

GUIDANCE for ADOPTION PROCEEDINGS and SECTION 84 ORDER PROCEEDINGS

This policy explains the role of the Children's Guardian and Children and Family Reporter in Adoption Order proceedings, and Section 84 proceedings under the Children and Adoption Act 2002.

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1.0 INTRODUCTION

- 1.1 The purpose of this guidance is to explain the legal framework for adoption under the Children and Adoption Act 2002 and the consequences of an adoption order as well as setting out the professional duties of the Children's Guardian and the Children and Family Reporter as they relate to adoption proceedings. The guidance also explains the legal framework for Section 84 applications (which is an application for parental responsibility prior to adopting a child abroad) although the duties of the Children's Guardian remain the same as in Adoption Order proceedings.
- 1.2 There are two types of adoption proceedings where a Children's Guardian or Child and Family Reporter might be appointed, they are:
- **Agency adoptions** - where the child was placed for adoption by an adoption agency - which is almost always a local authority; and,
 - **Non - agency adoptions** - partner (otherwise known as stepparent) adoptions, adoption by relatives or foster carers, and others where the child was not placed for adoption by an agency.

2.0 LEGAL FRAMEWORK FOR ADOPTION ORDER PROCEEDINGS

Parents and Guardians

- 2.1 The term 'parent' in this guidance refers to birth parents with parental responsibility for the child; the term 'guardian' includes Special Guardians of the child.

Adoption Orders

- 2.2 The effect of an Adoption Order is to end all parental responsibility of any person or local authority, and place it with the adopters, who then hold full and sole parental responsibility for the child.
- 2.3 An Adoption Order also ends any Children Act 1989 Order, such as a Care Order, a contact order, a Residence Order or a Special Guardianship Order, although new section 8 contact orders can be made with Adoption Orders. The Adoption Order will also end a Placement Order or Section 26 contact orders.
- 2.4 Where a Placement Order is in force, or a parent or guardian has given consent to placement for adoption¹, which has not been withdrawn, parents and guardians may only oppose the making of an Adoption Order with the leave of court. Leave will only be granted if the court is satisfied that there has been a change in circumstances that justify leave being given in the interests of the child. The Act does not specify which circumstances must have changed, for example, those of the child, parent or guardian or adopters.
- 2.5 Section 1(6) of the Act provides that the court can only make an Adoption Order where it considers that doing so is better for the child than not doing so. When considering the application for an Adoption Order the court must consider all the alternative orders available under the Adoption and Children Act 2002 as well as the Children Act 1989, and the option of not making any order.

Grounds on Which an Adoption Order Can be made

- 2.6 An Adoption Order can only be made in the circumstances set out in either (a), (b) or (c);
- (a) The court is satisfied that each parent or guardian of the child:
- consents to the making of the Adoption Order, or;
 - has consented under section 20 and does not oppose the making of the Adoption Order², or
 - consent should be dispensed with.

¹ Section 19 Consent

² A parent or guardian may not oppose the making of an adoption order under subsection (b) without the court's leave

(b) The court is satisfied that (in local authority agency adoptions) that the child;

- has been placed for adoption by a local authority with the prospective adopters with whom the order is proposed to be made, and either:
- was placed for adoption with the consent of each parent or guardian, the consent of the mother was given when the child was at least six weeks old, and the consent(s) were not withdrawn before the Adoption Order was applied for³, or
- The child was placed for adoption under a Placement Order, and no parent or guardian has been given leave to oppose the making of the Adoption Order.

(c) The third is that the child is free for adoption.

2.7 The court will not make an Adoption Order unless it is satisfied that there have been sufficient opportunities by the local authority to see the child with the prospective adopter(s)⁴. These visits are part of the investigation leading to the local authority Annex A court report⁵.

Timing of the Application for an Adoption Order

2.8 The decision to apply for adoption is usually agreed between the child (if s/he is of sufficient understanding), the prospective adopters, and the local authority (if it is a local authority placement). However, the prospective adopters do not need the approval of the local authority or the Independent Reviewing Officer to make their application.

2.9 The timing of the application and the need for notification of intention to apply for the Adoption Order will depend on the nature of the placement;

- In **local authority adoptions** the adopters can apply for an Adoption Order after the child has lived with them for at least ten weeks. Notification of intention is not required
- In **non agency adoptions** the time periods of the child living with the applicant(s) before the application can be made are:
 - Partner adoptions - six months
 - Local authority foster carers - twelve months
 - Relatives - three years
 - Inter-country adopters - six months if they have complied with regulations, twelve months if not
 - Other non-related persons (e.g. private foster carers) - three years.

(The court can give leave for an application to be made earlier than these time limits in non- local authority adoptions).

³ A parent or guardian may not oppose the making of an adoption order under subsection (b) without the court's leave

⁴ If a couple are adopting this must be with both prospective adopters

⁵ A child who is the subject of an adoption order application is not a "protected" child. The local authority's duty is specifically to investigate the child's circumstances and report about whether the adoption order applied for is in the child's best interests

- 2.10 Non-agency prospective adopters must give notice to the local authority of their intention to apply for an Adoption Order. The minimum notice period is three months before the application can be made and the maximum notice period is two years before the application is made.

Consent in Local Authority Adoptions

- 2.11 One of the legal consequences of a Placement Order or Section 19 consent is that parents and guardians will not be able to oppose the making of the Adoption Order unless they are given leave of the court to do so. Leave will only be granted by the court if it is satisfied that there has been a change in circumstances which justifies the giving of leave in the interests of the child. It is essential therefore that the parents and guardians are kept informed by the local authority if they are to know whether there has been a change in circumstances.

Dispensing with Consent

- 2.12 In both agency and non-agency adoption, if the parents do not consent and all relevant leave has been given, the prospective adopters must ask the court to dispense with parental consent on one of the following grounds:

- The parent or guardian cannot be found or is incapable of giving consent, or
- The welfare of the child requires the consent to be dispensed with

(The applicant(s) for the Adoption Order have the burden of proof that these grounds are made out.)

- 2.13 In circumstances where the adoption is contested the Children's Guardian or Child and Family Reporter's advice to the court as to whether the welfare of the child requires the parental consent to be dispensed with is a crucial safeguard for the child. The Guardian will assist the court in considering 5 key factors:

- Is the paramount factor in the court's decision the child's welfare, throughout his or her life?
- Has the welfare checklist been applied?
- What arrangements are necessary for contact, if any?
- is the order necessary and proportionate?
- Would any other order adequately promote the welfare of the child?

The Local Authority Report - Annex A

- 2.14 When an application for an Adoption Order is made, in both local authority and non-agency adoptions, the local authority must prepare a report (referred to as the Annex A Report) on the suitability of the adopters and whether adoption is in the best interests of the child. In assessing the child's best interests the report should address the ACA 2002 welfare checklist.

2.15 In non-agency adoptions, the best practice is for local authorities to begin preparing the Annex A report when the notice of intention is given, and before the application can be made. This will allow the local authority time to discuss with the prospective adopters possible alternative orders which could potentially be more in the interests of a child.

The Potential Outcomes of an Adoption Order Application

2.16 The potential options for non-agency adoptions are:

- a) An Adoption Order places parental responsibility (PR) solely with the adopters and ends the PR of the birth parents - creating a lifelong legal relationship between the adopters and the child
- b) The alternative for married or civil registered partners of birth parents, the alternatives to adoption are;
 - A Parental Responsibility Agreement⁶; or,
 - A Parental Responsibility Order⁷.
- c) The alternative for partners who are not married or civil registered partners of the birth parent is a Residence Order - lasting until the child is 16 or the order is discharged. The court can extend the order until the child is eighteen. The partner will acquire parental responsibility for the child which is shared equally with all other holders of PR, but the Residence Order determines with whom the child lives.
- d) The partner of a birth parent can only apply for a Special Guardianship Order if leave of court is given (although special guardianship is not likely to be an alternative to adoption for most partner adoptions).

2.17 In the case of other relatives such as grandparents or non-related prospective adopters such as foster carers the alternatives to adoption are;

- (a) A Residence Order (for details see 2.16), or
- (b) A Special Guardianship Order - lasting until 18 unless the order is discharged. The special guardians share PR with the birth parents and guardians and the order lasts until 18 unless it is discharged. The special guardians can exercise PR to the exclusion of parents and guardians on most issues.

⁶ Parental responsibility is shared equally with all others who have PR

⁷ Parental responsibility is shared equally with all others who have PR

2.18 The potential options for children placed by local authorities (subject to Placement Orders or section 19 consent) are:

- (a) An Adoption Order (for detail 2.16)
- (b) A Special Guardianship Order (for detail see 2.16)
- (c) A Residence Order (for detail see 2.16)
- (d) Revocation of the Placement Order - any Care Order made prior to the Placement Order will revive, and allows PR to be shared by the birth parent(s) and the local authority until the child is 18 or the order is discharged.

2.19 The child's wishes and feelings are integral to any decisions and must inform the plans for the future. The use of the needs, wishes and feelings pack will be a useful tool to work through with the child to explore the nature of the relationships between the child and other parties involved. Some children may not want to be adopted, even if they know that their parents cannot care for them, they may want their legal relationship with their birth family preserved. For other children, especially those who have been abused, the security, permanence and sense of belonging of adoption may be crucial to their emotional well being.

The Court

2.20 Prospective adopters can make their application to any court - it is not necessary to apply to the court which granted any previous orders. An application for an Adoption Order can be made to any Magistrates (Family Proceedings) Court, County Court Adoption Centre or the High Court.

The Legal Effect of the Application

2.21 The application prevents an accommodated child being removed by the local authority or the parents and guardians, unless the court gives permission, or the local authority needs to exercise its statutory powers because of significant harm to the child.

The Child as a Party

2.22 Unlike in Placement Order proceedings, a child is not automatically a party to Adoption Order proceedings. The court rules provide that the child will be party when⁸:

⁸ Rule 23 of The Family Proceedings (Adoption) Rules (2005)

- Permission has been granted by a court for parents or guardians to oppose the making of the Adoption Order
- The child opposes the making of the Adoption Order
- A Child and Family Reporter recommends that it is in the best interests of the child to be a party to the proceedings and that recommendation is accepted by the court
- The child is already an adopted child
- The prospective adopters are relatives of the child, (other than a partner of a birth parent)
- Any party to the proceedings or the child is opposed to the arrangements for allowing proposed contact, or a person not being allowed contact with the child after the making of the Adoption Order.

2.23 In inter-country adoptions the child will be party when:

- The application is for a Convention Adoption Order or a section 84 order
- The child has been brought into the United Kingdom in the circumstances where section 83(1) applies (restriction on bringing children in)
- The application is for an Adoption Order other than a Convention Adoption Order and the prospective adopters intend the child to live in a country or territory outside the British Islands after the making of the Adoption Order.

3.0 THE ROLE OF THE CHILDREN'S GUARDIAN IN ADOPTION ORDER PROCEEDINGS

3.1 The role and duties of the Children's Guardian are set out in Rules 59 to 68 of the Family Procedure (Adoption) Rules 2005.

Appointment of a Children's Guardian

3.2 When the court decides to make a child a party to the adoption proceedings a Children's Guardian will be appointed, unless the court is satisfied that it is not necessary to do so in order to safeguard the interests of the child⁹.

3.3 At any stage in proceedings where the child is a party, the court can appoint a Children's Guardian if an application is made by a party to the proceedings or, the court on its own initiative may wish to appoint a Children's Guardian for the child.

3.4 When appointing a Guardian the court will usually request the appointment of the same Children's Guardian who was previously appointed for the child.

The Duties

3.6 In safeguarding the interests of the child the Children's Guardian must appoint a solicitor for the child unless a solicitor has already been appointed. In particular the Guardian must:

- Instruct the solicitor representing the child, advising him or her on all matters relevant to the interests of the child, including the possibility for an appeal during proceedings
- Meet with the child to understand his/her views, needs, wishes and feelings about the plans for the future and on what is happening at court
- Give advice to the child as is appropriate having regard to his/her understanding
- Contact or seek to interview persons whom s/he thinks appropriate or as the court directs
- Make investigations as are necessary to carry out her/his duties
- Obtain such professional assistance as appropriate or which the court directs
- Advise the court on the child's ability to understand the nature of proceedings, including the child's views about undertaking particular assessments or examinations

⁹ Rule 34 of the Family Proceedings (Adoption) Rules (2005)

- Advise the court as to the appropriate forum and timings for the proceedings
- Advise the court of the most suitable options - from those available - for the particular child
- Any other matter on which the court seeks his/her advice or on which s/he considers that the court should be informed
- File a written report with the court unless the court directs otherwise, advising on the interests of the child in accordance with the timetable set by the court.

The Role of the Children's Guardian

3.7 The role of the Children's Guardian is to safeguard the welfare of the child in adoption proceedings. The welfare issues, which have led the court to make the child a party to proceedings, will guide the Guardian's investigation. The Guardian must apply the Adoption and Children Act (2002) welfare checklist to the issues in the case, and consider whether the Adoption Order appears to be the one most likely to secure the welfare of the child as opposed to the other alternatives available to the court.

Contact Issues

3.8 Before the court makes an Adoption Order, it must consider contact arrangements and hear the views of all parties. The Children's Guardian must advise the court as to whether in the interests of the child, any contact arrangements should be considered, including in some cases no arrangements for contact. The Guardian should highlight for the court any existing or proposed arrangements so that the court hears the child's views about her/his future contact needs.¹⁰

3.9 Post adoption contact can take the form of:

- **Indirect contact** - exchange of information, such as photographs or letters, through a confidential adoption agency letter box service, or a one way provision of information to be held in a letter box facility
- **Direct contact** - for example, a face to face meeting, phone calls and other electronic communications. The court can consider establishing agreements or undertakings about contact, or make a Section 8 order for both direct and indirect contact.

3.10 When considering contact arrangements, careful consideration must be given as to whether the contact will be supportive to the placement, as research suggests it can be in some cases ([Post Adoption Contact Research](#)). The potential risks that contact could undermine the relationship between the child and adopters will also need to be considered, as will the frequency and type of

¹⁰ Section 46 (6) ACA 2002

contact and how it should be handled with the child, arrangements to review contact, and contingency plans in case of difficulties.

Other Potential Parties

- 3.11 As part of the Guardian's analysis, s/he must, consider if there are any other people in the child's life who are important to the child and could have a role to play in safeguarding the child's interests. If the Children's Guardian is able to identify someone of importance to the child and it appears that their role in the child's life has not been sufficiently considered by the local authority, the Guardian must; advise the person that it may be possible for them to join proceedings¹¹, and they should take legal advice.

Adoption Support

- 3.12 Under the Adoption Support Services Regulation 2005, local authorities have the duty to assess support needs and discretion as to provide support to adoptive families. The support services are:

- Financial support - including ongoing payments or lump sums, introductory and settling in expenses, court fees and legal costs
- Support groups for adoptive parents and adoptive children
- Support for contact arrangements between adoptive children and their birth relatives or with other people with whom they share significant relationships
- Training for adopters in meeting their child's needs
- Therapeutic services for children
- Services to ensure the success of the adoptive placement or adoption
- Counselling, advice and information (this support can also be provided to non -agency adoptive families).

- 3.13 Regulations require that the local authority plan ahead for adoption support at each stage of placement and adoption. The Children's Guardian has an important role to play in checking that appropriate support services and, where relevant, plans are in place at the Adoption Order application and that there are clear arrangements in hand for provision after the Adoption Order, where appropriate. For further information on post adoption support refer to - [Standards for Adoption Support](#).

¹¹ Rule 23 of the Family Proceedings (Adoption) Rules (2005)

Separate Legal Representation for the Child¹²

- 3.14 If the child's solicitor, having taken into account the views of the Children's Guardian and any direction of the court considers that:
- 3.14.1 The child wishes to give instructions which conflict with those of the Children's Guardian; and
 - 3.14.2 S/he has sufficient age and understanding, to give such instructions on her/his own behalf.
 - 3.14.3 The solicitor will conduct the proceedings in accordance with instructions received from the child. In these circumstances the Children's Guardian may apply to the court for permission to have legal representation in the proceedings, this would be arranged through CAFCASS Legal¹³.

Attendance at Hearings

- 3.15 The Children's Guardian or the solicitor for the child must attend all directions hearings unless the court directs otherwise.
- 3.16 The court must notify birth parents and guardians of the final hearing date of the Adoption Order. Parents and guardians are entitled to attend the court and be heard on whether the Adoption Order should be granted, even if they have not applied for leave to oppose¹⁴, other than when birth parents request not to be notified, or the child has been freed for adoption.
- 3.17 The Children's Guardian and child's solicitor should establish during directions hearings what arrangements have been made about the management of the court hearing, such as ascertaining if parents and guardians will attend, and making sure that everyone is safe at the court and their confidentiality maintained.
- 3.18 An important aspect of ensuring safety and confidentiality for the child and the prospective adopters is the confidentiality of court reports.
- 3.19 Although any report in adoption proceedings cannot be disclosed, even to other parties without the permission of the court¹⁵. The court must consider whether any information should be deleted, for example, information likely to disclose, the identity and/or address of the child or adoptive applicants. The Children's Guardian or CFR should therefore highlight for the court any information in their report which should remain confidential if reports are disclosed, in order to ensure a child is safeguarded and his/her welfare prioritised.

¹² Rule 67 of the Family Proceedings (Adoption) Rules (2005)

¹³ Rule 64 [2] [c] of the Family Proceedings (Adoption) Rules (2005)

¹⁴ A parent or guardian who applies for, but is refused leave to oppose, can still attend court but cannot be heard on the issue

¹⁵ Rule 77

- 3.20 It is good practice at the final hearing, for the Children's Guardian to write a letter, which can be kept on the court file for the child in the interests of his/her later life needs¹⁶.

Communicating the Court's Decision to the Child

- 3.21 The Children's Guardian will ensure that planning has been made to inform the child of the court's decision and the outcome of that decision for his/her life is explained to the child. This last meeting between the Children's Guardian and the child also gives the child opportunity to have closure and say goodbye.

¹⁶ For all adoptions on or after 30th December 2005, the adopted adult has a legal right to see the court records of their adoption including the application form (but not the documents attached to it), the Annex A and Cafcass report

4.0 ROLE AND DUTIES OF THE CHILD AND FAMILY REPORTER IN ADOPTION PROCEEDINGS

4.1 The role and duties of the Children and Family Reporter in adoption proceedings are set out in Rules 73 and 74 of the Family Procedure Adoption Rules 2005.

Appointment of a Child and Family Reporter

4.2 In adoption proceedings the court may ask a Children and Family Reporter (CFR) to prepare a report 'on matters relating to the welfare of the child'. The CFR is appointed to safeguard the welfare of the child who is the subject of the Adoption Order proceedings. As the child is not a party, the CFR does not appoint a solicitor for the child.

The Duties

4.3 The duties of the CFR are very similar to those of the Children's Guardian and must include considerations about contact and adoption support. To see the full list of duties refer to 3.6 of this guidance. However, a particular duty of the CFR is to:

- Consider whether it is in the best interests of the child to be made a party to the proceedings, and if so, notify the court of his/her opinion together with the reasons for that opinion.

The Role of the Children & Family Reporter

4.4 The role of the CFR is to safeguard the welfare of the child in adoption proceedings through the investigation of the specific welfare issues considering the impact of future plans for the child.

4.5 The CFR must meet with the child, to discuss the analysis of the circumstances of case and the contents of the report (subject to the child's age and understanding) including any reference in the report about the child's views on the application.

4.6 Like the report of the Guardian, the confidentiality of the CFR's report is an essential aspect of safety planning for the child and the prospective adopters. The CFR should highlight for the court any information which should remain confidential if his/her report is disclosed in order to ensure a child is safeguarded and his/her welfare prioritised.

- 4.7 Like the role of the Guardian, the CFR should also establish during directions hearings what arrangements have been made for the court hearing as outlined in 3.17 of this guidance, and plans as to how the outcome of the case will be communicated to court.

5.0 APPLICATION FOR A SECTION 84 ORDER

- 5.1 A Section 84 order gives parental responsibility to prospective adopters prior to them taking the child abroad specifically for adoption. An application for a Section 84 order must be made to the High Court.

Legal Framework

- 5.2 The law and procedure follows the format of a local authority adoption. Therefore, the prospective adopters will have been approved as adopters according to the law in the country where they live. The UK local authority will have complied with regulations to determine that, placement with and adoption abroad, by these applicants is in the child's best interests.
- 5.3 The child will always be a party to this application and a Children's Guardian and Solicitor will be appointed.

Timing of the application

- 5.4 An application for a section 84 Order cannot be made until the prospective adopters have lived with the child for at least 10 weeks in the UK.

6.0 THE CHILDREN'S GUARDIAN ROLE IN SECTION 84 PROCEEDINGS

- 6.1 The role and duties are the same as in Adoption Order proceedings; refer to detailed guidance at 3.6 & 3.7 of this guidance.

Contact issues

- 6.2 Before making a section 84 order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings¹⁷.
- 6.3 Contact arrangements might be similar to those proposed in adoption application refer to further guidance at 3.8 – 3.10.

End of Appointment

- 6.4 The appointment of the Children's Guardian or CFR ends at the conclusion of the proceedings. The Children's Guardian will make arrangements to inform the child of the outcome and say goodbye to the child.
- 6.5 It is good practice that at the end of the appointment of the CFR - if there is no appointment of a Guardian - for the CFR to write a letter, which can be kept on the court file for the child in the interests of his/her later life needs¹⁸.

¹⁷ Section 46 [6] ACA (2002)

¹⁸ For all adoptions on or after 30th December 2005, the adopted adult has a legal right to see the court records of their adoption including the Annex A and CAFCASS report