-making for children.

Please note: The bullet points in boxes cross-reference to the CoramBAAF agency decision-maker training.

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Which cases need to go to the panel?

Since 1 September 2012, the agency only refers a child's case direct to the adoption panel for a recommendation in certain circumstances. All other cases will be referred direct to the agency decision-maker for a decision. The following table sets out to whom a case must be referred.

	Circumstances	Refer to adoption panel	Refer direct to decision-maker without referral to adoption panel	Authority to place: Apply for placement order or Obtain parental consent
1.	Child accommodated by the local authority or relinquished for adoption and the birth parent has indicated they will consent to their child being placed for adoption - no court scrutiny of the agency's adoption plan	Yes	No	Parental consent
2.	Care order made and the birth parent has indicated they will consent to their child being placed for adoption – no court scrutiny of the agency's adoption plan	Yes	No	Parental consent
3.	Care Order made and the birth parent has indicated they will consent to their child being placed for adoption, but the agency considers there is a possibility that the birth parent will change their	Yes	No	Parental consent/Placement order

	mind and not give their consent	evidence that the birth parents will change their mind and not give their formal consent. In deciding which course of action to take, the agency must take into account the effect on the child of any unnecessary delay.		
4.	The child is placed for adoption by the local authority or is being provided with accommodation by them and the agency is not authorised to place the child for adoption and the child has no parents or guardians or the local authority considers that the conditions in section 31(2) of the Children Act 1989 applies	No	Yes	Placement order
5.	Care proceedings in progress	No	Yes	Placement order
6.	Care order made and birth parent has indicated that they will not give consent to their child being placed for adoption	No	Yes	Placement order

[Statutory guidance on adoption. 2013. Para 2.69 \(.page 49\).](#)

Appointing a decision-maker

The Decision Maker

- is a senior person within the adoption agency or is a trustee or director of the voluntary adoption agency.
- is a social worker with at least 3 years post-qualifying experience in child care social work.
- has knowledge and experience of permanency planning for children, adoption and childcare law and practice (NMS 23.17).
- has intercountry knowledge if appropriate, there are an increasing number of children's plans which involve an international element.
- understands the legislation surrounding access to information and the impact of adoption and reunion.

Agencies may have more than one decision-maker, but they may not delegate their duties to another person (Statutory Guidance Adoption 2013 (1.50)). It is sensible to have more than one decision-maker to cover absence/holidays, etc, but each must be appointed in their own right, and should know where that delegation is – usually in the 'schedule of responsibilities' for local authority agency decision-makers.

In most cases, it will be relatively straightforward for the agency to identify a suitable decision-maker. Often, it will be an assistant director, head of service or service manager in a local authority. There will usually be enough managers to allow for identification of someone who is well placed to



undertake this role, and who can offer a level of independence. However, for smaller agencies it is sometimes difficult to find someone who meets the requirements and who, at the same time, is not directly involved in supervising staff who are assessing or preparing potential adopters, or involved in the care planning, or who are their supervising social workers.

Smaller agencies may need to employ an independent decision-maker. The regulations do not specify the employment status of the decision-maker, but the Statutory Guidance does mention the decision-maker being a senior person 'within the agency' (Statutory Guidance Adoption 2013 (1.50)). This suggests that the decision-maker should be able to influence the wider work of the agency, and it will be for agencies to show that their decision-maker is active in this regard.

Larger agencies and local authorities will not usually have to consider appointing an external person, but will need to think about how many decision-makers to appoint, how to ensure a consistent approach between those individuals, and how to divide up the decision-making responsibilities. This may be done geographically, or by task.

The decisions to be made:

- *Child Should be placed for Adoption (AAR 19)*
- *Prospective Adopters are Suitable to Adopt (AAR 30B)*
- *Child should be placed with a specific adopter (AAR 33)*
- *Temporary approval of adopter to act as foster carer for a specific child (REG25A)*
- *Qualifying determination that a prospective adopter is not suitable to adopt*
- *Decision that a prospective adopter is not suitable to adopt after 40 working days or after recommendation, advice and minutes from the IRM*
- *To disclose protected information about adults under section 61 of the Act and regulation 15 of the Disclosure of Adoption Information (Post Commencement Adoptions) Regulations 2005 (AIR) when determining an application.*

Timing

“The decision-maker makes a considered decision that takes account of all of the information available to them, including (where applicable) the recommendation of the adoption panel and the independent review panel within seven working days of receipt of the recommendation and final set of panel minutes”.

(Adoption NMS 2014 17.10)

The child’s parents/guardian and prospective adopter should be informed orally of the agency’s decision within two working days; and

Written confirmation should be sent to them within five working days.

Where the Independent Review Mechanism (IRM) panel had reviewed the case, a copy of the decision must be sent to the contract manager of the IRM.

(Adoption NMS 2014 17.10)

In exceptional circumstances where it is impossible to comply with this requirement and reach a fair and well-informed decision, the decision-maker should ensure that the applicant (in the case of approval decisions) has been notified about the delay and must provide reasons why the delay was necessary.

If the decision-maker wishes to discuss any case, for example, if they are minded not to accept the recommendation of the panel or IRM, they should speak to the agency adviser, or agency medical adviser as applicable. The outcome of any discussion, as well as the decision itself and its reasons, should be recorded on the child and/or prospective adopters’ case record as applicable (Statutory Guidance 2013, 1.55).

The agency decision-maker should not approach the panel Chair or any other panel member for further discussions about a case, nor should they hold meetings or “pseudo panels” at which a child’s case is discussed and the decision made.



Things to consider:

All the information surrounding the case (including the reports submitted to the panel);

- that the authors of the reports comply with ARRs;*
- the stability and permanence of the relationship of any couple under consideration (Reg 4 Suitability of Adopters 2014);*
- the recommendations and reasons of the panel (and the IRM if applicable);*
- the minutes of the panel, including any minutes from adjourned panel meetings and the IRM.*

The social worker who knows the child best should compile the child's permanence report (CPR), provided they meet the requirements of the Restriction on the Preparation of Adoption Reports Regulations 2005 (ARR 2005). Regulations 3 and 4 set out who can prepare adoption reports, including a CPR and Adoption Placement Report (APR).

In order to be qualified to prepare adoption reports (including the CPR, APR or prospective adopter's report (PAR)), a person must be a qualified and registered social worker with at least three years' post-qualifying experience in child care, including direct experience of adoption work OR must be supervised by someone who is employed by the local authority and who has this experience.

While the ARR do not define 'direct experience of adoption', this should be experience as:

- a social worker responsible for a child where the agency has decided that the child should be placed for adoption and the social worker has been personally involved in considering whether the child should be placed for adoption, the matching, placement and review stages of the adoption process;*

and/or

- a social worker responsible for the recruitment, preparation, assessment and support of adoptive families*

Where reports are being prepared by social work students, independent social workers or social workers who do not have the necessary experience, the draft report should be considered and discussed during supervision and signed off by a social worker with the necessary experience before the report is submitted to the adoption panel, another agency, or the court (Statutory Guidance 2013, 1.16).

The penalty for causing someone unqualified to write this report lies with the agency decision-maker and can be a criminal offence (Adoption & Children Act 2002 s94).



Setting out the decision

In reaching a decision or making a qualifying determination, the decision-maker should consider *Hofstetter v L B Barnet and IRM* [2009] EWCA 328 (Admin), in which a court set out guidance for the way in which an adoption agency decision-maker should approach a case, or decision based on the agency or independent review panel's recommendation. The court said that it would be good discipline for the decision-maker to:

- list the material taken into account in reaching the decision;
- identify key arguments;
- consider whether they agree with the process and approach of the relevant panel(s) and are satisfied as to its fairness and that the panel(s) has properly addressed the arguments;
- consider whether any additional information now available to them that was not before the panel has an impact on its reasons or recommendation;
- identify the reasons given for the relevant recommendation that they do or do not wish to adopt; and
- state a) the adopted reasons by cross reference or otherwise, and b) any further reasons for their decision.



The context of decision-making

As a senior person in the organisation, the decision-maker has a responsibility to ensure that practice in the agency is of a standard that allows for effective decision-making, as well as influencing the wider practice in the agency. If the practice leading to the decision is effective and of a good standard, that will enable the decision-maker to have confidence in the evidence presented to them and the processes that have led to the decision.

It is not possible here to go into detail about what constitutes good care planning or a good assessment, but the decision-maker might wish to ensure that they are familiar with the materials listed in the bibliography at the end of this document.

The IRM annual report (2018) gives the following helpful notes:

- *The quality of the agency decision-making sometimes falls below the standards set out in the Fostering and Adoption Guidance. The IRM receives many applications where the ADM appears to merely endorse the recommendation of their own panel without explaining how they have reached the decision.*
- *The responsibility of the ADM is to act independently of their panel and provide a decision that has clearly reflected on all the evidence available before reaching a decision.*
- *Some agencies have developed agency decision tools which record evidentially how the ADM has reached their decision and these are helpful in demonstrating that the ADM has acted according to the regulations and guidance.*

It may also be appropriate to consider some questions by way of auditing in relation to the agency:

- How do you know that assessments and viability assessments being undertaken within the agency are of a good standard?
- How do you know that parenting assessments are of a good standard?
- How do you know that you have all the relevant materials on which to base your decision?

Since the decision-maker may be taking account of panel recommendations in some cases, they will also need to be confident that the practice here is also of a high standard.

- Are panel processes fair, and do applicants have an opportunity to be fully involved and give feedback?
- Are you confident that the panel minutes you use as a basis for your decision are accurate and signed off by all panel members as the final version?
- Are the panel procedures explicit about the process to be followed when not all panel members are in agreement?
- Are the panel minutes explicit about the reasons for the recommendations and any concerns expressed by the panel?

And more generally:

- Are you using a template that ensures all the relevant matters are considered when you make a decision?
- Are the reasons for your decision clearly recorded, and do you specify where your reasons are additional to or different from any panel recommendation?
- Do you routinely meet the timescales requirement for the decisions to be made and communicate decisions?

It is always important to bear in mind that decision-making should not occur in a vacuum, and that the wider context of best practice within the agency is equally important.



References

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Lord J and Cullen D (2022) '[Effective adoption panels](#)', London: CoramBAAF