Fostering and Adoption
an Islamic Perspective
Introduction

In the last two years, the North London Adoption and Fostering Consortium, which is a partnership initiative consisting of six London Boroughs, has organised fostering recruitment events in the London area specifically to recruit Muslim Foster Carers.

These events raise awareness about the fact that in Islam Fostering and Adoption is not only permissible but a duty of the Muslim Ummah. An ‘Alim is usually present to speak about Fostering and Adoption in the light of the Qur’an and Hadith.

These events have been very successful in raising awareness about Fostering and Adoption among Muslim communities. So far, we have undertaken three events in Edmonton, Barnet and Camden.

Insh’Allah the next event is taking place at the London Central Mosque in Regents Park on Saturday the 16 April 2016, with the added participation of the East, South and West London Adoption and Fostering Consortia. This is significant, since almost half of the Muslims in the UK live in London.

This initiative is much needed, as there are a growing number of Muslim children coming into care. There are very few Muslim Foster Carers. In Barnet, for example, there are 44 Muslim children in care and only 4 Muslim Foster Carers. Most children in care are looked after by non-Muslim families. This has meant that some children are losing their Deen along with knowledge of their Islamic identity and heritage.

There is an urgent need for the Muslim Leadership to do something about this and it is pleasing that these events have been very successful and many Muslims are registering their interest in Fostering and Adoption – but more needs to be done.

It is important that we raise awareness of this important work. There is a growing need for Muslims to become Foster Carers and Adopters – not only because in the UK there are proportionately more Muslim children in care than there are Muslim Foster Carers and Adopters, but also because the current Prime Minister, David Cameron, has announced that 20,000 refugees will be allowed to enter the UK during the next five years. In addition, the Save the Children Fund is urging the Government to take in at least 3,000 unaccompanied children from Syria. The Muslim community therefore needs to plan to assist these Muslim refugee children.

This means that there is an urgent need for Muslims in the UK to understand the issues concerning Fostering and Adoption both from an UK legal perspective and from an Islamic perspective in order to decrease the shortage of Muslims coming forward to become Foster Carers or Adopters.

Perhaps one of the main reasons why Muslims are not taking an interest in this area is because of their lack of understanding of Fostering and Adoption from an Islamic perspective. Many Muslims mistakenly believe that it is not permissible in Islamic Law to Foster or Adopt a child. This is not true!

Not only is it permissible in Islam to Foster or Adopt a child but rather it is a Sunnah to do so and this has many rewards in the sight of Allah, subhanahu wa ta’ala.
This paper accordingly looks at Fostering and Adoption in the context of both UK governance and Law and from an Islamic Jurisprudence perspective.

This brief is divided into two sections because Fostering and Adoption are two very different ways of caring for a child both legally and Islamically.

Fostering tends to be more of a short term arrangement for a limited time, while Adoption tends to be more of a long term arrangement. Sometimes fostering a child can lead to Adopting that child.

At present the main focus for the Local Authorities across the UK is concerned with Fostering as there is a shortage of Foster Carers in all parts of the country and the local government is trying very hard to recruit both Muslim and non-Muslim Foster Carers.

**FOSTERING**

**What is Fostering?**

Fostering is a way of providing a stable family life for children and young people, who are unable to live with their natural birth parents at a specific point in time. Fostering allows children the chance to thrive in a safe, secure, loving and caring home environment with Foster Carers. The children and young people placed with Foster Carers are from a diverse range of backgrounds and will display different behaviour depending upon their various experiences.

All children and young people are different, making it difficult to define a “typical child”. However, what is expected is that, as with any child or young person, they need security, stability and the chance to develop and thrive with carers who have empathy for the child’s situation and needs.

Fostering differs from adoption, in that an adoption order ends a child’s legal relationship with their natural birth family and transfers legal responsibility for the child to the adoptive parents – whereas ‘looked after’ children remain the legal responsibility of the local authority and/or their birth parents.

Placements of children in care can last for days, months or even years. Many children return home to their families but others may receive long-term support, either through continued fostering, adoption, residential care or by being helped to live independently from the age of 18 onwards. There is now a push from the Government to keep children up to the age of 21 or 25 in the Foster home to provide continued support up until they become independent.

While there is occasionally a need to place babies and very young children into foster care, most of the children needing foster care are aged between 4 and 18. Brothers and sisters are usually placed together wherever possible. Some children have disabilities whether physical or mental and need specialist support from Foster Carers. Many of the children in care have had a traumatic past – some have experienced abuse, others have been neglected. Most have not had much stability in their early lives. As a result it is likely that their education has been disrupted and they might feel isolated or excluded from other children.

There are now a growing number of unaccompanied children coming from war torn countries such as Afghanistan, Syria, Iraq and parts of Africa who have different emotional needs. Research has revealed pervasive feelings of depres-
sion, anxiety, hopelessness, grief, resentment, anger, and fear among war-af-
fected children. Unlike children in care in the UK who will have regular contact
with their birth parents throughout their placement with Foster Carers, many of
the refugee children fleeing from war torn countries are orphans and have no
contact with their natural birth families.

Like all other children, each foster child has their own likes and dislikes, hobbies
and interests and their own particular hopes and dreams about their future.
Part of the real pleasure of being a Foster Carer is about getting to understand
what makes fostered children tick and helping them to take their lives in a more
positive direction.

Children and young people in care, whatever the reason they need fostering,
need support, stability and normality. They don’t want to be treated as special
cases; they just want to have an ordinary home. Therefore, Foster care is about
giving children and young people the opportunities to reach their full potential.

In the UK, Foster Carers are a part of a team of professionals, including social
workers, who make sure they get the care and support they need. Foster Carers
look after the children in their care on a day-to-day basis including seeing to
them that they attend school, health appointments and other aspects relevant
to bringing up any child in this country.

Foster care, unlike adoption, is not a permanent arrangement and Foster Carers
are paid remuneration in the form of Allowance and Skills Payment to look after
the child.

Whilst Foster Care is hugely satisfying and extremely rewarding it can also
be very challenging and demanding. It offers many different opportunities to
make a difference in a child’s life. Appropriate training and support is provided
throughout the placement and a visit from the Social Worker is made on a reg-
ular basis whilst the child is in the care of the Foster Carers.

Foster placements
There are approximately 60,000 children and young people who are in the care
of Local Authorities at any one time. The total number of children and young
people who are looked after by the state in any year rises to approximately
300,000, and the numbers seem to be increasing each year.

Foster carers are needed from all ethnic origins with varying cultures, religions
and languages. The Local Authorities are looking for Foster Carers from var-
ying backgrounds including people from the Middle East and Africa. Most of
the children from these countries are Muslim and whilst the numbers of peo-
ple from these countries may be few, it is then important to place them with
Muslim families in order for them to maintain their Islamic heritage, identity and
sense of belonging and to keep hold of their Deen. There have been known
cases where children who have been placed with non-Muslim Foster Carers
have lost their Deen – and this is a worrying trend for the Muslim Ummah.

Foster Carers do not need to have any particular academic or vocational qualifi-
cations, but having experience of caring for or working with children or young
people really helps.

Fostering is a huge commitment. It will have an impact on Foster Carers and
their whole family. The decision to become Foster Carers is not taken lightly.
The Social Worker will make an assessment of the potential Foster Carer to assess whether it is right for them and whether they are capable of looking after children in care. At least one family member must be able to communicate in English.

**THE LEGAL FRAMEWORK**

Most of the law relating to the safeguarding and promoting the welfare of children is contained within the Children Act 1989, Guidance and Regulations Volume 4 Fostering Services, the Care Standards Act 2000, the Adoption and Children Act 2002 and the Children Act 2004.

There are regulations contained within the Fostering Services Regulations 2011 and associated National Minimum Standards that provide a clear framework for Fostering Service Providers, Foster Carers and associated staff.

The key principles of the The Children Act 1989 can be summarised as follows:

**The Welfare Principle**

This is concerned with safeguarding and promoting the welfare of children, including protecting the child from harm or abuse. The child's welfare should be the 'paramount' consideration of anybody dealing with a child.

All professionals supporting and working on behalf of children and young people should work in partnership with families. This includes Foster Carers.

The importance of considering key aspects of the child's background is highlighted – the child's religious identity, racial origin, cultural and linguistic background must be taken into account in planning for the child.

**Parental responsibility**

Parental responsibility is defined in the Children Act 1989 as all the rights, duties, powers, responsibility and authority a parent has for a child or young person and their property. As children grow older they assume greater responsibility for themselves. Parents never lose their responsibility for their child, even when they share it with the Social Services Department when the child is subject to a Care Order. The only exception is when a child is adopted.

**Legal status of children in foster care**

All children and young people in foster care are the responsibility of the Local Authority from which the child and young person originates. In the case of refugee children from overseas, the key responsibility remains with the Local Authority, even if they are placed with a voluntary or independent fostering provider.

**Looked after children**

The term 'looked after' is a shortening of the phrase 'looked after by the Local Authority'. It was introduced by the Children Act 1989. Children and young people are 'looked after' if there is a Care Order. This means that the Local Authority shares parental responsibility with one or both birth parents.

**Duty to Protect**

All of these issues, including the duty to protect children from abuse and
neglect, are covered in the Statutory Framework. The Fostering Services Regulations 2011 require fostering service providers to prepare and implement a written policy which is intended to safeguard children placed with foster carers from abuse or neglect, and set out the procedure to be followed in the event of any allegation of abuse or neglect.

The National Minimum Standards for Fostering Services require safe caring guidelines to be provided, based on a written policy, for each foster home, in consultation with the carer and everyone else in the household. These guidelines must be cleared with each child’s social worker and be explained clearly and appropriately to the child as well as the Foster Carers.

Within these guidelines, the boundaries and restrictions placed upon practising Muslims by their Deen can be adopted and issues around mahram and non-mahram concerns can be included. There is in fact no conflict between the legal requirements of English law and the requirements of the Qur’an and the Sunnah.

This means that the religious and cultural identity of Fostered Muslim children can be freely maintained and developed while satisfying both the requirements of the law of the land and remaining within the hudud of Allah.

The Organisation of the Islamic Conference (OIC) produced a document entitled “Covenant on the Rights of the Child in Islam” in June 2015. In Article 11 it states that parents and guardians are required to: “develop the personality, religious and moral values, and sense of citizenship and Islamic and human solidarity of the child and to instil in him/her a spirit of understanding, dialogue, tolerance, and friendship among peoples.” In addition, in Article 9 it states that parents and guardians must respect the child’s right to form his or her personal views in all matters and allow the child to express these views freely. This is very much in harmony with current UK legislation and guidance.

**ISLAMIC PERSPECTIVE ON FOSTERING**

Most of the aspects governing fostering from the Islamic Jurisprudence point of view are concerned with the intermixing of the sexes when a child reaches the age puberty. This is when mahram and non-mahram issues arise. A teenage foster child may be placed with Foster Carers who have their own birth children who may be of a similar age. Accordingly these concerns need to be discussed and understood.

**Mahram and Non Mahram issue and respecting the personal privacy of men and woman**

One of the main concerns that Foster Carers have is what to do when a child reaches the age of puberty and the issue of being Mahram arises.

Some people avoid fostering or adopting children because when the child attains puberty, this will result in family members sharing the home with non-mahrams – which will mean that ladies will need to wear a head scarf when non-mahrams are present.
This happens anyway when a non-mahram visits a Muslim household, but whereas such a visit may only last for a few hours in a day, having a non-mahram fostered adolescent living in the house is more of a full time situation. This is why in some cases some foster carers ask that the child leave their home at the onset of puberty.

The practice of wearing hijab when in the presence of non-mahrams may seem strange to non-Muslims, but these concerns are absolutely valid and in a general sense Muslims are required to guard their modesty. There are many verses in the Qur’an and the teachings of the Prophet Muhammad, may Allah bless him and grant him peace, which allude to this issue. Living in the current climate, there are many temptations in society to commit acts of immorality – which can easily result in unwanted children being born who are then in need of being Fostered or Adopted!

This is why Allah, subhanahu wa ta’ala, has created us in our innate nature to self-regulate ourselves and by following Allah’s guidance to avoid taking action that is considered to be harmful by taking action that is beneficial. The Qur’an and Hadith teach us to prevent people, including ourselves, from even approaching committing an act of immorality.

The mixing and intermingling of men and women who are not related to each other in circumstances in which their beauty is openly revealed is prohibited in Islam because attraction between the sexes can be very powerful and at times overpowering. This is why sexual relations between a Muslim man and a Muslim woman are only permitted within marriage – and are avoided and discouraged outside marriage. These extra-marital encounters are prohibited because they can lead to fitna – temptation or trial – which can result in harmful consequences through the arousing of desires and the committing of indecency and wrongdoing. The Prophet Muhammad, may Allah bless him and grant him peace did not touch a woman to whom he was not married.

Among the many proofs in the Qur’an of the prohibition against the unrestricted meeting and mixing of men and women who are free to marry are:

“Say to the believers that they should lower their eyes and guard their private parts. That is purer for them. Allah is aware of what they do. Say to the believing women that they should lower their eyes and guard their private parts and not display their adornments – except for what normally shows – and draw their head-coverings across their breasts.” [Qur’an 24:30-31]

Part of the provision of maintaining the dignity and honour of men and women in Islam is in the way they look at each other. It is forbidden for a Muslim man to look at any woman with desire, except for his wife. The same is true for a Muslim woman with regard to another man to whom she is not married. Muslim men and women are encouraged to maintain a respectful distance between them.

There can be no doubt that preventative measures are an important part of Islamic Law. There are numerous rulings in Islam that are preventative in nature. However, this does not mean that we can legislate against every remote possibility of wrongdoing that we can think of. Doing so would be a violation of Islam’s tolerance and magnanimity and its ease of application. It would place too great a burden upon the believers.
Generally if the etiquettes of wearing the hijab and avoiding being alone with a non-mahram in private are followed and the intention is pure, then there should be no problem.

The Qur’an indicates that orphans and children in care within the household should be treated as brothers/sisters, when intermixing. Suddenly segregating an adopted child upon reaching puberty based upon their gender as if they have become a stranger overnight does not qualify as treating the child as a brother/sister, as directed by the sacred text. Such an approach might cause severe emotional and psychological damage, both to the adopted/fostered child and to the other members of the household. Wearing hijab can be managed in a naturally relaxed manner, without being rigid.

Members of each household can determine bounds of modesty and privacy to be observed among fostered and adopted and biological relatives, based on their specific contexts, the dictates of their conscience, mutual respect and their understanding of what the Qur’an and the Sunnah prescribe.

The meeting of men and women is not forbidden but it is safeguarded. It is perfectly acceptable or even required if the intention is for a praiseworthy action such as fostering or adoption.

**ADOPTION**

It is important at the very outset to appreciate that the English legal definition of Adoption is in fact closer to the Islamic Jurisprudence definition of Fostering. What the Shari’a forbids with regard to Adoption is also forbidden by English law. So it is very important to be fully aware that what is understood by the term ‘adoption’ in Islamic Jurisprudence is not the same as what is understood by the term ‘adoption’ in English law.

For example, under English law a family who Adopt a child cannot pretend that the child is their own natural birth child – who must be made aware from an early age that he or she has been adopted and who must be informed of his or her true life story from birth onwards.

**Adoption under UK Law**

If a child cannot be looked after by his or her birth parents, the child will be fostered or adopted. Fostering a child does not lead to full parental responsibility being transferred to the Foster Carers, whereas adoption is permanent, with full parental responsibility being transferred to the adoptive parents. To be adopted, the child must be unmarried and under the age of 18 at the time of the adoption application.

Adoption transfers all legal parental rights and responsibilities to the adoptive parents. The birth parents of the child lose all legal access to their child once an adoption order is approved by the courts. Birth parents have a right to request a re-union when child turns 18. This is usually managed by an approved adoption support agency.

Adopted children may keep in contact with some of their birth relatives if agreed during the adoption process – but the child’s safety and wellbeing is the first priority. Adoption support plans usually encourage letter box contact with birth parents, siblings, relatives and significant others. Adoptive parents are encouraged to keep the child’s first name. Most adopters do change the child’s
surname in order to ensure the safety of the child and also to develop the child’s sense of belonging and attachment with the adoptive family – but not to pretend that the child is their biological child.

Following the making of an adoption order, the child becomes a new member of the adoptive family and receives the same rights as if he or she had been born into that family. An adoption order is granted by the court. Adopters have to apply for an adoption order – and most adopters are usually encouraged to apply for an order following three months into an adoptive placement. The local authority or adoption agency endeavour to find the right adopter for each child based on their needs and past experiences.

Adoption is permanent – only on very rare occasions have adoption placements been reversed. Adoption becomes an option where there is no possibility of the child in question being restored to his or her natural birth family.

The placing Local Authority remains responsible for providing adoption support for the first three years and thereafter transfers this responsibility to the Local Authority where the adopters reside. Every Local Authority has a post adoption order support team in order to provide support for the adoptive child and the adoptive parents. Support can include financial help, counselling, advice, therapy, support with birth parents and contact issues – in fact almost any assistance needed.

**ISLAMIC PERSPECTIVE ON ADOPTION**

Islam fully supports the practice of helping the orphan and the poor and those in need of help by taking them under your wing. If there is no one to take care of the orphan and poor children, then this responsibility falls upon the Islamic government.

The most famous orphan in Islamic history is, without doubt, the Prophet Muhammad, may Allah bless him and grant him peace. His father died before he was born and by the time he was eight he had lost both his mother and grandfather. He was subsequently raised by his Uncle Abu Talib who continued to be his protector until his death.

The verses of the Qur’an and Hadith which refer to the obligation of looking after orphans and the poor clearly also apply in today’s modern context to those children who have been ‘taken into care’ by local authorities in order to safeguard their security and wellbeing.

**CARING FOR ORPHANS AND CHILDREN IN NEED OF CARE ENCOURAGED IN ISLAM**

There are many verses in the Qur’an and Hadith which encourage Muslims to care for Orphans. These apply equally to looking after children who are in need of care – even if one or both of their natural birth parents may still be alive, but are unable for one reason or another to care for their own children themselves.

When the Prophet’s wife Khadijah, may Allah be pleased with her, gave to him a slave named Zaid, the Prophet freed the boy and raised him as if he were his
own son. There is no better example than this of the importance of taking care of orphaned or homeless children.

The Prophet Muhammad, blessings and peace be upon him said, “Whoever caresses the head of an orphan in affection solely for the sake of Allah, a good deed will be written to his account for every hair over which he passed his hand. (Narrated by Abu Hurairah)

The Prophet Muhammad, blessings and peace be upon him, also said, “I and the person who looks after an orphan and provides for him or her, will be in Paradise like this,” putting his index and middle fingers together. (Narrated by Sahl bin Sa’d)

The orphans are among those who need mercy and they ask from us to deal with them in a good way. Qur’anic morality demands tolerant and compassionate treatment of orphans as expressed in the verse: “Worship none but Allah and be good to your parents and to relatives and orphans and the very poor. And speak good words to people.” (Qur’an 2: 83)

Another verse of the Qur’an which refers to caring for Orphans: “Worship Allah and do not associate anything with Him. Be good to your parents and relatives and to orphans and the very poor, and to neighbours who are related to you and neighbours who are not related to you, and to companions and travellers and your slaves. Allah does not love anyone vain or boastful.” (Qur’an 4: 36)

It is therefore somewhat startling to hear Muslims assert that adoption and fostering are prohibited in Islam. As already stated, the confusion often arises over the precise definition of what is understood by the term adoption. English law, like the Shari’a, does not permit adoptive parents to pretend that an adopted child is their own biological child, although of course they are free to display the same unconditional love and affection towards their adopted child as towards their biological child.

The adopted or fostered child is considered to be entitled to equal rights and privileges as a birth child in the way that they are cared for and looked after and they are treated very much the same. However from an Islamic perspective, there are some differences – and there are especially three important aspects that need to be considered and put into practice. They are:

1. The child should not take the surname of the adoptive parent, in order to clearly preserve the lineage of both the birth father’s name and the adoptive father’s name.

2. Shari’a compliant inheritance rules need to be applied when an adoptive parent dies.

3. The Sunnah regarding the mixing of non-related males and females should be observed. This has already been discussed in the section on Fostering.

None of these requirements should be used to discourage or prevent Muslims from Adopting or Fostering – especially since the Prophet Muhammad himself, may Allah bless him and grant him peace, demonstrated to us how adopting a child should be done.
THE ISLAMIC NAMING SYSTEM

When the Prophet Muhammad, may Allah bless him and grant him peace, married Khadijah, may Allah be pleased with her, she gave him a slave known as Zaid bin Haritha (Zaid, son of Haritha). The Prophet took such good care of Zaid that their relationship changed from that of a master and a slave into one of father and son. Zaid was one of the first persons to accept Islam. When his father and uncle came to know of his whereabouts, they came to Makka and told the Prophet Muhammad that Zaid had been captured by some thieves and sold into slavery. The Prophet set him free. However, when he was given the choice, Zaid refused to leave the Prophet and go with his father. The father became very angry and openly declared that from now on, “Zaid is not my son.” The Prophet immediately responded by adopting Zaid. Zaid came to be known as Zaid ibn Muhammad (Zaid, son of Muhammad).

This continued until after the Prophet migrated to Madina. Zaid had grown up and was now a married man. However, his marriage did not work out. Allah revealed verses relating to Zaid’s divorce in which the issue of ‘re-naming’ adopted children was also alluded to. Allah says:

“Call them after their fathers. That is closer to justice in Allah’s sight. And if you do not know who their fathers were then they are your brothers in the deen and people under your patronage. You are not to blame for any honest mistake you make but only for what your hearts premeditate. Allah is Ever-Forgiving, Most-Merciful.” (Qur’an 33:5)

After the revelation of this verse, Zaid was again called Zaid ibn Haritha (Haritha being his birth father’s name) and not Zaid ibn Muhammad (Muhammad being his adoptive father’s name). However, this change in name did not affect the close relationship between the Prophet and Zaid. They were still like father and son – but because Zaid was not the Prophet’s natural birth son, Allah permitted the Prophet to marry Zaid’s former wife, Zaynab, may Allah be pleased with her.

As the Qur’an states, calling adopted children by the names of their adoptive fathers is contrary to Islamic teaching and therefore, they must be called by the name of their real father. In the modern context, if the real father’s name is not known (for example in the case of an abandoned child), then an adopted child can be given a kunya or a generic name, like ibn ‘Abdullah or bint ‘Abdullah.

In the UK, often the surname or last name is used to help identify an individual – but not with the intention of severing or hiding a child’s blood relationship with his or her natural parents. This simply helps to identify the family to which a child “belongs” – not as a possession, but as a member of the family whose members are looked after by the family’s parents.

Implications of this Verse

What this means is that adoption does not change the genealogical relationship of a person: adoption does not end the blood relationship between the child and his/her real parents and siblings – nor does it create a blood relationship between him/her and his/her adoptive parents and their biological children.

The practical implications of this view, on the one hand, is that all the rules which apply between blood relatives are still valid: for example, the child will still be mahram; that is an adopted child cannot marry his real siblings; he or
she is also eligible for inheritance from the real parents; and there is no need for hijab between the child and members of his or her real family.

On the other hand, the rules that apply between non-related persons are also still valid. For example, adoption does not create the status of being mahram between the child and the new family: an adopted girl will have to observe hijab in presence of her adoptive father and brothers; similarly, the mother and sisters will have to observe hijab in the presence of the adopted son; an adopted child can marry the child of the adoptive parents once they are both old enough to marry, provided of course that they are compatible and wish to be married.

If an adopted baby is suckled by the adoptive mother, then this makes that child mahram. This is why Muslim adoptive parents often wish to adopt a baby. There are differences of opinion as to the maximum age at which a child can no longer take milk from the breast – but certainly a baby can be suckled up to the age of two.

**ISLAMIC INHERITANCE RULES**

Adopted and fostered children are not entitled to the prescribed shares to which children who are related by birth or marriage are entitled. In the Qur’an, Allah has prescribed the fixed shares to which blood relatives and relatives by marriage are entitled when a family member dies. Adopted and fostered children are not included amongst these blood relatives. However, a Muslim is entitled by Shari’a to make bequests from up to one-third of his or her estate to a non-inheritor – in this case to the adopted or fostered child. So Muslim adopters and foster carers can stipulate this in their Will, ensuring that the adopted or fostered child receives a bequest which does not interfere with the prescribed shares to which blood-relations and relations by marriage are entitled.

In fact it would be wise and equitable to stipulate in such a bequest that the adopted or fostered child should receive the amount which he or she would have received had he or she been a blood-relation. Adoptive and foster parents should be encouraged to use this discretion allowed in Islam.

On the other hand, since a Muslim child has a right to inherit from its birth parents, some people have concerns that if the child is adopted away, the birth parents will not be able to pass on their inheritance. In fact in many cases the birth parents usually have no assets, but if this is not the case, they can always leave a Will to this effect and this can be facilitated through the appropriate authorities.

It is always prudent for everyone, both Muslim and non-Muslim, to make a Will which ensures that relatives and loved ones will inherit in accordance with the testator’s wishes.

In fact, since English law does not yet recognise Muslim personal law, the estate of any Muslim who dies without making an Islamic Will, will be divided up in accordance with the intestacy rules – which prescribe different shares to surviving relatives than those prescribed by Allah in the Qur’an. This means that every Muslim who wishes a Shari’a based division of their wealth after their deaths should leave an Islamic Will which ensures that blood-relations receive
the shares to which they are entitled – and that bequests of up to a third of the estate can be made to others who are not blood-relations (including adopted and fostered children) or to a charity to establish a Sadaqa Jariya.

SUMMARY AND CONCLUSION

The mistaken belief that “Islam forbids adoption” must be seen for what it is: a misconception based on a misunderstanding. The classical Islamic scholars’ definition of adoption does not correspond to the English legal definition of adoption, which in fact forbids what the Shari’a forbids. The laws governing Adoption and Fostering in the UK are compatible with Islamic Jurisprudence. As we have seen, Fostering or Adopting children separated from their natural birth parents or orphaned is consistent with Islamic law, as long as vital ethical guidelines are followed.

Regarding Orphans, the Qur’an clearly states that the best interests of the child are paramount, which is exactly what UK law also dictates. The tabloid media is fond of depicting the Shari’a of Islam as being totally opposed to UK law, when in fact both legal systems share much in common.

Families considering Fostering or Adoption must strive for a balanced combination of transparency, justice, and compassion. Adoptive parents must refrain from obscuring the adopted child's biological lineage and they must strive to help the child flourish in all areas of life. The just division of wealth among biological and adopted family members of each family must be ensured not only in the case of adopted children, but also of long term fostered children.

According to UNICEF, “the best interests of the individual child must be the guiding principle” in making any decision on the adoption and placement of orphaned children. This is in accordance with the broad recommendation in the Qur’an regarding orphans: “They will ask you about the property of orphans. Say, ‘Managing it in their best interests is best.’” (Quran 2:220) According to a central principle of Islamic law, all actions are to be judged according to intentions.

In England alone, there are around 3,000 Muslim children in foster care, and with a shortage of Muslim foster carers, they are usually fostered by non-Muslim families. Hundreds of these children need adopting. In some cases, where children who were Muslim by birth and given up by their birth parents but adopted by non-Muslims, they often testify as adults that they grieve for the loss of their Muslim identity. Social Workers try their very best to place Muslim children with Muslim Adoptive Parents and Foster Carers but if they do not have Muslims registered, they have no choice but to place them with non-Muslim Carers.

In November 2002, the Adoption and Children Act passed into law and, for the first time, allowed unmarried couples, including same-sex couples, to apply for joint adoption. Therefore in the UK people in same sex relationships such as Gay and Lesbians can legally adopt. An increasing number of lesbians and gay men in the UK have been recruited in the last few years to become carers and adopters of children in public care. They are seen as a valuable solution to the problem of placing these children, as they obviously cannot have children of their own, and Muslim children, as with children of any faith, are sometimes placed with gay and lesbian foster carers.
Previous legislation required social workers to give ‘due consideration to a child’s religious persuasion’ when selecting a family to adopt or foster the child. However, in order to address the dire shortage of adopters and foster carers, particularly for black and minority ethnic children (which often include a greater number of Muslim children), the British government has recently brought about controversial changes in legislation – and there is now no longer a requirement to consider the child’s religion.

When the large influx of Orphans and children in need of Foster Care reaches the shores of Britain, are the Muslims of Britain just going to stand by and watch them taken into care by non-Muslim Foster Carers and Adopters? That would be a great shame on the part of the Muslim Ummah.

That said, it must be emphasised that non-Muslim Foster Carers and Adoptive parents are among the best of people, with noble and generous hearts, who act in accordance with what is recommended in the Qur’an and the Sunnah, even when they may not be aware of what the Qur’an and the Sunnah actually state about the need to look after children in need of care. If anything such people have a greater standing with Allah than those who know what the Qur’an and the Sunnah say on the matter and who are in a position to act on what they know – but who do not!

That said, it is difficult, even with the best intention and sincerity in the world, for a non-Muslim to bring up a child as a Muslim, because Islam is a way of life and it can only be learned from those who embody it. As the Prophet Muhammad said, may Allah bless him and grant him peace, “You become like the company that you keep – so pay attention to whose company you keep.”

This is why Muslims are naturally concerned that Muslim children should not be unnecessarily deprived of being brought up as Muslims, since – while accepting that Allah has created many different kinds of people who follow many different lifestyles – from a Muslim’s point of view, there is no better way of life in this world (which is swiftly leaving us) and no better preparation for the next world (which is swiftly approaching us).

It is important that clear leadership decisions are made on this issue. Perhaps a fatwa on the topic should be issued to help Muslim children maintain their Deen, dignity and the Islamic heritage which is rightfully theirs. If Muslims in the UK are reminded of the blessings and rewards that come to those who look after children in need, then insh’Allah many of them will take that giant yet relatively easy step of either Fostering or Adopting a child in need, whether that child is a Muslim or a non-Muslim.
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