



Inter-racial adoption

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The issue of race in matching children in care with prospective adoptive parents is one that has been raised in Parliament and in the press on a number of occasions. The *Adoption and Children Act 2002* currently provides that, although a child's racial and cultural origins are relevant factors to be considered by adoption agencies when making decisions about an adoption placement, they are not overriding considerations. However, concerns that race was preventing children being placed with suitable families of different backgrounds prompted the Coalition Government to issue revised statutory guidance to make it clear that a child's ethnicity should not be a barrier to adoption. Subsequently, provision to repeal the requirement for adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when making a decision in relation to the adoption of a child was included in the *Children and Families Act 2014*.

This note provides information on the development of the policy on inter-racial adoption.

This note applies to England.

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1 Adoption law and guidance

The [Adoption and Children Act 2002](#) provides the legislative framework for adoptions in England and Wales. The Act is supplemented by regulations made under the Act and statutory and other guidance.

When making a decision in relation to the adoption of a child, the 2002 Act requires that the paramount consideration for courts and adoption agencies¹ must be the child's welfare throughout his life.² They must also have regard to the adoption 'welfare checklist', among other matters:

- a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of his age and understanding);
- b) the child's particular needs;
- c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person;
- d) the child's age, sex, background and any characteristics of his which the court or agency considers relevant;
- e) any harm which the child has suffered or is at risk of suffering;
- f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including –
 - i. the likelihood of any such relationship continuing and the value to the child of doing so,

¹ Including local authorities placing children for adoption

² *Adoption and Children Act 2002*, section 1

- ii. the ability and willingness of any of the child's relatives, or any such person, to provide a secure environment in which a child can develop, and otherwise to meet the child's needs,
- iii. the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.³

1.1 The issue of race

When placing a child for adoption, the *Adoption and Children Act 2002* currently also requires an adoption agency to give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background⁴. Accordingly, although factors such as race and cultural background have to be considered, they should not be used to prevent a child being placed with adopters of a different background, if that adoption is in the child's best interests. The paramount consideration must be the child's welfare.

Under the earlier law set out in the *Adoption Act 1976*, a parent of child could object to an adoption if the proposed adopters were not of the same racial, cultural and religious background as the child.⁵ Following the change in the law, there were reports that adoption agencies were placing undue weight on the race of the child. In 2010, seven years after the enactment of the 2002 Act, Martin Narey, the then chairman of children's charity, Barnardo's, warned that adoption agencies were interpreting the legislation too literally and this was resulting in black and Asian children waiting on average three times longer than white children for adoptive families.⁶

Over the years, the issue of mixed race adoption has been raised a number of times in the Chamber. The Rt Hon. Michael Howard MP, during the Second Reading debate on the *Children and Young Persons Bill* in 2008, said:

Michael Howard: According to the law, the paramount consideration in cases of adoption is the welfare of the child. That is exactly as it should be. It is true that the Adoption and Children Act 2002 requires an adoption agency to give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background. It also requires an adoption agency to give due consideration to the wishes of the natural parent. But I repeat, according to the law the paramount consideration must be the welfare of the child. So, although factors such as race and cultural background have to be considered, they should not be able to prevent a child from being placed with adopters of a different background if that is in the child's best interests. Yet clearly, far too often, that is what happens.

Does the reason for that perhaps lie with the statutory guidance issued by the Government under the 2002 Act? That guidance emphasises the requirements to consider the child's religious and cultural upbringing, as well as any wishes and feelings that the child's parents or guardian may have about those matters. Is it perhaps the case that adoption agencies and social services departments are placing

³ *Ibid*, s1(4)

⁴ Section 1(5), ACA 2002 [emphasis added]. The requirement on courts and adoption agencies to give due consideration the child's racial, religious and cultural background will be repealed when the relevant provisions in the *Children and Families Act 2014* are brought into force.

⁵ LAC(98)20

⁶ Quoted in The Independent, [Race issues are delaying the adoption process, charity warns](#), 21 January 2010

too much emphasis on that part of the guidance and not enough on the paramount consideration of the welfare of the child?

The answers to those questions seem to me to be of great significance. If social service departments are misinterpreting the law, and misinterpreting or failing to apply the law and the Government's guidance, that might provide my party—and particularly my hon. Friends on the Front Bench—with a rare opportunity to change things while still in opposition nationally. After all, many—probably most—of the local authorities that exercise political control of their social services departments are now in the hands of the Conservative party. If those departments are getting it wrong, my hon. Friends should be able to use their influence to put the situation right. If, on the other hand, the guidance is wrong, the Government should change it. If, contrary to what seems to be the case, the law is wrong, the law should be changed, and this Bill provides the opportunity to do it.

I would very much like the Minister to answer the following questions. Is he satisfied with the current state of affairs on adoption? If not—I hope that he is not satisfied—why does he think that social services departments and adoption agencies are getting it wrong, and what does he propose to do about it? I look forward to his replies.⁷

In response, the then Minister for Children stated:

Kevin Brennan: All I can say is that local authorities, under the law and under the guidance, must find a placement that meets the needs of the child. A child should not be denied the opportunity of a loving family only on the basis of the ethnic background of prospective adopters. The Government's policy is quite clear: it was set out originally in 1998 in the local authority circular, "Achieving the Right Balance". It has not changed—the matter was debated under the 2002 Act—and local authorities should comply with that. I cannot emphasise that too strongly.⁸

In 2010, the then Children's Minister Tim Loughton, in a speech to mark National Adoption Week, called on local authorities and voluntary adoption agencies not to deny children a loving home with adoptive parents solely on the grounds that they did not share the same racial or cultural background.⁹ He also revealed that the Government intended to reissue and update statutory adoption guidance to include advice on matching for black and minority ethnic (BME) community and mixed ethnicity children.¹⁰

1.2 Statutory guidance

[Revised statutory guidance](#) for local authorities and adoption agencies¹¹ was published by the Government in February 2011. In the ministerial forward to the revised guidance, the Children's Minister, Tim Loughton, stated that he had also set up a Ministerial Advisory Group on Adoption to provide expert advice on proposals to improve and share best practice. Former chief executive of Barnado's Martin Narey was subsequently appointed [ministerial adviser on adoption](#).

The aim of the guidance is to clarify, rather than change the law for adoption agencies on issues such as matching the ethnicity of the child with that of adopters. The guidance makes

⁷ HC Deb 16 June 2008, cc754-5

⁸ HC Deb 16 June 2008, cc 776-7

⁹ DfE press notice 2010/0114, [Ethnicity shouldn't be a barrier to adoption](#), 2 November 2010

¹⁰ *Ibid*

¹¹ DfE, *Adoption and Children Act 2002, Statutory Guidance*, 2011 (as amended)

it clear that matching the ethnicity of the parties should not prevent an adoption if the placement is in the best interests of the child. It provides:

Ethnicity and culture of children and prospective adopters

6. The structure of white, black and minority ethnic groups is often complex and their heritage diverse, where the race, religion, language and culture of each community has varying degrees of importance in the daily lives of individuals. It is important that social workers avoid 'labelling' a child and ignoring some elements in their background, or placing the child's ethnicity above all else when looking for an adoptive family for the child¹.

7. A prospective adopter can be matched with a child with whom they do not share the same ethnicity, provided they can meet the child's other identified needs. The core issue is what qualities, experiences and attributes the prospective adopter can draw on and their level of understanding of the discrimination and racism the child may be confronted with when growing up. This applies equally whether a child is placed with a black or minority ethnic family, a white family, or a family which includes members of different ethnic origins.

8. All families should help children placed with them to understand and appreciate their background and culture. Where the child and prospective adopter do not share the same background, the prospective adopter will need flexible and creative support to be given by their agency. This should be in the form of education and training, not just simplistic advice, provided in a vacuum, on learning their children's cultural traditions or about the food/cooking from their birth heritage. The support plan should consider how the child's understanding of their background and origin might be enhanced. This can include providing opportunities for children to meet others from similar backgrounds, and to practise their religion – both in a formal place of worship and in the home. Maintaining continuity of the heritage of their birth family is important to most children; it is a means of retaining knowledge of their identity and feeling that although they have left their birth family they have not abandoned important cultural, religious or linguistic values of their community. This will be of particular significance as they reach adulthood.¹²

2 Proposals for reform

2.1 *The Adoption Action Plan: tackling delay*

The revised statutory guidance was followed in 2011 by the Government's [Adoption Action Plan](#) which set out proposals to improve the adoption process and reduce delays. The main measures include:

- Requiring local authorities and adoption agencies to reduce delays by focusing on finding suitable adopters for children rather than the 'perfect match'.
- Legislating to allow proposed adopters to foster children while the courts consider the case for adoption.
- Referring children to the national Adoption Register if they are not adopted locally within three months of being recommended for adoption.

Delays caused by ethnic matching

In the [Action Plan](#), the issue of ethnic matching was highlighted as one of the causes of delays in placing children for adoption. It provided:

¹² *Ibid.*, p85

50. The delay faced by black children during this process needs particular attention. They take around a year longer to be adopted after entering care than white and Asian children. One reason for this is that in some parts of the system, the belief persists that ensuring a perfect or near perfect match based on the child's ethnicity is necessarily in the child's best interests, and automatically outweighs other considerations, such as the need to find long-term stability for the child quickly.

[...]

52. That is not to say that ethnicity can never be a consideration. Where there are two sets of suitable parents available then those with a similar ethnicity to the child may be the better match for the child. Sometimes an ethnic match will be in a child's best interests, for example where an older child expresses strong wishes. However, it is not in the best interests of children for social workers to introduce any delay at all into the adoption process in the search for a perfect or even partial ethnic match when parents who are otherwise suitable are available and able to provide a loving and caring home for the child.

53. Similarly, there are approved adopters who are ready and able to offer loving homes but who are too readily disregarded because they are single, or considered too old. These can, of course, be relevant factors, but we know that in most cases delay and the instability associated with it will be the greater potential cause of damage to the child.

54. The Government will bring forward primary legislation at the next available opportunity to address these issues. The overriding principle in finding a match for a child will remain what is in the child's best interests throughout their life.¹³

The Action Plan includes a number of case studies of inter-racial adoption placements and is available to view in full on the [Department of Education website](#).

A subsequent Ofsted report, *Right on Time*, found that the most significant cause of adoption delays was not the matching and placement process by adoption agencies and councils but the court process.¹⁴ The issue of delays in care proceedings more generally was one that the Government examined as part of a wider [Family Justice Review](#).¹⁵

2.2 Draft legislation

On 8 November 2012, the Government [published](#) two draft clauses on fostering and adoption. The second of the clauses provided for removal of 'the express duty on adoption agencies to give due consideration to religious persuasion, racial origin and cultural and linguistic background, when matching children with prospective adopters'. The Government stated that the clause would reinforce 'the existing emphasis on the welfare of the child and the impact of any delay'.¹⁶

The [draft provisions and explanatory notes](#) set out the Government's intention to amend the rules relating to ethnic matching in further detail. The draft explanatory notes provided:

¹³ Department for Education, *An Action Plan for Adoption: Tackling Delay*, 2011; paras 52-54

¹⁴ Ofsted, *Right on time: exploring delays in adoption*, April 2012

¹⁵ The Family Justice Review also encompasses, amongst other things, contact rights following parental separation. Further information on this area is set out in the Library standard note, [Family Justice Review update: Contact and other issues for parents following separation](#) SN/SP/6335

¹⁶ Department for Education, *Government publishes draft legislation on ethnicity and "Fostering for Adoption"*, 8 November 2012

Clause 2: Adoption agencies: repeal of requirement to give due consideration to ethnicity: England

6. This clause amends section 1 of the Adoption and Children Act 2002 so that subsection (5) does not apply in relation to local authorities in, and registered adoption societies whose principal office is in, England. Section 1(5) of that Act requires adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when placing him or her for adoption.

7. Adoption agencies are required by section 1(2) and (4) of that Act to make a child's welfare throughout his or her life their paramount consideration, and to have regard to a range of matters, including the child's needs, wishes and feelings, and his or her background and other relevant characteristics, in reaching a placement decision. These provisions, therefore, mean that the adoption agency will be under a duty to have regard to the child's religious persuasion, racial origin and cultural and linguistic background, amongst other factors, where relevant. An adoption agency is also required by section 1(3) of that Act to bear in mind that any delay in coming to a decision is likely to prejudice the child's welfare.

8. The amendment to subsection (5) is intended to avoid any suggestion that the current legislation places a child's religious persuasion, racial origin and cultural and linguistic background above the factors in section 1(2) to (4).¹⁷

Lords Committee Select Committee on Adoption Legislation report

Pre-legislative scrutiny on the draft adoption clauses was carried out by the [House of Lords Select Committee on Adoption Legislation](#).¹⁸ The Committee published its pre-legislative scrutiny [report](#) on the draft adoption clauses on 19 December 2012.¹⁹

The Committee expressed concerns about whether the draft clause ethnicity matching achieved the correct balance between placing a child for adoption without undue delay and respecting the components of a child's identity. The Committee recommended that legislation be amended to explicitly include consideration of religious persuasion, racial origin and cultural and linguistic background in placing a child for adoption, as part of the 'welfare checklist'²⁰:

The second draft clause is intended to repeal the requirement to give due consideration to ethnicity when matching for adoption in England. We share the Government's belief that children should not experience undue delay whilst a search for a perfect or near perfect ethnic match takes place. We do not, however, believe that considerations of race, religion, culture and language should be neglected altogether, as they are all components of a child's identity. We are concerned as to how the removal in England of section 1(5) of the Adoption and Children Act 2002 will be interpreted by those working in the field, and that it may be seen as a signal that race and ethnicity should be given no weight in the matching process. A better balance needs to be achieved. We therefore propose that the welfare checklist, at section 1(4) of the Act, should be amended to include considerations of ethnicity. This will ensure

¹⁷ Department for Education, [Draft legislation on Adoption: Early Permanence Through 'Fostering for Adoption' and Matching for Adoption](#), p8

¹⁸ The Committee normally deals only with post-legislative scrutiny, but had its remit extended to consider the draft clauses.

¹⁹ House of Lords Select Committee on Adoption Legislation, [Adoption: Pre-legislative scrutiny](#), First Report of Session 2012-13, HL 94

²⁰ The checklist is detailed in section 3.1 of this paper

that issues of race, religion, culture and language are considered alongside the other elements of a child's welfare.²¹

The Government decided not to amend its draft clause on matching for adoption, stating its belief that the Committee's proposed amendment would retain 'the excessive emphasis that the present legislation is perceived to create for those aspects of a child's background and characteristics that relate to their ethnicity.'²² The response noted that adoption agencies would still have the child's welfare as their paramount consideration in making an adoption placement, and be required to have regard to the 'welfare checklist' when placing a child, which includes the child's age, sex, background and any of the child's characteristics which the court or agency considered relevant.²³

2.3 The Children and Families Act 2014

The *Children and Families Bill* was introduced in the House of Commons on 5 February 2013. The Bill included final versions of the clauses subjected to pre-legislative scrutiny by the Lords Select Committee on Adoption Legislation, and other clauses relating to support for adoption which were included in the Government's *Adoption Action Plan*. The clause on ethnicity matching sought to remove the requirement on adoption agencies in England to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when making an adoption placement.²⁴ Further information on the Bill is set out in research papers²⁵ written by the House of Commons Library and available on the Bill pages of the [Parliament website](#).

The provision is included as section 3 of the now *Children and Families Act 2014* which received Royal Assent on 13 March 2014. The provision is unchanged from the clause as published in the Bill. It amended section 1 of the *Adoption and Children Act 2002* so ethnicity is no longer a due consideration for adoption agencies in England when placing a child.²⁶ The provision came into force on 25 July 2014.

3 Further reading

The Narey Report

Prior to taking up the position of ministerial adviser on adoption, Martin Narey published a report on adoption for *The Times* newspaper, *A blueprint for the nation's lost children*.²⁷ Chapter 7 of the report examines the issue of ethnicity in the adoption process and set out a number of cases studies involving black and ethnic minority children adoptions by white parents. Narey was dubious that new guidance will have a measureable effect on adoption practices. In his report he recommended that the Children's Minister:

- ensures that the new guidance on ethnic matching in arranging adoption is changing local authority voluntary sector behaviour
- ensures that ethnicity data on the number of adoptions of children from care, and the time lag between care and adoption is published frequently.²⁸

²¹ *Ibid*

²² *Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny*, Cm 8540, p 27

²³ *Ibid*.

²⁴ The requirement would remain for adoption agencies in Wales

²⁵ [RP 13/11](#) and [RP 13/32](#)

²⁶ It does however remain a consideration for adoption agencies in Wales.

²⁷ *The Times* 5 July 2011 (subscription only - contact the Members' Library for access or a hardcopy printout on x3666)

²⁸ Chapter 7

Further research

[Professor Elaine Farmer's study for the Adoption Research Initiative](#) examined the effectiveness, outcomes and costs of different family finding methods and matching practices in adoption. The study found that attempts to match families of similar ethnicity were a cause of delay for 70% of the black and minority ethnic children who experienced delay.²⁹

[A study by Dr Julie Selwyn](#) found that children's profiles often included the specific requirement for the prospective adoptive parents to match the child's ethnicity, with 'same-race' placements dominating the Child Permanence Report over and above other needs. This study also found that some social workers were so pessimistic about finding ethnically matched adopters that there was little family finding activity. Consequently many minority ethnic children had their plan changed away from adoption.³⁰

Further research by [Dr Selwyn & Dinithi Wijedesa](#) which looked at on the reasons why a sample of 120 minority ethnic children with adoption recommendations entered care found no evidence that children were being removed unfairly or in a discriminatory way. However, there were significant differences by ethnic group in the characteristics of children and their mothers, in reasons for entry and in age at referral. The study provided that these differences needed to be better understood, and interventions targeted at improving the circumstances and stresses within families that lead to abuse, neglect or relinquishment are also needed. It concluded that simply focusing on reducing the number of minority ethnic children in care did not in itself produce better outcomes for children.³¹

A review of research on trans-racial adoption in the United States of America by [Evan B. Donaldson Institute](#) concluded that adoption across ethnic boundaries did not in itself produce psychological or behavioural problems in children. However, where a child was adopted across ethnic boundaries, they and their families could face a range of challenges. The manner in which parents handled these challenges, particularly their sensitivity and approach to racism, facilitated or hindered children's development. The authors concluded that these challenges needed to be addressed when matching children with families and in preparing families to meet their children's needs.³²

Press articles

The Independent, ['The racism of our adoption rules'](#), 11 November 2008

The Times, ['Tories vow to remove inter-racial taboo in adoption'](#), 10 November 2008

The Guardian, ['Children are wasting years in care because people like us are 'too posh''](#) 15 July 2008

The Observer, ['Race dilemma at the heart of our adoption crisis'](#), 7 July 2008

The Independent, ['Race issues are delaying the adoption process, charity warns,'](#) 21 January 2010

²⁹ Farmer et al, ['An investigation of family finding and matching in adoption – briefing paper,'](#) 2010

³⁰ Selwyn et al, ['Pathways to permanence for black, Asian & mixed ethnicity children'](#), 2010

³¹ ['Pathways to adoption for minority ethnic children in England – reasons for entry to care,'](#) September 2010

³² Smith et al, ['Finding families for African American children: the role of race & law in adoption from foster care'](#), 2008

The Guardian, [‘The truth about inter-racial adoption,’](#) 3 November 2010

The Guardian, [‘Long waits for adoption have nothing to do with ethnic matching,’](#) 18 November 2010

The Times, ‘Adoption couples blocked by race barrier,’ 24 January 2011 (subscription only, print outs available from Member’s Library x 3666)

The Times, The Narey Report: ‘A blue print for the nation’s lost children,’ 5 July 2011 (subscription only, print outs available from Member’s Library x 3666)

Sunday Times, ‘My 65,000 reasons why this adoption apartheid must end,’ 26 February 2012 (subscription only, print outs available from Member’s Library x 3666)

Telegraph, [‘Gove accused of exaggerating race role in adoption delays,’](#) 2 April 2012

Sunday Times ‘House! I’ve won the adoption bingo’ (interview with Baroness Oona King) 13 May 2012 (subscription only, print outs available from Member’s Library x 3666)

The Guardian, [‘On adoption, race does matter,’](#) 22 December 2012

Further information on adoption processes is available on the [Gov.uk](#) and [British Association for Adoption and Fostering \(BAAF\)](#) websites.