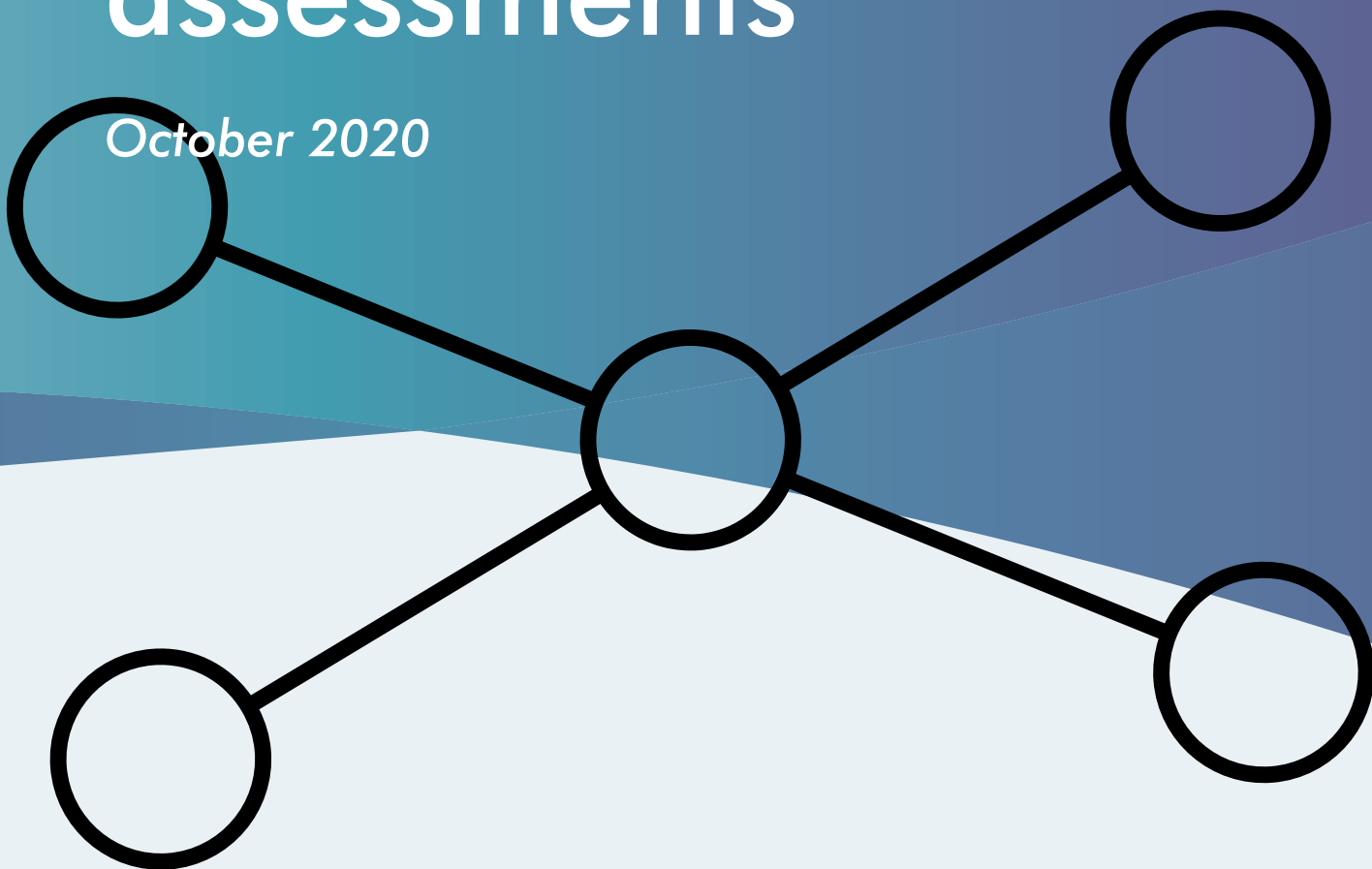


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# Sharing fostering assessments

*October 2020*



## Why have we written this briefing?

There is some confusion and, from time-to-time, conflict in the fostering sector over who has a right to a copy of a fostering assessment report. Is a foster carer entitled to a copy of their assessment report? Can they share the copy with others, especially if they wish to transfer to another service? Can one service refuse to supply another service with a copy of an assessment report? What if the carer has given their permission for this to happen? Underpinning these questions is recognition that fostering assessment reports have a tangible business value, representing considerable investment in the recruitment of foster carers. There is mistrust that - rather than use information from another service's report to inform their own assessment - some services (independent or local authority) will directly 'cut and paste' from one to the other, or even badge the original assessment as their own.

Nonetheless, many fostering agencies wish to support foster carers' rights and ability to move from one service to another and not to compromise good practice by placing obstacles in the way of information-sharing. This briefing note is intended to clarify some of the legal framework around sharing fostering assessment reports and tease out answers to the following questions raised by our members:

- Who does the fostering assessment report belong to?
- Should foster carers possess a copy and, if so, can they share it with others?
- Under what circumstances should one fostering service share the fostering assessment with another service?
- Can third-party information be shared?
- What does 'sharing the fostering assessment' mean in practice?

## What is a fostering assessment?

In this briefing, we talk about 'the fostering assessment report', rather than refer to the 'Form F'. The Form F is a commercial report template designed by CoramBAAF for capturing information on an applicant to foster for the purpose of a comprehensive assessment. This template has been around in one form or another for decades, regularly revised and updated, and now known as the Prospective Foster Carer Report (Form F)<sup>1</sup>. However, though the Form F is frequently used in the assessment of applicants to foster, the relevant legislation

<sup>1</sup> This form is designed in different versions for use in England, Scotland, Wales and Northern Ireland. Where this briefing note refers to the Form F, it will be to the Prospective Foster Carer Report (Form F (England)).

does not prescribe the format of assessments. Regulation 26 and statutory guidance<sup>2</sup> restrict themselves to defining the minimum information-gathering requirements under Stages 1 and 2 of any assessment of an applicant's suitability to foster.

An alternative assessment template commercially available is The Skills to Foster Assessment developed by the Fostering Network, described as 'an evidence-based system which looks at the skills, experience, abilities and aptitudes needed to foster and helps you examine the capabilities of each individual'<sup>3</sup>. In addition, some fostering services have designed their own fostering assessment report formats.

## What is a fostering assessment?

### Regulations

Regulation 26 and Schedule 3 of the Fostering Services (England) Regulations 2011, as amended by The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013, specify the minimum information gathering required to carry out an assessment under Stages 1 and 2 of any applicant to foster.

### Statutory Guidance

The statutory guidance, *Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013*, is explicit that all this information must be taken into account in considering the suitability of the applicant to become a foster carer, and the suitability of their household, and be included in a written report to the fostering panel, along with recommendations regarding any terms of approval. However, the statutory guidance is also explicit in stating,

*'There are no specific requirements about the way in which assessment information must be collected or presented to the panel.'* (p8)

<sup>2</sup> Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013

<sup>3</sup> [https://www.thefosteringnetwork.org.uk/sites/www.fostering.net/files/uploads/pdf/stf\\_assessment\\_faqs.pdf](https://www.thefosteringnetwork.org.uk/sites/www.fostering.net/files/uploads/pdf/stf_assessment_faqs.pdf)

## Should foster carers have a copy of the assessment report?

The Government has still not published a version of the 2011 fostering regulations with all subsequent amendments included, which results in some of the key 2013 amendments being less well known. One such amendment is in relation to the fostering assessment report and requires the assessing fostering service to give the applicant a copy of the fostering assessment report prepared on them so that they may submit observations on it before it is considered by a fostering panel<sup>4</sup>.

It has long been considered good practice for applicants to foster to see their fostering assessment in draft (generally minus any confidential third-party references) so they can read it carefully and offer any corrections/ comments before signature. The explicit expectation now in legislation is that they are given their own copy to retain.

CoramBAAF have addressed this expectation directly in their Form F template, making the assumption that the applicants will retain a copy, but requiring them to sign that they understand the form is the fostering service's property and that they agree *'not to . . . disclose its contents in full or in part, to any other person, fostering service or authority without the fostering service's permission.'*<sup>5</sup>

The **Transfer of Foster Carers England Protocol** was developed by The Fostering Network and the Joint Forum of Independent Fostering Providers and is issued with the support of the Association of Directors of Children's Services (ADCS). It was most recently revised and updated in 2019<sup>6</sup>. The protocol similarly states that a foster carer's assessment report is the property of the service which produced it. However, it points out that foster carers have the right to almost all the information that is in the report under data protection provisions and recommends the carer have a copy.

4 The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 introduced new regulation 26(2)(d)

5 Page 27 of Prospective Foster Carer Report (Form F) (England) template

6 [https://www.thefosteringnetwork.org.uk/sites/www.fostering.net/files/content/transfereoffostercarersprotocol\\_1.pdf](https://www.thefosteringnetwork.org.uk/sites/www.fostering.net/files/content/transfereoffostercarersprotocol_1.pdf)

## Who does the fostering report belong to?

The CoramBAAF Prospective Foster Carer Report Form F (England) 2018 template asks the applicant/s to sign that they agree to the following statement:

*'I/We understand that this form is the property of the fostering service to which I/we have applied. I/We agree not to copy this document (other than for my/our own personal records) or disclose its contents in full or in part, to any other person, fostering service or authority without the fostering service's permission.'* (p27)

The Fostering Network's Transfer of Foster Carers Protocol states:

*6.1 A foster carer's assessment report is the property of the service which produced it. However, foster carers have the right to almost all the information that is in the report under the provisions of the Data Protection Act 2018(DPA)*

*6.9 It is recommended as good practice that the current agency provide a copy of a foster carer's assessment report to the recruiting service and for the foster carer to have a copy of their assessment report minus any confidential information from third parties.*

The Fostering Network protocol makes the link between minimum data protection legislation requirements and good practice. The GDPR and Data Protection Act 2018 have reinforced the rights of any data subject, including foster carers:

*'Foster carers and prospective foster carers have the right to see and obtain copies of the personal data that is held on them . . . information can be provided electronically, or in the form of paper copies, or by other means'*<sup>7</sup>

Whoever 'owns' the report, and regardless of whether foster carers have the right to disclose the contents to any other person or organisation, NAFP accepts that foster carers have the right to receive and keep a copy of their fostering assessment report. But if further clarification is still required, the Information Commissioner's Office has confirmed in e-mail correspondence with a NAFP representative:

*'Under data protection legislation, individuals have the right to access the personal data an organisation holds on them, this is known as a subject access request. Therefore, irrespective of who the information belongs to, the data subject is still entitled to request a copy, providing no exemptions apply.'*

Exemptions<sup>8</sup> to subject access in relation to any of the information in an assessment report should apply on a case-by-case basis, not as

<sup>7</sup> Complying with the GDPR and DPA 2018 - A Good Practice Guide for Fostering Services in England (CoramBAAF 2019) p29

<sup>8</sup> Exempt information is typically a/ Information provided by or about an individual, other than the subject access requester, where that individual's expectations or wishes were that it not be shared in this way, and b/ Information that would be likely to cause serious harm to the physical or mental health of any individual.

## Sharing information between services for the purposes of foster carer assessments

general rules, and a fuller explanation and information to aid decision-thinking in relation to exemptions is available on the ICO's website<sup>9</sup>

### Should foster carers have a copy of their fostering assessment report?

*'Irrespective of who the information belongs to, the data subject is still entitled to request a copy, providing no exemptions apply.'*

Information Commissioner's Office (ICO) – email to NAFP representative

*'Sharing information is law but giving information without hesitation and in a usable format is part of recognising the carer as part of the team, a self-employed fostering specialist who has the right to work where they wish'.*

NAFP member – personal correspondence to NAFP Chief Executive

Written into the legislation and guidance is also the principle of sharing information between fostering services when a current or previous foster carer applies to another service. Sharing information held in existing foster carer records is permitted for the purposes of informing a new assessment of a person's suitability to foster (or to adopt, but this briefing note refers to fostering only):

*'The intention is to ensure that the fostering service or adoption agency has all the relevant information that already exists about a person, so avoiding unnecessary delay in the process'<sup>10</sup>*

Accordingly, where an applicant has been approved previously or is currently approved as a foster carer, the fostering service undertaking the current assessment can request access to records about the applicant held by the fostering service which granted the approval<sup>11</sup>. This is provided that the applicant consents. The current/former service must provide access within 15 working days of a request being received<sup>12</sup>. The information being provided may differ between agencies, however, it is clear within the guidance<sup>13</sup> that the fostering assessment, the most up to date foster carers review and a reference is suggested as the minimum requirement. Nothing should be withheld that could impact on the safety of children's care. Records compiled by a previous or current

<sup>9</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/exemptions/>

<sup>10</sup> Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 p7.

<sup>11</sup> Reg 26(1)(1A)(e)

<sup>12</sup> Reg 32(6)

fostering service can then be used to inform the new assessment of suitability to foster. The assumption that fostering services will want to do this, and that it is both good practice and more efficient that they do so, is threaded through the statutory guidance. For instance, the guidance states that if previous partners have been interviewed in the past to verify facts, and the current assessing social worker is satisfied with the records in respect of these interviews, it is not necessary to repeat the interviews if no further information is required. The assessing social worker should, however, satisfy themselves as to the quality and continuing relevance of the information before using it to inform the current assessment<sup>13</sup>. It is also worth noting that you cannot claim to have verified historic information in the assessment and this needs to be considered.

## Sharing information for the purposes of foster carer assessments

### Regulation 26(1)(1A)(e)

(1) Where a person (“X”) applies to become a foster parent and the fostering service provider decides to assess X’s suitability to become a foster parent, any such assessment must be carried out in accordance with this regulation.

(1A) Subject to paragraph (1B), the fostering service provider—

(e) may, where X was approved as a foster parent by another fostering service provider and consents, request access to the relevant records compiled by that other fostering service provider in relation to X

### Regulation 32(6)(a)

(6) A fostering service provider must provide access to their records compiled under regulation 30 or 31 in relation to a foster parent—

(a) to another fostering service provider within 15 working days of a request under regulation 26(1A)(e)

13 Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 p7

The statutory guidance then outlines what sort of information should be shared, upon request, including:

- the report of the original assessment of the person's suitability to foster (if it is considered by the body requesting the information to be recent enough to be relevant);
- a copy of the report of the last review of the individual's continuing suitability to foster and any other review report considered useful to understanding the person's current suitability to foster<sup>14</sup>

Some have pointed to a difference in the wordings above i.e. that the statutory guidance does not specifically state 'a copy of the report of the original assessment'. They infer that this is deliberate and use this as justification for only allowing an assessor to come to their premises to read the original assessment report, and to take notes, but for refusing to give them a copy. But why would statutory guidance (guidance that must be complied with) make such a distinction?

It is likely that the difference in wording here has no significance. The legislation is intended to ensure that an assessing service has ready access to all the relevant information to complete its assessment. Furthermore, the applicant themselves should not be (or put in the position to be) the conduit for this information. The statutory guidance positively encourages fostering services to share the information directly with one another, rather than have the assessing agency rely upon obtaining it from the applicant. This is a safeguarding measure and services are advised to obtain that information from the fostering service or adoption agency holding it, rather than from the individual. This avoids any possibility of information being changed<sup>15</sup>.

Later in the same page of statutory guidance, it states that '*a fostering service which holds information about a person they approved to foster is required to provide that information to a fostering service or adoption agency that asks for it for the purpose of assessing the person's suitability to foster or adopt. It is worth noting, however, that individuals themselves, in most cases, also have a right to obtain a copy of information held about them*'. (Our underline).

<sup>14</sup> Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 p13

<sup>15</sup> Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 p14



## Sharing information for the purposes of foster carer assessments

### Statutory Guidance

'Sharing information about a person that is held in their existing foster carer or adopter records is permitted for the purposes of informing a new assessment of a person's suitability to foster or adopt. The intention is to ensure that the fostering service or adoption agency has all the relevant information that already exists about a person, so avoiding unnecessary delay in the process by which:

- an approved foster carer, or person who was an approved foster carer in the past, can be approved by a new fostering service;
- an approved foster carer can be approved as an adopter by an adoption agency;
- a person who has been approved as an adopter can be approved by a fostering service'

(Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 page 10)

'Information that should be shared, upon request, in order to inform a new assessment of a person's suitability to foster or adopt includes:

- the report of the original assessment of the person's suitability to foster or adopt (if it is considered by the body requesting the information to be recent enough to be relevant);
- a copy of the report of the last review of the individual's continuing suitability to foster or adopt and any other review report considered useful to understanding the person's current suitability to foster or adopt;

- details of any concerns about standards of practice and what if anything is being done/has been done to address them;
- details of allegations made against the foster carer/adopter or their household members;
- Any other information considered to be relevant to the assessment of the person's suitability to foster/adopt.'

(Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 pages 12-13)

Statutory guidance does emphasise that only information about the individual and other relevant household members should be provided:

*'Information should only be shared with the informed, explicit consent of all parties referred to in the information, including young people where they have sufficient understanding to consent to the sharing of their information (if they do not have sufficient understanding, the consent of a person with parental responsibility would need to be obtained). This means that the person giving consent needs to understand why their information is to be shared, what will be shared, who will see their information, the purpose to which it will be put and the implications of sharing that information.'*<sup>16</sup>

It is NAFP's view that the intention both in the legislation and guidance is that, subject to consent and any required redaction of third-party information (see discussion below), the previous or current service should give a copy of the original assessment report to the assessing service, just as they would to the carer/former carer should they make a subject access request.

<sup>16</sup> Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 page 12

## Third party information

As noted above, statutory guidance emphasises that, where information is being requested to support an individual's application to foster, or as part of a general subject access request, only information about the individual and other relevant household members should be provided unless other people's consent is obtained.

Since much third-party information in a fostering assessment report is given freely by those in an applicant's network, CoramBAAF advises a targeted privacy notice that explains that the information is held in relation to fostering and that various individuals and organisations may have access to it for this reason only<sup>17</sup>. For others referred to in the report, perhaps in relation to past events, the Data Protection Act 2018 allows a further exemption to allow disclosure of information about an individual who has not given their consent,

*'if it is reasonable to comply with the request without that individual's consent . . . although you may sometimes be able to disclose information relating to a third party, you need to decide whether it is appropriate to do so in each case. This decision will involve balancing the data subject's right of access against the other individual's rights. If the other person consents to you disclosing the information about them, then it would be unreasonable not to do so. However, if there is no such consent, you must decide whether to disclose the information anyway.'*<sup>18</sup>

Only when it is not possible to obtain permission from others whose personal information is in a report and it is also not reasonable to disclose this information, is redaction advised in order that a copy of the information can still be supplied:

*'Where information about the individual includes information relating to another person and the other person has not given permission for their information to be shared, organisations are entitled to withhold this information. However, fostering services should try to comply with as much of the request as they can, redacting where necessary so that information can be shared'*<sup>19</sup>

<sup>17</sup> Complying with the GDPR and DPA 2018 - A Good Practice Guide for Fostering Services in England (CoramBAAF 2019) Appendix D

<sup>18</sup> ICO Guide to the GDPR <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/>

<sup>19</sup> Assessment and approval of foster carers: Amendments to the Children Act 1989 Guidance and Regulations Volume 4 July 2013 p13

## References

To forestall further correspondence with referees and/or the redaction of references from reports, and considering the refreshed data protection legislation, CoramBAAF now advises all fostering services to accompany referee requests with a privacy notice letter to include the following statement,

*'Please also give your agreement or otherwise for us to share your reference with the applicant. If you ask for your reference or parts of your reference to remain confidential . . . you should be aware that there may be circumstances where this is not possible. Where this is the case, we will discuss the matter with you before sharing any information with the applicant'<sup>20</sup>.*

Nonetheless, new provisions in relation to confidentiality of references under the GDPR/Data Protection Act 2018 explicitly exempt *confidential* references from disclosure under subject access requests,

*'if you give or receive a confidential reference for the purposes of prospective or actual:*

- *education, training or employment of an individual;*
- *placement of an individual as a volunteer;*
- *appointment of an individual to office; or*
- *provision by an individual of any service.<sup>21'</sup>*

This means that, if a fostering service receives a subject access request from a current or previous foster carer, they are not required to provide a confidential reference unless there is **consent** from the referee.

## Good practice in sharing fostering assessment reports

The question of whether and when to share fostering assessment reports with another service provider is a conflict-ridden issue, particularly for agencies that are concerned about losing foster carers to other fostering services. The fostering assessment report is just one of many documents that services hold on carers, but it has a key 'business value' and represents a significant investment in the carer/s.

Transfer protocols guide the way in which fostering services should manage the movement of foster carers between fostering services. The Fostering Network produced the first transfer protocol for use across the fostering sector in 2004, and currently has protocols in England, Northern Ireland and Scotland<sup>22</sup>. NAFP is a signatory to the **Principles Governing the Transfer of Foster Carers (2015) England**, which includes the following good practice statements that we expect our members to follow:

*'The principles of the transfer protocol recognise that all foster carers have the right to freedom of movement between fostering services. **However, fostering providers should not intentionally entice or persuade foster carers to transfer to a new service in an unethical manner . . . Whilst not putting obstacles in the way of foster carers who wish to transfer to a new fostering service, providers should not target their resources to attract existing foster carers to move**'<sup>23</sup>*

20 Complying with the GDPR and DPA 2018 - A Good Practice Guide for Fostering Services in England (CoramBAAF 2019) Appendix E

21 ICO Guide to the GDPR <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/exemptions/>

22 <https://www.thefosteringnetwork.org.uk/policy-practice/recruitment-and-retention/transfer-protocols>

23 <https://www.thefosteringnetwork.org.uk/sites/www.fostering.net/files/content/principles-governing-transfer-foster-carers.pdf>

If our members will commit to these principles, much of the heat is taken out of requests to share a copy of reports and services would be freed up to focus more effectively on any retention issues or to challenge unprincipled practice, should this be the case.

As noted, the fostering legislation since 2013 requires any assessing service to give a copy of the assessment report to the applicants at least 10 working days before presentation to the fostering panel. It is unquestionably good practice that an applicant is given a copy of their assessment report as this enables them to check that the report is factually accurate as well as whether the recommendations and opinions within it are evidence based and reasonable, but it seems that this has had to be enshrined in legislation to ensure that it happens. As time goes on, we can expect most current and previous carers to hold a copy of their report. Even if this is indelibly stamped as 'property of' their current/previous service, there is little to prevent them from providing another service with a copy. But as the statutory guidance points out, there is a safeguarding issue here insofar as applicants could 'doctor' their report and good practice dictates that we try to make this less, not more, likely to happen.

The original fostering assessment should 'be shared . . . in order to inform a new assessment', providing there is informed consent from the data subject. In relation to subject access requests, the ICO takes a similar stance to that of CoramBAAF, which is that the fostering assessment report in whatever format is the property of the service that produced it. The ICO acknowledges that under data protection legislation it is the personal data, not the format, that must be shared but points out that redacting and reorganising the personal data

(ensuring that nothing is missed) into another format would likely be far more work for a fostering service than simply providing a copy of their assessment report<sup>24</sup>.

The ICO also advised NAFPP verbally that where the current/previous service is refusing to provide the assessing service with a copy of the report (minus exempted third party information etc.), the carer i.e. the data subject should contact the ICO, so that they can monitor how often this happens and possibly intervene<sup>25</sup>. The ICO appears to assume that a copy of the assessment report would be provided, given that:

- The foster carer anyway has the right to access their personal information under data protection legislation and has given their consent for it to be shared with another agency;
- The expectation in statutory guidance is that, upon request (and with the subject's consent), the assessment report be shared with another agency for the purposes of assessment.

Whoever provides a copy of the original assessment report to the assessing service – the applicant or their current/previous service – the assessing service should only use this to inform their own assessment and is required by fostering legislation to prepare its own assessment report, as the original still belongs to the current/previous service. Verification, evidence and analysis of the information should be evident in the new assessment. Under no circumstances should information be cut and pasted from one report to another, nor should one service's work be rebadged as another's. Any examples of this should be brought to the attention of the fostering regulator.

<sup>24</sup> Discussion with NAFPP representative

<sup>25</sup> Discussion with NAFPP representative

## Decision-thinking checklist

Do you ensure that all applicants to foster receive a copy of their assessment report at least 10 days' prior to the fostering panel? If not, why?

Are you proactive and proportionate in checking that you have consent from third parties for the applicant/foster carer to see their information in the assessment report, including references?

Can you justify any redaction of third-party information in a copy of the assessment report, bearing in mind exemptions that allow information to be shared?

If a current or previous foster carer makes a subject access request for a copy of their original assessment report, do you provide it in its current format (which belongs to your service as data controller)? If not, in what format do you provide all the personal information in the report?

If an assessing fostering service requests from you a copy of the original fostering report, and the applicant has provided their consent, do you give them a copy? If not, how do you share the report with them and what is your justification for not providing a copy of the report?

What additional information do you provide to the transferring agency? Do you allow file reads? Or does your policy indicate what and how the information will be shared?

Do you ensure Transfer Protocol Meetings are taking place? Is this guidance understood by those who work within the agency, and also foster carers? (see Transfer of Foster Carers England Protocol)

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