

LCQ1: Procedure for adoption of children

Following is a question by the Hon Yung Hoi-yan and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (January 26):

Question:

Some foster parents have relayed that earlier on, when they applied for switching to adopting a child who had been under their foster care for nearly two years, they were told by the Social Welfare Department (SWD) that they must first relinquish the foster care for that child before they could apply for and be put on the waiting list of adoption, in accordance with the procedure for adoption. The incident has cast doubts that the existing procedure has not taken the child's best interests as the paramount consideration, and is "putting the procedure above a child's best interests". In this connection, will the Government inform this Council:

(1) of the policy and concepts in respect of the existing procedure for switching from foster care to adoption of a child, and whether it has reviewed if the procedure is in line with a child's best interests and actual circumstances;

(2) whether the SWD will, by drawing reference from the hearing of two cases on adoption in 2021, grant approval for a foster family to directly switch to adopting a child, after taking into consideration that it is in the best interests of the child to be adopted by the foster family; and

(3) whether it will review the Adoption Ordinance and improve the adoption policy, so as to ensure that the adoption procedure is premised on the best interests of children, such as not requiring a child to be separated from his/her foster family first and then wait for his/her foster family to apply for adoption; if so, of the details; if not, the reasons for that?

Reply:

President,

The Government's adoption policy seeks to provide the most suitable long-term welfare for children in need in their best interest. Apart from adoption service, the Social and Welfare Department (SWD) arranges residential care services, such as small group homes, foster homes, children's homes, etc. for children who cannot be adequately taken care of by their birth parents or families of relatives for various reasons. Where necessary, the Director of Social Welfare (DSW) will make the concerned child to become a ward of the DSW for safeguarding their welfare by making an application to the court.

My reply to the Member's question is as follows:

(1) Adoption service is for identifying and securing permanent and stable homes for children whose parents are unable or unwilling to take care of them and provide care and nurture. Once an adoption order is granted by the court, adoptees will enjoy the rights and status legally as if they are biological children of the family; and the adoptive parents will have all rights, duties, obligations and liabilities in relation to the custody, maintenance and education of the adoptees. Adoption is a service for pursuing the long-term welfare of the children. On the other hand, foster care service provides temporary care arrangement for children who have not gone through the adoption procedures, reunited with families or lived independently. It is a temporary residential service for these children to continue enjoying family life. As adoption and foster care services are of a very different nature, the rights and responsibilities borne by the concerned families also differ considerably. Hence, the eligibility, and areas and standards of assessment from the SWD (including financial requirements, commitments of life-long care, etc) to the applicants are different and the two services have their own matching mechanisms with different criteria. As adoption is a long-term arrangement, families that are eligible for foster care service do not necessarily meet the requirements of adoption service.

If a foster family wishes to adopt a child, they will have to make the adoption application in accordance with the conditions set out in the Adoption Ordinance (Cap. 290) and participate in the matching exercise for adoptive children. The DSW is duty bound to strictly follow the procedures laid down in the Adoption Ordinance. Under general circumstances, the SWD will cease the foster care service provided by the family with a view to avoiding any chance for the family to influence or hinder the will of the adoptee and undermine the fairness of the matching process. It is also to ensure that the family can be fairly assessed by the SWD or the three accredited bodies according to the procedures of adoption with conditions similar to other families who have applied for adoption. The matching will be based on the best interest of the children to ensure that the most suitable long-term care arrangement can be arranged for the children in need.

The SWD or related foster service organisations will clearly inform the foster families that the foster care service is a temporary care arrangement when the service commences. Foster parents are obliged to assist the adoptee to smoothly re-unite with their family members or transit to an adoptive family. If the foster family is not willing to co-operate or will affect the best interest of the child, the DSW as the legal guardian of the child concerned can take relevant actions, including to arrange other suitable care arrangement for the child concerned.

(2) The two court cases raised in the question of the Member are related to a local adoption case. The applicant was entrusted by the birth parents to take care of the child concerned before the adoption arrangement was made, and hence the case did not involve a foster family.

(3) The SWD has been fairly performing assessment and matching in accordance

with the adoption mechanism as stipulated under the Adoption Ordinance and is committed to finding the most suitable adoptive family for children awaiting adoption. The Government will listen carefully to the opinions of various sectors, continue to enhance the prevailing mechanism, and continue to properly handle child adoption matters by taking into account the best interest and long-term welfare needs of the children.