

GUIDANCE FOR PLACEMENT PROCEEDINGS

This policy gives an overview of the legal framework for placement proceedings, and gives guidance on the role of the Children's Guardian and the Reporting Officer in Placement Order proceedings - when there is an application for a Placement Order.

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1.0 INTRODUCTION

- 1.1 This guidance gives an overview of the legal framework for placement proceedings, it explains the legal consequences of a Placement Order and gives guidance on the role of the Children's Guardian and the Reporting Officer in Placement Order proceedings - when there is an application for a Placement Order.
- 1.2 Guidance for witnessing parental consent to placement of children relinquished for adoption is the subject of a separate set of joint guidance and a protocol with the Association of Directors of Children's Services (ADCS). There is also separate guidance for Adoption Order proceedings.

2.0 THE LEGAL FRAMEWORK

Parents and Guardians

2.1 The term 'parent' in this guidance refers to parents with parental responsibility for the child. The term 'guardian' includes section 5 Children Act 1989 guardians or testamentary guardians [appointed after a parent's death], special guardians of the child; and those in a foreign jurisdiction who have similar duties in respect of the child.

Authorisation to Place for Adoption

2.2 A local authority cannot place a child for adoption without authorisation by one of the following routes:

- Consent to placement by each parent with parental responsibility and guardian¹; or,
- The granting of a Placement Order²; or,
- The child is the subject of a Freeing Order³. (If a child has been freed for adoption under the Adoption Act 1976 this guidance is not applicable).

Grounds on Which a Placement Order Can be made

2.3 Section 21 of the Adoption and Children Act 2002 sets out that

(2) The court may not make a Placement Order in respect of a child unless -

- a) the child is the subject of a Care Order,
- b) the court is satisfied that the child is suffering or likely to suffer significant harm⁴; or,
- c) the child has no parent or guardian.

(3) The court may only make a placement order if, in the case of each parent or guardian of the child, the court is satisfied -

- that the parent or guardian has consented to the child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn consent, or
- that the parent's or guardian's should have their consent dispensed with because they cannot be found, are

¹ Section 19 ACA 2002

² Section 21 ACA 2002

³ Section 18 Adoption Act 1976

⁴ The threshold conditions met under S31(2) of the Children Action 1989

incapable of giving consent, or the welfare of the child requires their consent to be dispensed with.

Placement for adoption without parental consent

2.4 If the local authority has decided that a child should be placed for adoption, but the parent or guardian does not consent, the local authority must obtain a Placement Order before the child can be placed in an adoptive family. There are broadly three circumstances in which a local authority will apply for a Placement Order, they are:

a) Combined care and placement proceedings

These will be the majority of cases. When a local authority decides during care proceedings that the care plan is adoption, it has a duty to apply for a Placement Order within those proceedings. The Placement Order application will usually be heard immediately after the Care Order application in the same hearing. There is no required notice period before a Placement Order application can be issued in care proceedings. This was confirmed by a decision of the Court of Appeal in June 2006, Re P-B (A Child) EWCA Civ1016 June 2006 [Court of Appeal]. This means that the Placement Order application can be issued at a very late stage in the care proceedings - even during the final hearing.

The Children's Guardian who is appointed in the care proceedings will usually be appointed for the placement proceedings. If any parent or guardian indicates during these combined proceedings that they wish to consent to their child being placed for adoption the court will usually appoint the existing Children's Guardian to act as a Reporting Officer (after the care order has been granted⁵) to witness their consent. A parent's consent under s19 in placement proceedings - is one of the grounds on which a Placement Order can be made.

b) Placement proceedings following the granting of a Care Order

Sometimes a child is the subject of a Care Order originally made on a different care plan than adoption, and the care plan subsequently becomes adoption.

If the parents or guardians do not consent to placement for adoption the local authority must obtain a Placement Order before it can place the child for adoption.

A Children's Guardian will be appointed for the placement proceedings. This will usually be the Children's Guardian who was appointed in the previous care proceedings. If any parent or guardian

⁵ Consent given under Section 19 to the placing of a child for adoption by a parent or guardian is not effective if it is given during the course of care proceedings. Therefore, obtaining consent during care proceedings does not provide the local authority with the right to place a child for adoption. If the local authority is satisfied that the child ought to be placed for adoption it must apply for a Placement Order.

indicates during these free-standing placement proceedings that they wish to consent to their child being placed for adoption, then as in combined care cases, the court will appoint the existing Children's Guardian as a Reporting Officer or another Cafcass officer as Reporting Officer to witness their consent⁶. The local authority can choose to rely on consent given under s19 as authority to place the child for adoption. However, early indications suggest that the local authority is more likely to decide to pursue the application for a Placement Order as this would prevent the need to recommence proceedings if consent is withdrawn.

c) Placement proceedings for a child not subject to a Care Order or care proceedings

If a child is accommodated at the request of parents⁷ and the local authority decides the child should be placed for adoption, each parent and guardian must give consent⁸ or a Placement Order must be made, before the child can be placed for adoption (the grounds on which a Placement Order can be made are set out in 2.3 of this guidance).

If no Placement Order has yet been made parents or guardians who have given consent to placement, can withdraw their consent up until the adoption order is applied for. If the child has been placed in foster care or for adoption after consent has been given, and then a parent or guardian withdraws their consent to placement, the parent is entitled to have the child returned at their request⁹. However, if the local authority decides the child should be placed for adoption, or remain in the adoptive home, the local authority must apply for a Placement Order to avoid the duty to return the child, and to continue pursuing the adoption plan. Again, if at any point during proceedings a parent or guardian decides that they wish to consent, the Children's Guardian can be appointed as a Reporting Officer to witness the consent.

⁶ Section 19

⁷ Section 20 Children Act 1989

⁸ Section 19

⁹ This paragraph relates to Section 19 Consent

3.0 THE CHILDREN'S GUARDIAN ROLE IN PLACEMENT PROCEEDINGS

- 3.1 The appointment and duties of the Children's Guardian and solicitor for the child are set out in detail in Rules 59 to 68 of the Family Procedure (Adoption) Rules 2005.
- 3.2 If during the course of the care proceedings the local authority decides the child should be placed for adoption¹⁰, the local authority must apply for a Placement Order which will, subject to courts satisfaction against the placement criteria set out at 2.3, authorise the local authority to place a child for adoption with any prospective adopters chosen by the authority.
- 3.3 If the parents don't consent the court must dispense with the consent of parents and guardians to placement for adoption on the grounds that they cannot be found, are incapable of giving consent, or the welfare of the child requires their consent to be dispensed with.
- 3.4 Before the Placement Order can be applied for the child's circumstances should be considered by the "should be placed for adoption' panel¹¹, and then a senior officer in the local authority [the agency decision maker] will decide whether the child should be placed for adoption. Re P-B (A Child) 2006 EWCA (Court of Appeal).
- 3.5 The local authority is not required to satisfy the court as to the likelihood of placement when applying for a Placement Order. Therefore, the local authority is not required to have identified a particular family for a child, taken a 'match' to adoption panel, or to provide information to the court or the Children's Guardian about any families that are being or have been considered for a child, before a Placement Order is made.
- 3.6 In situations when the prospective adoptive family has been identified during the placement proceedings, such as when they are the existing foster carers of the child or they have adopted an older sibling, the local authority may share information about them with the court and the Children's Guardian.

¹⁰ Section 22(2) of the ACA 2002

¹¹ Across the country there are different names for the adoption panel, sometimes it is referred to as the best interests panel, but for the purpose of this guidance we will refer to it as – “should be placed for adoption” panel

Appointment

3.7 Placement proceedings are 'specified' and so the court will appoint a Children's Guardian when a Placement Order application is issued (unless it is satisfied that it is not necessary to do so to safeguard the interests of the child)¹². This will usually be the Children's Guardian already appointed in the care proceedings. When appointing a Children's Guardian in applications for Placement Orders issued after the completion of care proceedings the court should consider requesting the re-appointment of the Children's Guardian who previously acted for the same child.

Duties

3.8 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 and investigate as s/he thinks appropriate or as the court directs. In particular the Children's Guardian must:

- Meet the child and give advice to the child as appropriate to her/his age and understanding; and,
- Contact and/or try to interview appropriate people involved in the child's life;
- Seek appropriate professional assistance where necessary;
- Write a report to court drawing attention to any issues which will be of assistance to the court in considering the application. Although this may be a brief report, it is separate to the report in the care proceedings because the report must address the Adoption and Children Act 2002 welfare checklist. The court will decide if the placement report should be disclosed to other parties in the proceedings;
- If adopters have been identified during placement proceedings (likely to be unusual - see para 3.7 above) care must be taken to ensure that any information is removed from the report about the prospective adoptive family if their identity is not to be known to the parents.

3.9 The Children's Guardian or the solicitor appointed for the child must attend all directions hearings unless the court directs otherwise¹³.

The Role of the Children's Guardian

3.10 The role of the Children's Guardian in safeguarding the child's welfare in placement proceedings is to address the Adoption and Children Act 2002 welfare checklist; and to consider whether the option being recommended to court (placement for adoption) appears to be most likely to secure the welfare of the child in light of full consideration of all the alternatives and circumstances. Refer to the appendix 3 of this guidance for a useful 'walkthrough' of the welfare checklist¹⁴.

¹² Rule 59 FPAR

¹³ Rule 65 (1) FPAR

¹⁴ ADOPTION The Modern Procedure by HHJ Heather Swindells QC and Clive Heaton 2006

- 3.11 The Children's Guardian will also assist the court in deciding if the welfare of the child requires the court to dispense with the parents' or guardians' consent to placement. However, it is for the court to decide if the child should be placed for adoption and whether to grant or refuse the Placement Order.
- 3.12 A Placement Order hearing is not a re-run of the care proceedings. Where the 'significant harm' criteria¹⁵ has been proved in earlier care proceedings the first requirement of the grounds for a placement order has already been satisfied.
- 3.13 It is not the role of the court or the Children's Guardian to be involved in choosing the adoptive family in placement proceedings. However, the Children's Guardian should ensure that care proceedings are used to good effect by including consideration of what characteristics of a future placement will offer the optimum chances for a good outcome for the child and ensure this analysis is included in the care plan. Furthermore, it is good practice for the local authority's evidence to include an outline of the efforts that have been made and strategies which will be used if the Placement Order is granted, to identify a family. The local authority will need leave of court to advertise a child for adoption before the Placement Order is granted.

Court timetabling and the 'should be placed for adoption' panel

- 3.14 When the timetable is being agreed in care proceedings it is important to ensure that the meeting of the 'should be placed for adoption' panel is scheduled into the timetable to be held after the final assessments and expert evidence is expected to be filed. This is because until the panel has considered and made a recommendation with all information available, the local authority cannot decide that the child should be placed for adoption and comply with its obligation to apply for a Placement Order in the care proceedings. [Re P-B 2006](#)
- 3.15 When appointed as a Children's Guardian in care proceedings, the Guardian may consider it appropriate to make their views known in writing to the 'should be placed for adoption' panel which must meet prior to the Placement Order being issued and must consider views expressed. In some circumstances it may be appropriate to request to attend the panel. The sort of circumstances in which a Children's Guardian might want to attend and share their views would be, for example:
- When there is a continued disagreement about the options of adoption and placement with a relative;
 - When there are contact considerations between siblings and family or where a decision is very finely balanced, or;
 - When a Children's Guardian is appointed for a sibling group and the Guardian is putting forward views on behalf of a sibling of a child being considered by the Panel.

¹⁵ Section 31 Children Act 1989

- 3.16 However, the Children's Guardian should be aware that the adoption panel does not make decisions - it makes recommendations upon which the local authority separately decides. A local authority is at liberty to decide contrary to the panel recommendation. Therefore, a meeting with the appropriate local authority staff responsible for care planning may be a more effective route for a Children's Guardian in influencing a decision.
- 3.17 If the Children's Guardian attends the 'should be placed for adoption panel' they must not act as a member of the panel, and must not take part in the making of the panel's recommendation to the local authority. It is important that any contribution made by the Children's Guardian does not conflict with court rules or orders about disclosure. However, if the court's leave was given, the panel will have had disclosed to them the experts' reports and assessments which have been filed at court in the care proceedings. It is also important that any contribution made does not lead to the conclusion that the Children's Guardian shared responsibility for the recommendations made at the meeting.
- 3.18 If the Children's Guardian has concerns about the recommendations being considered by the panel, s/he should voice his/her concerns at the panel. It is not helpful to reveal after the meeting, information that might have changed the recommendation of the panel about the child's interests, or to criticise the recommendations of the panel. The practitioner's overall intervention should be constructive and co-operative in order to promote the child's interests.

Contact

- 3.19 The Adoption Agency regulations¹⁶ require that the local authority, when deciding to place a child for adoption, consider what arrangements it should make for allowing any person contact with the child post placement. Before the court makes a Placement Order, a crucial role for the Children's Guardian is to make sure that sufficient consideration has been given to contact arrangements which are in the interests of the child for the duration of the Placement Order, including whether Section 26 Contact Orders should be made.
- 3.20 Consideration of the child's needs, wishes and feelings in relation to contact after the Placement Order may help the court when it is considering the subsequent adoption order application and whether the child should be made a party to the proceedings. The use of the My Needs, Wishes and Feelings pack may be a useful tool for this purpose.

The Legal Consequences of a Placement Order

- a) The local authority is authorised to place the child for adoption with any adopters chosen by it.

¹⁶ Regulation 46 of the Adoption Agency Regulations 2005

- b) A Placement Order does not take away the parent's parental responsibility (PR). It is shared between the parents and the local authority, and also with the prospective adopters from placement. (The PR of parents and the local authority terminates at the making of an adoption order.)
- c) The Placement Order suspends a Care Order, so that if the Placement Order is revoked the Care Order revives.
- d) The child is still 'looked after', but the duty to promote contact no longer applies. Contact arrangements are at the discretion of the local authority that can allow or refuse contact. Alternatively, a section 26 Contact Order (Adoption and Children Act 2002) can be made.

Revocation of Placement Orders

- e) A Placement Order can be revoked on application to the court if at a future point adoption is no longer a likely or desirable outcome for a child. The local authority or the child (via CAFCASS or another appropriate adult) can apply for revocation as of right, at any time after the Placement Order has been made.
- f) A parent may apply to revoke at any time after the placement order has been granted if the child has not been placed for adoption and the parent has leave of court. The criteria for leave are a change in circumstances since the placement order was made.
- g) A leave application is not specified proceedings, although the child will be a party - a Children's Guardian can be appointed at the discretion of the court.
- h) An application to revoke a placement order is specified proceedings and a Children's Guardian will be appointed by the court (unless it is satisfied that it is not necessary to do so to safeguard the interests of the child).

End of appointment

- 3.21 The appointment of the Children's Guardian ends at the conclusion of the placement proceedings. The Children's Guardian will make arrangements for the child to be informed of the outcome of the case. Plan should also be made to say goodbye to the child and if appropriate consider the possibility of an appeal. It is good practice for the Children's Guardian, at the end of the proceedings, to contact the Independent Reviewing Officer (IRO) who has responsibility for the child to ensure that the court care plan and any other key information is communicated to inform their monitoring of the implementation of the care plan.
- 3.22 If there has been a gap between the conclusion of care and the Placement Order, and one meeting has already occurred between the Guardian and IRO at the conclusion of care proceedings, again, it is good practice to

meet with the IRO a second time at the conclusion of placement proceedings to update the IRO on any new developments¹⁷.

- 3.23 An IRO will have been appointed for the 'looked after' child, and will continue to review the child after the Placement Order is granted or Section 19 consent given. The IRO will review the child's case at intervals specified by the Adoption Agencies Regulations 2005¹⁸, and will ensure that the child's views are taken into account and the performance of the local authority in implementing the care plan for adoption is closely monitored. The IRO has a duty to try to resolve problems with the implementation of the adoption care plan within the local authority, and if this not possible and where the IRO thinks the child's human rights are being breached s/he may refer the case to Cafcass. For further information about the role of an IRO refer to: Guidance for Independent Reviewing Officers in [Cafcass IRO Practice Note](#).

Arrangements for Freeing

- 3.24 In ongoing cases of freeing consult Cafcass Legal for advice.

Good Practice to Aid the Future Adoption Order Hearing

- 3.25 Unlike the placement stage of proceedings the child is not routinely made a party to the adoption proceedings therefore a Children's Guardian may not be appointed. A child is a party to an adoption order only in certain circumstances (see table 2 of Rule 23 of the Family Procedure (Adoption) Rules 2005). These include adoption by a relative other than a stepparent, and where contact arrangements are disputed. See Cafcass guidance on Adoption Proceedings.
- 3.26 To protect the child's right to be consulted and allow for due consideration to be given to their needs, wishes and feelings it may be helpful if the court, when making the Placement Order, makes a note on the face of the order of the issues which the Children's Guardian has set out in their report as important to the child's welfare. This would increase the probability of these issues being addressed by the IRO during placement and at the adoption order stage. It is possible that the child's view will change, and that information that is correct when the Placement Order is made is no longer relevant; if this is highlighted in the report or raised directly with the IRO, s/he would be in a better position to monitor this.
- 3.27 This approach may help avoid the appointment of Children's Guardian in the adoption order proceedings when it may not be necessary, but ensure that the Court is better informed about whether an appointment is necessary to ensure the effective participation of the child in accordance with paramountcy of the child's welfare in adoption law and the UN Convention.

¹⁷ Regulation 36 of the Adoption Agency Regulations 2005

¹⁸ Regulation 36 of the Adoption Agency Regulations 2005

4.0 THE REPORTING OFFICER ROLE DURING PLACEMENT PROCEEDINGS; ON APPLICATIONS FOR FREE STANDING PLACEMENT ORDERS OR WHERE CARE PROCEEDINGS HAVE CONCLUDED

Appointment

- 4.1 The court will appoint a Reporting Officer where it appears that during placement proceedings any parent or guardian of the child is willing to consent to their child being placed for adoption¹⁹. The same person may be appointed as the Reporting Officer for two or more parents or guardians of the child, although if the parents live in different locations it may be necessary, for practical travel reasons, to appoint a second Reporting Officer to visit a parent residing in a different part of the country.
- 4.2 The appointment and duties of the Reporting Officer in placement proceedings can be found in Rules 69 to 72 of The Family Procedure (Adoption) Rules 2005.

Duties

- 4.3 When witnessing consent²⁰ during placement proceedings the Reporting Officer must witness the signature of the parent or guardian on the form prescribed by the rules (or a form to like effect).
- Form A100 is used for consent to placement for adoption with any prospective adopters chosen by the agency.
- (A parent or guardian giving consent to placement in placement proceedings may only consent to placement with any adopters chosen by the agency.)
- 4.4 When giving section 19 consent to placement, or subsequently, parents or guardians may decide to give consent to the making of an adoption order in the future (section 20 consent). This consent must also be given formally and witnessed by a Reporting Officer on the prescribed form which is:
- Form A103 Advance consent to adoption.
- 4.5 When section 20 consent has been given the parent or guardian must be notified of the date and venue of the adoption order application, unless the parents make a statement that they do not wish to be informed of the application for an adoption order. There is no prescribed form in which the parents make such a statement.

¹⁹ Section 19

²⁰ Section 19

The Role of the Reporting Officer

- 4.6 The role of the Reporting Officer is to ensure that the parent or guardian's of the child are fully aware of the implications of adoption and their consent to placement for adoption is given unconditionally and with a full understanding of the nature and effect of their consent.
- 4.7 The Reporting Officer should investigate all the circumstances relevant to the parent or guardian's consent to placing the child for adoption. On receiving the Local Authority Annex B Report the Reporting Officer should allow sufficient time to read the documentation including checking for diversity information before meeting with the parents.
- 4.8 While the task of witnessing consent is limited in scope and is essentially a short independent checking role, in practice assessing all the circumstances relevant to parent or guardian's consent is a complex task. The Reporting Officer needs to assess whether the parent has understood the legal and other implications of placement for adoption and adoption, and is giving her/his consent unconditionally and with a full understanding of what is involved.

Ensuring informed consent

- 4.9 The consent to placement for adoption forms were not designed for parents and guardians of children subject to ongoing care proceedings. The local authority cannot rely on parents consent to placement during care proceedings and if the plan is for adoption the local authority would be expected to make an application for a placement order. If the parents then decide to consent they would be consenting to the making of a Placement Order. The main use of the consent to placement for adoption forms is for parents relinquishing children for adoption. The legal consequences of giving consent to a Placement Order are set out at 2.3 of this guidance and an amended consent form (for parents giving consent to placement where the child is the subject of a Care Order) is provided in appendix 2 to this guidance. Separate guidance applies when taking consent, acting as an officer of the service, and taking consent outside of proceedings.
- 4.10 A Reporting Officer is appointed on an application for a Placement Order to obtain consent of the parents to the actual Order and not the placement itself. The Reporting Officer will have to amend the explanation of the legal consequences of consenting to an order rather than consenting to a placement. The parent needs to have a clear understanding of the legal consequences when signing their consent and therefore should take legal advice before signing.
- 4.11 If a parent fails to attend the first appointment then it is a good idea to offer at least two additional appointments in order to provide a fair and sensitive service to the birth parents. There may be some cases where the particular needs of the case require more than this, however this would be unusual.

Ensuring valid consent

- 4.12 The Reporting Officer should be vigilant about factors that might militate against a parent's consent being valid, such as incapacity due to mental ill health or a learning disability. The local authority report to the court for the Placement Order application (the Annex B report) and other evidence before the court (e.g. in the application for the Care Order) provides information which will indicate to the Reporting Officer, who may also be Guardian in the care proceedings, if the parents or guardians have the mental capacity to consent or if other factors affect their capacity to give consent with full understanding and unconditionally. A birth parent under the age of 18 can give valid consent if they have sufficient understanding. However, if there is any doubt about parental capacity the Reporting Officer should seek directions from the court. If this arises in a case in the Family Proceedings Court, then the case must be transferred up.
- 4.13 The Reporting Officer must also make sure that the parents or guardians have been offered support and counselling by a social worker other than that appointed for the child. To the extent that this is possible in what may have been, until the indication that parents are willing to consent, contested care and placement proceedings. It is good practice for the Reporting Officer to make sure that birth parents are aware of post adoption support services, the adoption contact register and the facilities for indirect letter box contact. Most parents will already be legally represented in the placement and care proceedings, but for those who are not, it is good practice to advise them to seek legal advice.
- 4.14 There should be a certified copy of the child's full birth certificate and the accuracy of this document needs to be checked with the parents (it is important to note that this must not be a photocopy).
- 4.15 Fathers without parental responsibility²¹ may already be involved in the care and placement proceedings, but are not required to give their consent to placement for adoption. The local authority evidence will have set out the circumstances of the father without parental responsibility and the efforts the local authority have made to ensure he is notified of the care proceedings. The court rules provide that a father without parental responsibility who was joined as a party in the care proceedings will be party to placement proceedings.
- 4.16 On completion of her/his investigations the reporting officer must:
- Submit a report confirming that in the opinion of the Reporting Officer consent has been given unconditionally and with full understanding, and drawing attention to any matters which in his/her opinion may be of assistance to the court; The original of the signed consent form

²¹ Parental Responsibility: Mothers have PR from birth, fathers have PR if they are married to the mother at any time after the child's birth, or they have signed a formal agreement with the mother and sent it to the court, or if they have acquired PR under a court order or if they are registered as the father of the child on the birth certificate after 1/12/03.

must be delivered to the court which is hearing the Placement Order application (a copy should be retained on Cafcass' file);

- Make a report to the court if the parent or guardian is unwilling or unable to consent.

4.17 If consent is not given, the proceedings for a Placement Order will continue. The Reporting Officer must attend all directions hearings unless the court directs otherwise²².

Minor Parents

4.18 The Family Procedure (Adoption) Rules 2005 sets out the procedures where the birth mother or father is under the age of 18 and wishes to be involved in the placement proceedings²³. The starting position is that they must have a Litigation Friend to conduct proceedings on their behalf, but²⁴ they may conduct proceedings without a Litigation Friend where they have obtained the court's permission to do so. The court will grant permission to dispense with a Litigation Friend and allow a minor parent to instruct their solicitor directly if it is satisfied the minor parent has sufficient understanding of the nature and legal impact of the proceedings.

4.19 In the case of a minor parent the court may make an order appointing

- a) The Official Solicitor who should be approached first (practice note from Official Solicitor 2 April 2001);
- b) An Officer of the Service (meaning Cafcass) - if s/he consents and if there are concurrent children proceedings²⁵; or
- c) Some other person (if s/he consents) as a Litigation Friend.

4.20 When a child reaches the age of 18 a Litigation Friend's appointment comes to an end, even if the proceedings continue.

The Legal Consequence of Giving Section 19 Consent to Placement in Placement Proceedings

4.21 Child subject to Care Order or interim Care Order

- a) The local authority continues to share parental responsibility with the parents and guardians, and with the prospective adopter[s] from the date of placement.
- b) The child is still looked after, but the duty to promote contact no longer applies. Contact arrangements are at the discretion of the local authority or Contact Orders can be made (Section 26 ACA 2002). The parents/guardians can withdraw consent at any time up until the Placement Order is granted. If they do withdraw consent, the local

²² Rule 72 (4) FPAR 2005

²³ Rule 49 FPAR 2005

²⁴ Rule 51(1) FPAR 2005

²⁵ Note the same practitioner cannot act for the minor parent and the child

authority will ask the court to dispense with their consent and grant the Placement Order.

- c) A parent or guardian may not oppose the making of the adoption order unless they have the court's leave at the time of the adoption application.

4.23 When a child is accommodated, or placed in foster care or for adoption when there is no Care Order or interim Care Order.

- a) The local authority acquires parental responsibility by the signing of section 19 consent, PR is shared with the parents and guardians and with the prospective adopter[s] from the date of placement
- b) The child is looked after, but the duty to promote contact no longer applies. Contact arrangements are at the discretion of the local authority or Contact Orders can be made (section 26 ACA 2002).
- c) The parents or guardians can withdraw consent at any time up until the adoption order is applied for. The local authority is then obliged to return the child to the parents if they request it (within 7 days if the child is in foster care, and 14 days if placed for adoption).
- d) If any parent or guardian withdraws consent and the local authority decides that the child should be placed for adoption, the local authority must apply for a Placement Order to avoid the duty to return the child.
- e) If the child has been placed for adoption for more than 10 weeks the prospective adopter(s) can apply for an adoption order, and are not obliged to return the child to the local authority or parents unless a court orders it.
- f) If section 19 consent is not withdrawn before the adoption order is applied for, it is deemed consent to the making of an adoption order.
- g) A parent or guardian may not oppose the making of the adoption order unless they have the court's leave.

APPENDIX ONE



Children and Family Court Advisory and Support Service

Adoption and Children Act 2002 Section 22 Application By Local Authority for a Placement Order

Report of the Children's Guardian

Court:

Court Case Number:

Children's Guardian:

Report Completed on: DATE COMPLETED E.G. 08 APRIL 2006

Report Filing Date: FILE DATE E.G. 08 APRIL 2006

Solicitors Address:

Confidentiality

This report has been prepared for the court under the Family Procedure (Adoption) Rules 2005 and is confidential it may not be disclosed without the consent of the court

CHILD (REN) SUBJECT OF THE APPLICATION

Name	Gender	Date of birth	Age	Ethnic Origin
First Names SURNAME	M/F			

Applicant	Date of application

Parties Name(s)	Relationship to Child	Date of birth	Age	Ethnic Origin
First Names SURNAME				

Application before the Court: Application for Placement Order

Current Court Orders or Ongoing Proceedings:

Date of Hearing:

Directions:

Final:

Date of Children's Guardian Appointment to Case:

CAFCASS Office Address:

Telephone Number:

**Fax Number:
Solicitor**

FAMILY STRUCTURE

1.

CASE SUMMARY

2.

RECOMMENDATION

3.

GUARDIAN'S ANALYSIS

1. The Child

SUMMARY OF WHAT IS HAPPENING TO THE THE CHILD(REN), INCLUDING THEIR VIEWS, NEEDS, WISHES AND FEELINGS

2. Parents

SUMMARY OF THE PARENT'S SITUATION (& OTHER RELEVANT ADULTS), INCLUDING THEIR VIEWS

3. Local Authority

4. ASSESSMENT USING THE WELFARE CHECKLIST

The paramount consideration of the Court in this application must be the child's welfare throughout his or her life (Adoption and Children Act 2002 Section 1(2)) and the court must have regard, amongst other things, to the following matters (Adoption and Children Act 2002 Section 1(4)).

a) The ascertainable wishes and feelings of the child regarding the decision relating to adoption (considered in the light of his age and understanding).

b) The child's particular needs.

c) The likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person.

d) The child's age, sex, background and any of the child's characteristics which the court or agency considers relevant, including the child's religious persuasion, racial origin and cultural and linguistic background.

BRIEF PEN PICTURE OF THE CHILD(REN)

e) Any harm (within the meaning of the Children Act 1989 as amended) which the child has suffered or is at risk of suffering.

f) The relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant including-

- i) The likelihood of any such relationship continuing and the value to the child of its doing so,
- ii) The ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise meet the child's needs,
- iii) The wishes and feelings of the child's relatives, or of any such person, regarding the child.

CONTACT

CURRENT AND PROPOSED ARRANGEMENTS. SIGNIFICANCE OF CONTACT FOR THE CHILD

SOURCES OF INFORMATION

Author's Name
Children's Guardian

23/12/2008

APPENDIX TWO

(This Form Must be Agreed with Local Courts Before it is Used)

**CAFCASS ADOPTION CONSENT FORM FOR CONSENT FOR
PLACEMENT ORDERS
(When Appointed as a Reporting Officer)**

This form is for consent to a placement order which will lead to the placement of my child for adoption with any prospective adopters chosen by the Adoption Agency.

Consent to the placement of my child for adoption with any prospective adopters chosen by the local authority

Name of child.....

Before signing this form you are advised to seek legal advice about consent to a Placement Order and the effect on your parental rights. Publicly funded legal advice may be available from the Community Legal Service.

You can get information about this or find a solicitor through CLS Direct on www.clsdirect.org.uk or by telephoning 0845 345 4 345

Name and address of the local authority in the matter:
.....
.....
.....

I consent to _____ (my child), who is the child to whom the attached certified copy of the entry in the Register of Live Births relates to being placed for adoption with any prospective adopter(s) chosen by the local authority.

I understand that if I consent to my child being placed for adoption when the agency has applied for a Placement Order, I am also consenting to the making of Placement Order.

If my child is adopted, I understand that I will no longer legally be treated as the parent and that my child will become a part of the adopter (s') family.

I also understand that when my child is placed with the prospective adopter(s), they will also have parental responsibility. In addition, the adoption agency (local authority) has parental responsibility and will determine to what extent the parental responsibility of the prospective adopters or myself should be restricted

I understand that I may withdraw my consent at any time until the Placement Order is granted, but if I do withdraw my consent, the local authority will ask the court to dispense with my consent to the making of the Placement Order. However, the withdrawal of my consent to placement is ineffective if it is given after an application for an adoption order is made.

I will be entitled to be told when the prospective adopters make their application to the court, but I will only be able to oppose the making of the adoption order if the court gives me permission to do so.

For the court to consider giving permission, I must be able to show that there has been a change of circumstances since I gave my consent or as the case may be since the Placement Order was made.

I understand that once I have given my consent to placement and the Placement Order is made I will have no right to contact with my child, except by arrangement with the agency or under a court order.

I am entitled to apply to the court for an order for contact with my child while the Placement Order is in force, and the court will decide on the contact arrangements it considers are most appropriate.

I have not received any payment or reward from any person making arrangements for the adoption of my child.

*[I have taken legal advice] / *[I have not taken legal advice, but I have been advised to do so], about giving my consent to my child being placed for adoption and the effect on my parental rights.

*(delete as appropriate)

I consent unconditionally and with full understanding of what is involved, to the placement of

(My child) for adoption with prospective adopter(s) chosen by the local authority

Signed

On theday of20xx

Witness statement

This form was signed by

On the.....day of20xx

Before me (*print full Name*).....

Signed.....

Office of witness*.....

Address

.....

- In England and Wales an officer of the Children and Family Court Advisory and Support Service or, where the child is ordinarily resident in Wales, by a Welsh family proceedings officer, should witness this form.
- In Scotland a Justice of the Peace should witness it by a Justice of the Peace or a Sheriff, and in Northern Ireland.
- Outside the United Kingdom, the form should be witnessed by a person who is authorised by law in the place where the document is signed to administer an oath for any judicial or legal purpose, a British Consular Officer, a notary public, or, if the person executing the document is serving in the regular armed forces of the Crown, an officer holding a commission in any of those forces.

APPENDIX THREE

Welfare Checklist – ‘Walkthrough’²⁶

The Adoption and Children Act s1(2) states that the paramount consideration of the court or adoption agency must be the child’s welfare throughout his or her life. It is the welfare of the child “throughout his or her life” which must be considered.

Section 1(3) applies the principle that delay is prejudicial to the child’s welfare and places delay among the foremost mandatory considerations, although still subject to the welfare principle. It is important to consider the National Adoption Standards, which include the production of a plan for permanence for all looked after children at the four monthly review and a decision on prospective adopters within six months of application.

Section 1(4)(a) is crucial especially where the child has a strong sense of identity or awareness with their birth family.

Section 1(4)(b) encompasses all aspects of a child’s needs, health social moral emotional and psychological.

Section 1(4)(c) looks at the life-long prospects. It is two fold:

- 1) the emotional and psychological impact of adoption.
- 2) right of abode, nationality, succession, and inheritance.

In considering “*having ceased to be a member of the original family*” it is important to address the following;

- 1) The extinction of the parents’ parental responsibility and the complete severing of all legal ties with the birth family.
- 2) The loss of the child’s sense of identity with the birth family and the risk of damage to the child’s self esteem and psychological well-being.
- 3) The damaging sense of loss to such a child in seeing himself as abandoned or unloved by his parents or extended birth family.
- 4) The article 8 “right to family life provisions are important in this context.

In considering “becoming an adopted person“, one must address the provision for the child of a permanent substitute family where the adopters are fully committed to fulfilling their legal and parental responsibilities.

Section 1(4)(d) Where the adoption of an older child with strong links with the birth family is being considered, and where there is a younger child with strong links to older siblings, factors of age, and background may carry

²⁶ **Adoption: The modern procedure** by HHJ Heather Swindells QC and Clive Heaton. Published by FAMILY LAW in 2006. ISBN 0 85308 969 8

particular weight. Consideration such as special educational need or physical disability must also be included. Religion, racial origin and cultural background must also be considered as it must be by the adoption agencies but not at the expense of harmful delay to the child.

Section 1(4)(e) uses the same definition of harm as the Children Act welfare checklist. Section 31 is amended by ACA 2002 which adds impairment from seeing or hearing the ill-treatment of another. Domestic violence including the impact on children of witnessing abuse is therefore to be considered in all Children Act and Adoption proceedings.

Section 1(4)(f) has a wide focus and embraces the following;

- 1) The **value** to the child of a continuing relationship with his or her relatives.
- 2) the wishes and feelings of those relatives.
- 3) This includes the important sibling relationship, which is a life long relationship.

Section 1(6), the range of powers of the court. Consideration must also be given to the alternative options for permanence. Adoption is to be considered in a context of permanence with a range of options for finding families for looked after children who need them. The range of options includes:

- 1) rehabilitation with birth parents
- 2) placement with extended family members or friends
- 3) residence orders/ residence orders together with a 91(14) restriction
- 4) long-term fostering, especially where consideration is being given to preserving sibling relationships
- 5) special guardianship orders
- 6) adoption