Achieving permanency through adoption
Following in US footsteps?

In the past six years both England and the USA have called for radical overhauls of their adoption systems. These include not only changes to service delivery but also increased monitoring and accountability in order to achieve national child welfare goals. Drawing upon a report examining international adoption policy and practice commissioned by the Cabinet Office for the Prime Minister’s review of adoption, Julie Selwyn and Wendy Sturgess compare the problems identified in the two countries’ looked after children systems and examine the early impact of the US legislation.

In December 2000, the White Paper, Adoption: A new approach, opened with a foreword written by Prime Minister Tony Blair:

While there are many options suitable to children’s needs, adoption can work well. There is scope to increase the use of adoption. But there are clear problems with the way the system of adoption now operates. Poor performance, widespread variations, unacceptable delays . . . there is a lack of clarity, of consistency and of fairness . . . We have to change this. We have to have a new approach to adoption.

Similar concerns had been expressed in 1996 by President Clinton in the USA:

I am committed to giving the children waiting in our nation’s foster care system what every child in America deserves, loving parents and a healthy stable home . . . While the great majority of children in foster care will return home, for about 1:5 returning home is not an option and they will need another home, one that is caring and safe. These children wait for too long, typically over three years but for many much longer, to be placed in a permanent home . . . I know we can do better.

In response to these concerns, both countries set up reviews of adoption policy, led respectively by the Prime Minister and the President. In the USA wide-ranging consultations were held resulting in new legislation, the Adoption and Safe Families Act (ASFA, 1997), seen as an important landmark in federal child welfare law. Guidelines to the States (Adoption 2000) and changes to Federal rules (2000) followed. A target was also set to double the number of children adopted from care by 2002. The effects of these new policies on adoption and permanency practice in the USA are just beginning to be observed. In England, the Performance and Innovation Unit produced a report for consultation (PIU, 2000), which was quickly followed by a White Paper and the new Adoption and Children Bill, which is expected to be fully implemented by 2004. Prior to this, National Adoption Standards were introduced, specifying in detail the services that all parties involved in the adoption process should receive. These aim to improve the consistency of service provision across councils. A target has been set to increase by 40 per cent the number of looked after children adopted or in other forms of legally permanent placements by the year 2004/05 (Department of Health, 2000).

Both England and the USA have proposed radical overhauls of their adoption systems that include not only changes to service delivery but also increased monitoring and accountability in order to achieve national child welfare goals. At the time of writing, Wales, Scotland and Northern Ireland are considering their response to the Adoption Bill and National Standards. The intention of this article is to compare the problems identified in the English and US systems for looked after children and to examine the early impact of the USA legislation.

Difficulties are inevitably encountered when trying to make comparisons...
between countries. For example, sharing with the USA what appears to be a common language can lead to incorrect assumptions that terminology is being used in similar ways. Some statistics are collected differently, making direct comparisons complicated. In relation to adoption, the services provided in the USA and England are very different. In the USA the majority of adoptions are managed by private and independent agencies, often for profit and with little regulation (Freundlich and Phillips, 2000). These agencies primarily place infants for adoption. Only about 15 per cent of all adoptions in the USA are made through public agencies. These agencies are staffed by government-employed social workers whose task is to plan for permanency for ‘looked after’ children. It is this group of children whose needs most closely resemble the needs of children looked after in England and on whom we will focus in this article.

Population of children in care in the USA

During the early 1990s the numbers of children entering care in the USA rose dramatically. Between 1986 and 1995 there was a 72 per cent increase in the number of children in care, associated with a rise in the number of child abuse referrals (National Adoption Information, 2001). This trend was most apparent for younger children and the median age of entry to care reduced from 12.6 years in 1982 to 8.0 years in 1999 (Children’s Bureau, 2001). The rise threatened to overwhelm the child welfare system and kinship care was encouraged wherever possible. By 1999, 547,000 American children were in care with most looked after in foster care placements (Adoption and Foster Care Analysis and Reporting System, 1998–99). The goal for the majority of these children was reunification with their birth families. However, there was growing concern about the number of children for whom this was not possible and the length of time children waited in foster care (Children’s Bureau, 2001). In 1999 the Children’s Bureau identified 117,000 children (about 20 per cent of all looked after children) as waiting to be adopted. The majority of these children had entered care when aged under four and had had numerous moves within the care system. Many had waited a significant time for a new family and some were never placed. There were concerns about delays in planning, delays within court procedures, the perceived ineffectiveness of family support services for some families, and what were described as well-intentioned but misguided efforts to preserve birth families against the odds (General Accounting Office, 1999).

Population of children in care in England

In contrast to the situation in the USA, the number of children entering care in England has not risen dramatically. What has changed, however, is that since the mid-1990s, children are more likely to come into care because of child protection concerns and to remain in care for longer. The average number of days in care has increased for all age groups, but the trend is especially prevalent for children aged 0–4 years. In 1999/00 58,000 children were looked after by local authorities at any one time – a 13 per cent rise in the volume of the care population since 1994 (Children Act Report, 2000; Department of Health, 2000). In the USA the sharp upward trend has been attributed to the number of mothers...
addicted to crack cocaine and the number of children orphaned by AIDS (Michaels and Levine, 1992). In England anecdotal accounts from local authorities have suggested various reasons for the smaller increase. They include increasing substance misuse, earlier decision-making by social workers and the quicker removal of younger siblings once significant harm has been established.

More than half of the children entering care return home within six months (Department of Health, 2000) but there are many children who remain in the care system for much longer. In England and Wales in 1999, 28,000 children had been looked after continuously for more than two years (of whom nearly 3,000 were under five years old) and nearly 12,000 had been looked after for five years or more (Department of Health, 2000). In both England and the United States it has been established that the longer a child has been in care the more likely they are to remain there (Tatara, 1993; Department of Health, 2000). It is difficult to know how many children in England are ‘waiting’ to be adopted or the number of children for whom a best-interest decision was once made but an adoptive home never found, as these figures are not routinely collected at present.

The Prime Minister’s Review of Adoption (Performance and Innovation Unit, 2000) was commissioned to address ‘whether there should be more use of adoption as a permanency option for looked after children and whether the process could be improved’. The report identified many concerns similar to those recognised in the USA: inconsistence between local authorities in the use of adoption, slow decision-making, failure to deliver plans within appropriate timescales and a lack of support for adopters. A recent survey of completed adoptions (Ivaldi, 2000) upheld many of these concerns. Two-thirds of adopted children had entered care under 12 months old but were not adopted until aged on average four years and six months. The vast majority had never returned home, but many had experienced several changes of placement.

Adopted children in the USA
In the USA, 36,000 children were adopted from care in 1998 (Adoption and Foster Care Analysis and Reporting System, 1999). The majority of these were under ten years of age, the average age being 6.9 years, and most had identified special needs. The children were equally divided according to gender, but 38 per cent were white and 61 per cent from a minority ethnic background. Of these, 46 per cent were African-American, 13 per cent Hispanic, one per cent Native American and less than one per cent Asian/Pacific Islander. African-American children are disproportionately represented in care, comprising 48 per cent of the foster care population but only 17 per cent of the general child population (Adoption and Foster Care Analysis and Reporting System, 1998/9). In response to major concerns about lengthy stays, poor outcomes for minority children and the prevalence of racial preference in placement (Spar, 1997), Congress enacted the Multiethnic Placement Act (MEPA, 1994) and Interethnic Placement Provisions (IEP, 1996). These acts outlaw discriminatory practices and forbid the denial or delay of a foster/adoptive placement solely on the base of race, colour or national origin of the carer or child involved. As yet, there has been no evaluation of the impact of the new legislation.

Adopted children in England
In 1998/9, 2,200 children were adopted out of care (Department of Health, 2000). There were very few children adopted over the age of ten years, with the average age being just over four. The children were slightly more likely to be female and were more likely to be white. Ten per cent were from a minority ethnic background and of these seven per cent were of mixed parentage, two per cent black and one per cent Asian. There is no national policy in England requiring ethnic monitoring of children receiving welfare services (Boushel, 2000) and statistical information about the ethnicity of the general population is limited. The 2001 census should provide better information, particularly in relation to the population of mixed parentage children, a category
not included in the previous census. However, it is estimated that children from ethnic minorities make up ten per cent of the general child population (Berrington, 1995), 17 per cent of the looked after population (Performance and Innovation Unit, 2000) and ten per cent of adoptions from care. Collier et al (2000) note that a high proportion of children referred for family-finding are from ethnic minorities, constituting 26 per cent of accepted child referrals to BAAF’s family-finding services. The children though, are not represented to the same degree in the profiles of children who are adopted. This would suggest that children from ethnic minorities wait longer for adoptive homes and are less likely to be placed.

The USA response: the Adoption and Safe Families Act

The response of the US government to the concerns highlighted earlier was to pass, in 1997, the Adoption and Safe Families Act (ASFA). Individual states were then given a further two years to bring their own legislation into line with federal law. Drawing upon best practice, a set of national guidelines (Adoption 2002) were produced to aid states in the implementation of the ASFA. These guidelines proposed specific strategies to move children more quickly from foster care to permanent homes.

The Act aimed to remedy the problems identified in the US welfare system and to double by 2002 the number of children adopted. It is a lengthy and complex act, interacting with other legislation. There is time here to consider only some of the clauses and intentions. It has two overarching goals: the first is to quickly find a permanent placement for children who cannot return home and the second is to change the experience of children entering the care system. It is the first major reform of federal child welfare policy since 1980 and has the safety and security of children at its heart.

Key principles of the ASFA

- The safety of children is the paramount concern that must guide all child welfare professionals. The Act extended the concept of ‘reasonable efforts’, which was part of paras 96–272, the Adoption Assistance and Child Welfare Act of 1980. This is the requirement that social workers must make reasonable efforts to prevent removal of children from their birth families and reunify children and families where possible. For the first time legislation is explicit about when agencies do not have to try to preserve families, if by doing so the child’s health and safety would be endangered. A number of parental behaviours such as being involved in the murder of another child, abandonment and extreme abuse would preclude rehabilitation attempts.
  - Services to birth families should be of a high quality but should be time limited.
  - Foster care is a temporary setting and not a place for children to grow up.
  - Permanency planning should begin as soon as a child enters foster care and concurrent planning is mandatory. Delays should be minimised.
  - The child welfare system must focus on results and accountability; a new system of reporting has been introduced with annual publication of child welfare outcomes (Children’s Bureau).
  - Innovative approaches are needed to achieve the goals of safety, permanence and well-being.

The ASFA defines permanency as:

a stable and legally sanctioned relationship with caring protective adults. For most children this will be with their birth parents but for those in foster care it will be through adoption or guardianship. (Adoption 2002).

There is a hierarchy of options for permanence. First is safe reunification with birth parents or other suitable family members. If this is not possible, adoption is the placement of choice followed by a new order of permanent guardianship, then other types of guardianship. The least preferred option is remaining in foster or residential care without any legal order. Permanent guardianship is recommended for children who cannot return
home but where adoption is not possible or appropriate, for example, where a child is too old to be adopted or where he or she does not wish to be adopted. Parental rights are not terminated but the custodial rights (power to make decisions concerning the care, education, health, etc of the child) are transferred to the guardian. These placements are not supervised by social workers but the carers are eligible for the same services and allowances as adopters.

One of the most controversial elements of the Act comprises the deadlines set for the planning process. The clock begins as soon as the child is formally considered to have entered care. Deadlines are set for every stage of the process. Permanency hearings (before a court) have to be held within 12 months of the child entering care or within 30 days of a court making a 'no reasonable efforts' determination, ie that reunification services should not be provided. Parental rights can be removed at this point and have to be withdrawn before an adoption order can be granted. Common grounds for the termination of parental rights (TPR) are extreme or repeated abuse, addiction and failure of prior treatment, incapacity, and parental failure to improve within a court-defined timescale. In addition, if a child has been looked after for more than 15 out of the previous 22 months, federal law requires the removal of parental rights.

The law provides exemptions from TPR on the grounds that the family is close to reunification, that the child is older than 12 or that services have not been provided. There is almost a presumption that for the first 12 months the plan is to restore the child home, but at the permanency hearing the balance shifts to social workers having to argue why rehabilitation attempts should continue. Anecdotal evidence suggests that some social workers have taken the time limits very literally, so that at the 12-month hearing there has been an almost automatic shift to adoption planning.

Concerns have been expressed that parental rights are being taken away too swiftly. Some states have exercised the discretion allowed under federal law and, emphasising the safety of children to a greater degree, shortened the time limits to 12 months in continuous care before considering TPR. Others states, such as Missouri, have established a team approach to case management and decision-making. All key decision-makers – social worker, supervisor, parents, foster carers, guardian ad litem and juvenile officer of the court – make up a family support team. This team completes the assessment of need and develops, monitors and reviews the case plan on a defined periodic basis. Concurrent planning is part of this process. In practice, Missouri social workers are informing parents at every family support team meeting that they risk losing parental rights if their child cannot safely return home after 15 months.

In the present social work climate within England, where partnership and respect for individuals are strongly-held values, this kind of practice is unlikely to be welcome. It would be perceived as threatening to parents and undermining to attempts to build a sound relationship based on trust. Those in favour of tight timescales in the USA argue that a year is a long time in the life of a child, that the court process ensures that families are very clear about what they have to change and by when, and that agencies clearly have a duty to provide services. However, services are not always available and there are often waiting lists. For those parents requiring drug/alcohol programmes the waiting lists can be very long and treatment can last 18 months, putting some parents outside the time deadlines. Other research (Stevenson, 1998) shows that parents who are neglectful need long-term work and that quick time-limited interventions have not been successful.

In England previous experience of terminating parental rights through parental rights resolutions led to many children spending their entire childhoods in the care system without any contact with their birth families. Terminating parental rights, however appropriate, does not ensure permanency for children. There has been no published research in the USA on the views of birth parents or children about these changes, but there is
considerable evidence as to the continuing power of family relationships, regardless of what the British court decrees (Fratter, 1995; Bullock et al, 1998).

**Outcomes of the ASEF**

The target to double the number of children adopted from care by 2002 will be easily reached. Decisions are being made earlier and children adopted faster. Of the 42 states where data are available (eight states did not report), all but five have reported an increase in adoptions. All states are also reporting an increase in the use of permanent guardianship orders. There are currently no reports of a growth in the disruption rate.

Although there is little published research, it appears that there has been a clearing of the backlog of children who have been waiting in the system for some time. Over half the children adopted in 1999 were older than six years. The majority (65 per cent) were adopted by foster carers, most of whom had previously cared for the child. There has also been a growth in kin adoptions and a smaller growth in unrelated family adoptions. Single parents represent a significant proportion of adopters, ranging from 12 per cent in some communities to one-quarter or more in others (Shireman, 1995). Families already with children also make up a large number of stranger adoptions. In a 1994 survey of New York state unrelated adoptions, 81.4 per cent of parents already had children. Infertile couples are less likely to apply to adopt older children in the USA, as infants can be obtained through private arrangements or through intercountry adoption. The pattern is very different in England and Wales where three-quarters of adopters have no birth children (Ivaldi, 2000).

All aspects of the child welfare system have been reformed by states that have been most successful in raising the number of adoptions and reducing the population of children in care. For example, Illinois, now seen as an exemplary state, improved early risk assessment, increased time-limited family support services to children in their homes, increased the number of social workers and reduced caseloads (Illinois Department of Children and Family Services, 2001). These measures meant that the number of children entering care came down and USA child welfare outcome targets, such as reducing the number of children being re-abused, were met. Illinois contracted out to a non-profit agency the provision of services to children in foster homes. This agency received increased fees to purchase specific supports, but had to triple permanency rates and cut placement instability by half. The goals were met and the result was the most significant decrease in substitute care caseloads for more than a decade. Projected figures indicate that, by 2002, the number of children in care in Illinois will fall below half its peak in 1992 and the number of children in residential care will drop by 40 per cent since 1997.

The numbers of children in Illinois adopted or moved into subsidised guardianship arrangements have grown substantially. In 1998 there were more children placed in these kinds of arrangements than in all of the previous ten years. Adoption tripled. In 1995 there were 5.8 children looked after by the state for every child being supported in an adoptive home. By June 2000 this had reversed, with the state supporting more children in adoption/guardianship homes than in foster care. Increased adoption allowances and the provision of extensive wraparound support services for adopters, including kin adopters and those in subsidised guardianship arrangements, have enabled this dramatic shift. There has been a radical transfer of resources away from foster/residential care to family support and adoption and guardianship, and all such orders are now accompanied by a written contract setting out the plans for future support and finance.

Other states have been investigating innovative ways of achieving permanency for adolescents, a concept that challenges practice assumptions that adolescents should ‘move on’ and that permanency is not a consideration. A demonstration project was conducted in Iowa (Landsman et al, 1999) with 74 adolescents, mean age 15 years, who had been without legal parents for an average of five years. They had had on average eight placement
changes and were seen as ‘unadoptable’. The project re-conceptualised permanency as a multifaceted construct and emphasised the value of maintaining connections with important adults from the young people’s lives. These life-long meaningful connections with significant others were seen as meeting the young people’s needs for security, thus enabling them to take steps towards independence. Previous and current foster carers and other significant adults were contacted, and family and kin connections re-established. Not surprisingly, the project had mixed success, but it highlighted the need to understand permanency as a complex phenomenon and not just as a legal status or a placement category.

Although foster care allowances are lower in the USA than in England, some states are beginning to pay adoption subsidies at 110 per cent of the foster care rate or more. A range of financial incentives and tax breaks also make adoption more attractive than foster care (Selwyn and Sturgess, 2001). At the end of March 2000, 43 million US dollars had been allocated in incentive payments to states achieving more adoptions than their previous average (taken over three years). These incentive payments have been used to finance post-adoption services but it is unclear whether the payments will continue under the Bush administration. There are also concerns that ‘on year’ costs of providing services until adulthood have not been fully budgeted.

More widely across the USA, the increase in adoption has been attributed to strengthened partnerships between public and private agencies, better tracking of children through the system and the timely delivery of crucial services. The development of comprehensive post-adoption services (see, for example, www.cwti.org) has been of critical importance in increasing permanency options without also increasing the disruption rate. However, despite the huge national increase in adoption, not all states have been successful. Some have found that homes cannot be secured for all the children who have been subject to a termination of parental rights (General Accounting Office, 1999). Echoing the English experience, this illustrates that it can be far easier to sever family links than to create enduring ties, leaving large numbers of children in care cut off from their birth families but with no prospect of a permanent substitute family. Nationally, the numbers entering care continue to rise and some welfare agencies are struggling to comply with the ASFA in the face of overwhelming needs and limited resources.

The English response: the Adoption Bill and National Adoption Standards

In response to the concerns highlighted in the PIU report and to increasing concerns about the outcomes for children who remain in the care system (Stein and Wade, 1999), the Government concluded that more could and should be done to promote the wider use of adoption and other permanency options, such as special guardianship. The White Paper defined permanence as ‘a secure, stable and loving family to support children through childhood and beyond’. It detailed a range of options for achieving permanence including informal care with wider family or friends, residence orders and long-term foster care, as well as adoption and special guardianship. Yet although the White Paper suggested a range of options for permanence, the focus in subsequent government documents has been on adoption and a number of targets have been set.

Other measures have also been put in place to promote and increase the use of adoption, prior to enactment of the Adoption Bill. An Adoption Register, intended to link waiting children and approved adopters in England and Wales, has been launched and National Adoption Standards, designed to enhance consistency of service provision across local authorities, have been introduced. An Adoption and Permanency Taskforce has also been established with the aim of spending best practice and providing advice and support to councils to enable them to maximise their use of adoption and other permanent placements.

The Adoption Bill and National Standards have been influenced by the US experience. The provision of special
guardianship, targets to increase adoption and emphasis on reducing delay all have similarities with the ASFA. Nevertheless, the setting of targets to increase and speed up adoption has raised concerns. Practitioners especially complain that there has been something of a simplistic rush towards adoption and that the complexities of casework and the dangers of this approach have been overlooked. Concerns have been raised about the balance between allowing families sufficient time to work through their difficulties so that children can be returned home, and timely placement of children within permanent substitute families. Additionally, with such a strong focus on adoption, some feel that those children whose needs would best be met by long-term fostering or other permanency options might be neglected. This latter issue may be addressed in the new review of fostering announced by the Department of Health. Concern has also been expressed about a potential shortage of adoptive families and the fact that little is known about what distinguishes children who are successfully placed from those who have to wait a long time or are never placed. Additionally, local authorities with low adoption figures, currently labelled as under-performing, would argue that it might in fact be because they are conducting some positive preventative work. Despite these concerns, policy is currently firmly focused on seeing more adoption as a good thing.

The Adoption Bill does differ from the Adoption and Safe Families Act in that it is less prescriptive. On the positive side this allows social workers to exercise more professional judgement, but the downside is that there is no insistence that services must be provided. Unlike the ASFA and Adoption 2002, the provision of a comprehensive post-adoption service is not a key principle of the Adoption Bill. The National Standards state that adoptive parents will have access to a range of multi-agency support services, but the proposed Bill only ensures that adoption agencies undertake an assessment of the need for services when asked. Yet previous research in England (Lowe et al, 1999) has shown that adoptive families are often unaware of the services available and various forms of gatekeeping exclude many children and families. In the USA in 1998/99, 64 per cent of all adoptions from care were to former foster carers, a rise of 15 per cent since 1997 (Adoption and Foster Care Analysis and Reporting System, 1998/9). Currently in England only 13 per cent of foster carers go on to adopt children they have cared for (Ivaldi, 2000). Many more foster carers in England might be willing to offer adoption or guardianship if, like foster carers in the USA, they were assured of sufficient financial and practical support. In the USA, as far as possible, all barriers to the increased use of adoption and permanent guardianship have been removed. This will only happen in England if kinship carers and others offering adoption or guardianship have the same rights to allowances and services as those who currently foster.

A commitment to the sustained provision of post-adoption/guardianship services will be key to the success of the new policies. As adoptions increase it will be crucial that they are matched with resources. This is especially so as the number of open adoptions is growing and these necessitate the availability of social services funded letterbox schemes, supervised contact and support to children and adopters. There are, however, concerns that the Government is providing little new money. A budget survey by the Association of Directors of Social Services (Valios, 2001) showed that of the projected social services overspend of £200 million for 2000/01, 64 per cent of this was attributable to children's services. The promise of £66.5 million investment money for three years to secure improvements in the adoption service could be quickly swallowed up, without any noticeable improvements to services.

Social workers' lack of expertise and training in adoption issues was identified as a problem by the PIU and monies have also, rightly, been allocated for this purpose. This, however, fails to address the more fundamental problem of high vacancy rates and rapid turnover of staff. The most recent census of social service
departments in England revealed a seven per cent decline in staff, with many departments heavily dependent on agency staff. Furthermore, a recent SSI report (2002) commented that finding appropriately qualified and experienced workers in the childcare field is threatening the quality of services. More may need to be done to ensure that there is a sufficiently trained and experienced staff group to deliver the demanding targets of the National Standards if Adoption: A new approach (Department of Health, 2000) is to deliver the vision it promises.

Both England and the USA plan to monitor and evaluate the performance of individual states and local authorities. The systems developed for these purposes differ, but in both countries there is a move away from performance assessments based on compliance with procedures to assessments based on outcomes and results. A call for greater accountability is apparent in both countries in that agencies have to demonstrate that children and families receiving services are experiencing positive results. This is in line with the desire, central to both sets of new legislation, to increase stability and improve outcomes for children. Unfortunately, it will not be straightforward to compare children’s outcomes before and after the ASFA or the Adoption Bill as there has been no systematic collection of adoption outcome data in either country. Different kinds of children may be adopted following the new legislation, making comparisons complicated. Nevertheless, comparisons of certain aspects of the adoption processes or specific groups of children may be possible and it will be important to study the results of such investigations to ensure that the new practices are indeed serving children’s best interests.

Conclusions

In summary, there are clearly a number of ways in which the English and US reforms of their adoption systems have similarities and thus it could be said that England is following in the footsteps of the USA. However, as the Government has looked across the water it has been quite selective about the aspects of the US experience that it has chosen to emulate, for example the use of a range of permanency options, an emphasis on reducing delay and target-driven strategies. It is also just beginning to follow the US lead in recognising the importance of post-adoption support services. In other respects, the USA might do well to learn from the situation in England. These include the greater hesitancy to terminate parental rights, the concepts of ‘working together’ and ‘partnership’ that have been influential in reducing the number of children entering the care system and the well-established focus on child welfare outcomes since the introduction of the Looked After Children system. As both countries launch target-driven policies, the results of which have yet to be evaluated, the exchange of results and information could helpfully go both ways. This could ensure that individual children’s needs remain the paramount consideration and that, in a desire to meet targets, hasty decision-making does not result in a converse set of problems to those we currently encounter.

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