

## Long term fostering: Addressing some of the myths around this realistic permanency option

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Objectively there are many cases where the option of permanency through adoption is the best outcome for children. This article does not seek to challenge that in some situations the permanent option of a new family via adoption may be the best outcome. However it is not uncommon at a final hearing to have parties seek to argue that long term fostering is the better option for a child, mainly due to the perceived disadvantages of adoption. In response to this argument there are some generic arguments that are often quoted by social work professionals and lawyers to seek to emphasise the disadvantages of long term fostering. Professionals will have oft heard arguments like the following:

- 1) Long term fostering is not a permanent option;
- 2) It is not sufficiently permanent when compared to adoption because foster placements break down and are inherently unstable;
- 3) Long term fostering involves substantial ongoing involvement via corporate parenting;
- 4) There is a stigma attached to being a long term looked after child which should be avoided.

There is no doubt that parts of the above are correct, however when I looked at this issue in detail for a recent case I was surprised by actually how inaccurate some of these often generic arguments actually are, when compared to the evidence available. This article will seek to explore the realities behind these oft used arguments, not to say that they are entirely without merit, but to actually examine whether they are as correct as one may assume. This article specifically does not seek to promote long term fostering, rather to challenge some of the often lazy arguments used against it.

### **1. Long term fostering is not a permanent option**

Long term fostering is often opposed by social workers and guardians because it is not a 'permanent option'. Alternatively it is said that long term foster placements are not 'legally permanent', presumably because the plans can change moving forwards. It almost goes without saying that this can be a good thing, however there is inevitably merit in the argument that a child will be more settled if he/she knows that this is where they are going to remain in the longer term. However for the reasons explored below nothing is ever truly 'permanent' and even adoption doesn't provide certainty.

Long-term foster care has been a 'permanence option' in this jurisdiction since the 1980s, however guidance issued overtime had appeared to undermine its importance. Notably a previous definition of permanence appeared to exclude long term fostering as an option:

*Permanence is the framework of emotional permanence (attachment), physical permanence (stability) and legal permanence (the carer has parental responsibility for the child) which gives a child a sense of security, continuity, commitment, and identity.*

However the position has changed dramatically in the last 10 years. The main conclusion of the Care Inquiry<sup>1</sup> in 2013 was:

*'From all that we have learnt – is that 'permanence' for children means 'security, stability, love and a strong sense of identity and belonging'. This is not connected to legal status and one route to permanence is not necessarily better than another each option is right for some children and young people. Adoption, although right for some children, will only ever provide permanence for a small number of children in care'*

The report goes on to conclude that:

*'The weight of evidence, from all quarters, convinces us that the **relationships** with people who care for and about children are the golden thread in children's lives.'*<sup>2</sup>

The Nuffield Foundation in 2021 released a report titled 'Planning and supporting permanence in long-term foster care'<sup>3</sup>. The report written by Larson, Schofield and others is the culmination of a 2 year study with access to considerable data from the DofE. The introduction to the document makes the point that:

*The goal of permanence is to offer children security, a loving family life and a sense of belonging, and it continues to be central to the family justice and care systems ... The goal of permanence is to offer children security, a loving family life and a sense of belonging, and it continues to be central to the family justice and care systems.*

In 2015 Parliament passed the *Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015*<sup>4</sup> which specifically sought to address the issues with long term fostering as a permanence option. The regulations themselves make alterations to the *Care Planning and Placement Review (England) Regulations 2010* which remain the overarching set of regulations. Of relevance (when dealing with this argument against long term foster care) is that these regulations specifically introduce long term foster care as a legally defined permanence option for looked after children. S2(1) of the 2010 regulations now says the following:

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<sup>1</sup> *Making not breaking: building relationships for our most vulnerable children*  
<https://www.nuffieldfoundation.org/sites/default/files/files/Care%20Inquiry%20-%20Full%20Report%20April%202013.pdf>

<sup>2</sup> Page 3 of the above report

<sup>3</sup> <https://www.nuffieldfoundation.org/wp-content/uploads/2021/12/Long-term-Foster-Care-Report.pdf>

<sup>4</sup> <https://www.legislation.gov.uk/uksi/2015/495/made>

*“long term foster placement” means an arrangement made by the responsible authority for C to be placed with F where:*

- a) C’s plan for permanence is foster care;*
- b) F has agreed to act as C’s foster parent until C ceases to be looked after, and*
- c) the responsible authority has confirmed the nature of the arrangement to F, P and C, and any reference to the responsible authority placing C in such a placement includes, where C is already placed with F, leaving C with F in a long term foster placement;*

The 2015 amendments to the 2010 regulations go further in providing safeguards for such placements. S22B of the 2010 regulations<sup>5</sup> now provides a list of conditions before a local authority can place a child with a long term foster carer which are the following:

*The responsible authority may only place C with F if—*

- a) the responsible authority have prepared a placement plan for C,*
- b) the requirements of regulation 9(1)(b)(i) have been complied with,*
- c) the placement will safeguard and promote C’s welfare,*
- d) the IRO has been consulted,*
- e) C’s relatives have been consulted, where appropriate, and*
- f) F intends to act as C’s foster parent until C ceases to be looked after.*

Notably both the definition of long term foster placement and the specific conditions provide a requirement that long term foster carers must commit to caring for any child until that child ceases to be looked after. Objectively this is the same requirement that is asked of adopters, albeit without the legal order in their personal favour. It is an obligation with the ‘Staying Put’ guidance that arguably now extends beyond the age of 18 for children who wish to continue to reside with their foster carers.

There can be no argument now that long term fostering isn’t a permanent option available for children and can in the correct situation bring about permanence. It is legally defined as such and the regulations provide considerable safeguards before children are formally placed with long term carers.

## **2. It is not sufficiently permanent when compared to adoption because foster placements break down and are inherently unstable;**

*Well, even if they are legally permanent don’t long term foster placements just breakdown all of the time?* This is the next generic point of opposition to such placements being approved by courts.

It has to be accepted that there is some legitimate basis for this argument. Long term foster carers do not have an order saying that they are legally responsible for caring for a specific child and can at any time (regardless of what they may have intended to at the outset) give notice and ask for a

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<sup>5</sup> <https://www.legislation.gov.uk/ukxi/2010/959/regulation/22B>

child to be removed from their care. There is no guarantee or certainty that a long term placement will not be stable or secure until a child reaches the age of majority. There is nothing that a local authority can do to provide this reassurance and the longevity of any placement will inevitably rely upon the quality of the matching process and to some extent good fortune.

However it can equally be argued that the same risks apply to adoptions. Whilst the new adoptive parent becomes their only legal parent, they have the ability to surrender the care of that child, as any other parent does, were they to believe that they could no longer care for them. The higher courts frequently emphasise the point that adoption is not a panacea and all professionals have likely dealt with cases where adoptions have broken down, often with devastating consequences.

The question therefore arises as to whether either is arguably more stable for children. The assumption may be that foster placements break down more easily than adoptive placements. Statistics in this area are relatively difficult to come by, however in 2016 there was a study in Northern Ireland in which 374 children were tracked for a 7 year period in long term foster placements. This study by McSherry and others<sup>6</sup>, concluded that of these 374 placements, 87% were very stable compared to 99% of adoptions. A lengthy study from Nina Biehal and others in 2010<sup>7</sup> reported that 72% of foster placements remained stable after 3 years, compared to 87% of adoptive placements. These figures suggest that whilst inevitably there is a difference in objective stability, the difference is not as great as might be imagined.

The 2015 regulations now require local authorities to log specific statistical analysis regarding long term placements and children who are looked after. That information is publicly available<sup>8</sup> and can be analysed in a variety of customisable charts. That said the information is unwieldy in its published form. The 2021 Nuffield report has some particularly relevant statistics from its own analysis of the data<sup>9</sup>. From that data the following relevant headline figures appear:

- a) As at 2017/18 some 8.4% of the 17,340 children in long term foster care were under the age of 5;
- b) 66% of those 17,340 children had never had any placement moves and 86% had only had up to one placement move;
- c) The average number of moves for all 17,340 children was 0.26 whilst in their entire care life. This is particularly relevant because the data set generally was skewed by older children, with the mean age being 12 but the numbers of moves still being low;
- d) Children in long term foster care with non-friends and relatives were the group who had the highest proportion of children who had experienced no placement changes in the current year, and they had the lowest mean number of placements across their period in care;
- e) Whilst the majority of long term foster placements with non-friends and relatives were with local authorities (57.6%) some 42.3% were via independent fostering agencies (p34), this is

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<sup>6</sup> McSherry, D., Malet, M.F. and Weatherall, K. (2016) Comparing long-term placements for children in care: Does placement type matter? Children and Youth Services Review 69,56-66

<sup>7</sup> Belonging and Permanence: Outcomes in long-term foster care and adoption. London: BAAF

<sup>8</sup> Su

<sup>9</sup> P29-49 of that report

despite the additional bureaucracy in getting approval for IFA placements.

These figures looked at crucially would suggest that long term fostering is a relatively stable option for children. This is even more so when it is acknowledged that many children will need to move to a long term placement from an interim placement or may have two interim placements. An average number of moves for all children being one quarter of one move is a stark statistic if faced with an argument that long term fostering is inherently unstable. The available data from the 2021 Nuffield report appears to support the slightly older case studies referenced above.

Thus whilst it can never be argued that long term fostering is as secure or likely to result in a permanent placement for a child as adoption, it is objectively difficult to say that the statistics are not similar, or at least are similar enough to undermine the generic argument that long term fostering is by its nature unstable.

### **3. Long term fostering involves substantial ongoing involvement for the local authority in the child's life via corporate parenting**

Again it cannot be disputed that if a child becomes subject to a care order (but not a placement order) they will become a looked after child. That status leads to certain requirements needing to be fulfilled for that child by their designated local authority. Arguably these are all for a purpose (directed by Parliament) to promote their wellbeing, however often these interventions by the state are argued to be draconian or not in a child's best interest, when compared to the lack of intervention in the lives of adopted parents. This intervention and the ongoing state involvement is often emphasised as a reason to avoid long term fostering.

The 2015 regulations however also sought to address some of these matters and to reduce the perceived bureaucracy of long term fostering. Regulation 28 of the 2010 regulations<sup>10</sup> was amended so that the frequency of visits for certain looked after children could be reduced to not more than every six months, from every 3 months, provided that the child has been in a long term looked after placement for a period of a year. This does require that the child agrees and is of sufficient age and understanding before such visits are reduced but provides some significant reduction to the frequency of statutory visits by the allocated social worker.

Further to this the Care Planning, Placement and case review of July 2021<sup>11</sup> provides guidance that looked after children reviews actually only need be held every 12 months rather than every 6 months, provided that a child has been in a long-term foster placement for more than a year. In these situations the guidance suggests that *'consideration should be given to whether it is necessary*

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<sup>10</sup> <https://www.legislation.gov.uk/ukxi/2010/959/regulation/28>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1000549/The\\_Children\\_Act\\_1989\\_guidance\\_and\\_regulations\\_Volume\\_2\\_care\\_planning\\_\\_placement\\_and\\_case\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1000549/The_Children_Act_1989_guidance_and_regulations_Volume_2_care_planning__placement_and_case_review.pdf)

to hold a meeting as part of a review<sup>12</sup>. Therefore whilst there needs to be a review every six months as to whether the care plan is meeting the needs of the child, there needn't be a formal meeting.

Arguably both steps have a limited impact on the daily life of a looked after child, and the oft quoted intervention is the need for regular deferrals to make decisions on behalf of a child. Schedule 7 of the 2010 regulations were amended by the 2015 regulations to include paragraph 15 which specifically requires the local authority to at every review of a child's care plan consider:

*'Whether the delegation of authority to make decisions about C's care and upbringing, if any, recorded in C's care plan by virtue of paragraph 3(4A) of Schedule 2 continues to be appropriate and in C's best interests.'*<sup>13</sup>

Schedule 2 of the 2010 regulations specifically includes matters that must be included within any placement plan for a looked after child, and paragraph 3(4A) provides for the inclusion of:<sup>14</sup>

*Any delegation of authority to make decisions about C's care and upbringing by the persons mentioned in paragraph (4) (as appropriate) to—*

- a) the responsible authority*
- b) F, and*
- c) Where C is placed in a children's home, the appropriate person.*

*in relation to the matters set out in paragraph (4B), and identifying any matters about which the persons mentioned in paragraph (4) consider that C may make a decision.*

'F' is a reference in the 2010 regulations to a foster carer. Notably then paragraph 4B goes on to say:

*The matters referred to in paragraph (4A) are*

- a) medical and dental treatment*
- b) education,*
- c) leisure and home life,*
- d) faith and religious observance,*
- e) use of social media,*
- f) any other matters which the persons mentioned in paragraph (4) consider appropriate.*

These parts of the regulations specifically not only allow, but encourage local authorities to delegate vast swathes of the corporate parental responsibilities to the approved foster carers to make day to day decisions for looked after children. Arguments about social worker's permission being required to permit school trips, residential stays or even nights over at friend's houses are not sensible arguments to be run, as such decisions should be deferred to foster carers to take, as if they were the child's own parent.

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<sup>12</sup> Paragraph 4.17 on p118

<sup>13</sup> <https://www.legislation.gov.uk/ukxi/2010/959/schedule/7>

<sup>14</sup> <https://www.legislation.gov.uk/ukxi/2010/959/schedule/2>

Indeed most local authorities have specific policies available online that endorse this approach. By way of example Nottingham City Council's policy<sup>15</sup> provides that all Day-to-day parenting should be delegated to the child's carer, with exceptions and reasons having to be set out within the placement plan. Overnight stays which have been risk assessed specifically do not need to be referred to a social worker. Further the policy over education appears to defer everything to the foster carer, including the choice of school with the general policy being:

*Where the plan is for long term foster care, the foster carers should have a significant say in the majority of decisions about the child's care, including longer term decisions such as which school the child will attend.*

Thus whilst there is inevitably some overarching element of corporate parenting, it is the reality for children in long term foster care and indeed the aim of the various regulation to limit wherever possible the need for that corporate parenting. The vast majority of decisions are left with the approved carers, with other interventions (limits on the needs for other reviews and investigations) also being sought to be reduced when long term fostering is the approved plan.

#### **4. There is a stigma attached to being a looked after child**

Finally it is oft said that long term fostering is not a viable option because of the stigma that is attached to children in long term care. Whilst it is no doubt true that children may suffer stigma for this, it is unclear why there is any greater stigma to this than there is to other differences that children have to the perceived norm. Children in the modern day (as they have across time) will be stigmatised by their peers for many different reasons, size, age, fitness, hair colour, wealth, cleanliness, etc. Children may not live with their parents for any number of reasons and may live with different types of carers.

On investigation there appeared to be no particular research available that sought to investigate or quantify the level of stigma that is so often quoted as being linked to being in long term foster care. There is no particular research that I was able to find that made this link, rather the opposite. The article '*Keeping Secrets: How children in foster care manage stigma*<sup>16</sup>' by Diane Dansey and others in March 2019 makes the point in its introduction that:

*Given that being in foster care has been associated with stigma in many studies (e.g. Ferguson and Wolkow, 2012; Hedin, Höjer and Brunnberg, 2011; Kools, 1997), it is striking how this construct has been under-researched. Kools (1997) identified that children in residential care were stigmatised as 'abnormal' or 'damaged' and it was hard for them not to take these negative labels to heart, although further consideration of their impact did not appear to be given.*

It is therefore objectively a perfectly reasonable argument to push back against the generic argument of stigma, and question why that stigma from long term foster care is any greater than any other type of stigma that child may experience, or how indeed it is greater than the impact of being adopted. That is not to seek to say that there is not a likely stigma for living in care, however it is the

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<sup>15</sup> [https://nottinghamcitychildcare.proceduresonline.com/chapters/p\\_del\\_auth\\_fc\\_resid.html#types](https://nottinghamcitychildcare.proceduresonline.com/chapters/p_del_auth_fc_resid.html#types)

<sup>16</sup> <https://journals.sagepub.com/doi/epub/10.1177/0308575918823436>



quantification of the harm that this stigma may cause to a child, in comparison with other types of stigma that is simply under researched.

## **Conclusions**

As above it is not the purpose of this article to suggest that long term fostering is some form of panacea for children. It clearly still poses many disadvantages to children who might prefer to live with their parents and ordinarily would do. However the exploration above hopefully articulates that some of the oft quoted disadvantages of long term fostering are either incorrect or are not as detrimental as they are suggested to be. Changes in thinking and regulations have continued to push back against the more historical narrative that had been built up against long term foster care. This is a pertinent example of if you scratch behind the surface of something often accepted as being correct, things are not often as simple as they might be made out to be.