

Placements Orders under the Adoption and Children Act 2002 – An update

The Legislative Framework - Summary

1. The main changes effected by the ACA 2002 may briefly be summarised as follows:
 - a. WELFARE CHECKLIST the introduction of a welfare checklist in similar terms to that found in s.1(3) of the 1989 Act [s.1(4)]
 - b. PARAMOUNT CONSIDERATION the Court's AND the adoption agency's paramount consideration is the child's welfare THROUGHOUT HIS LIFE [s.1(2)]
 - c. PLACEMENT ORDERS freeing orders are replaced by placement orders [ss.18-29]
 - d. RESTRICTION ON PLACEMENT an adoption agency may not place a child for adoption UNLESS either:
 - each parent or guardian has consented to the placement of the child for adoption with identified prospective adopters OR with any prospective adopters OR

- the court has made a placement order [ss.18, 19 & 21]
- e. ADVANCE CONSENT a parent who consents to their child being placed for adoption may, at the same time or at a subsequent time, give advance consent to the child being adopted by the identified prospective adopters (what may be termed a 'closed consent') OR by ANY prospective adopters chosen by the adoption agency (an 'open consent') [s.20]
- f. DISPENSING WITH PARENTAL CONSENT there are now just 2 grounds for dispensing with parental consent:
- 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 [s.52]
- (The concept of the 'reasonableness' of a refusal to consent to adoption went).
- g. SINGLE/MARRIED APPLICANTS & COUPLES an adoption order may be made in favour of a single applicant (including a step parent, without affecting his/her partner's status as a birth parent or parental responsibility for the child), married applicants or

couples (whether of different sexes or the same sex) who live as 'partners in an enduring family relationship' [ss.50-51 & 144(4)]

The Over-arching Principles

2. These new principles are set out in s.1 and mirror, to a large extent, the principles set out in s.1 of the 1989 Act. They are:

a. CHILD'S WELFARE the child's welfare is now the paramount consideration and not merely the first consideration, cf. s.6 of the 1976 Act. Note the paramountcy principle:

- extends to adoption agencies as well as to the Court, whenever coming to a decision relating the adoption of a child [s.1(1) & (2)]
- applies to the child's welfare 'THROUGHOUT HIS LIFE' and is not limited to his childhood years [s.1(2)]

b. DELAY the courts and adoption agencies '*must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare*' [s.1(3)]. See also s.109, with reference to the court's duty to avoid delay by drawing up a timetable for the determination of the application and ensuring directions are adhered to, cf. s.11 of the 1989 Act.

c. WELFARE CHECKLIST s.1(4) sets out the welfare checklist, to which the court AND adoption agencies must have regard, and which includes a number of those factors set out in s.1(3) of the 1989 Act. The additional matters are as follows:

- s.1(4)(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*

- s.1(4)(f) *‘the relationship which the child has with relatives, and with any other person in relation to whom the court or the 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 to meet the child’s needs*
 - iii. *the wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.*

These two provisions emphasise the importance to be attached to the birth family (and/or the first adoptive family, if the application relates to a second, or subsequent, adoption application), both in terms of a placement with them and of continuing contact. The court AND the adoption agency is required to weigh carefully these matters before going on to conclude that adoption is the best course for the child. [Note: the checklist does not apply to applications for leave s.1(7)].

- d. RACIAL & CULTURAL FACTORS in placing a child for adoption, the agency '*must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background*' [s.1(5)].

- e. NO ORDER PRINCIPLE the court and the adoption agency must consider the whole range of orders and powers both under the ACA 2002 and the 1989 Act and '*the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so*' [s.1(6)]. Is there any material difference between the drafting of this subsection and s.1(5) of the 1989 Act, '*it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all*'.

The Adoption Service

3. Each local authority is obliged to maintain an adoption service within their area [s.3(1)]. They must provide the requisite facilities for the adoption of children and for the provision of adoption support services [s.3(2)]: either by themselves, by a registered adoption society or by a person or organisation prescribed by regulations [s.3(4)]. These services must be provided in conjunction with the local authority's social services "*so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay*" [s.3(5)].

4. Each local authority must prepare a plan for the provision of adoption services and publish the same [s.5(1)]. Local authorities **MUST** carry out an assessment of a person's needs for adoption support services, if requested by:
 - a. children who may be adopted, their parents and guardians;

 - b. people wishing to adopt a child; and

 - c. adopted people, their parents, natural parents and former guardians.

In respect of any other person the local authority **MAY** carry out an assessment if requested to do so [s.4(1) & (2)].

5. An independent body is to be established, by regulations, which will have the power to review determinations made by local authorities and adoptions agencies, upon an application by a qualifying person. The review procedure is primarily intended for prospective adoptive whose applications to become approved adopters have been refused by a local authority or adoption agency [s.12].

6. Note: whenever an adoption agency is coming to ANY decision relating to the adoption of a child, it is bound to have regard to the principles set out in s.1 of the Act, namely:
 - a. The paramount consideration is the child's welfare THROUGHOUT HIS LIFE [s.1(2)];
 - b. in general, any DELAY in coming to a decision is likely to prejudice the child's welfare [s.1(3)];
 - c. the WELFARE CHECKLIST [s.1(4)];
 - d. give due consideration to the child's RELIGIOUS PERSUASION, RACIAL ORIGIN, CULTURAL & LINGUISTIC background [s.1(5)]; and
 - e. have regard to the whole range of powers available under the Adoption and Children Act 2002 & the Children Act 1989 and the 'no order' principle [s.1(6)].

7. Adoption agencies will also be expected to have regard to and comply with:
 - a. Regulations made under the 2002 Act;
 - b. The National Adoption Standards and Practice Guidance; and
 - c. Guidance issued by the relevant department in local government circulars.

Adoption Orders

8. The conditions for making an adoption order are similar to the provisions of the 1976. There are changes in those people who are eligible to adopt a child, to the nature and consequences of step-parent adoptions, to the grounds of dispensing with parental consent and to the status granted by an adoption order.

9. **Preliminaries to Adoption Application**

- **Status**

Applications to adopt may be made by:

- a married couple [s.49(1)(a)];
- an unmarried couple (whether of different sexes or the same sex) who are living in an enduring family relationship [s.49(1)(a) & s.144(4)];
- a single person [s.49(1)(b)];
- a step-parent [s.50(2)];
- a parent's partner [s.51(2)].

- Age of Applicant(s)

An adoption order may only be made if the applicant(s) have attained 21 years of age EXCEPT where the mother or father of child is applying to adopt him with her or his partner, when the parent need on be 18 years of age so long as the partner has attained 21 years of age [ss.50 & 51]:

- Age & Status of Child

An adoption order may be made in respect of a child who has attained 18 years of age AFTER the application has been made but BEFORE the proceedings are concluded [s.49(5)]. An adoption may NOT be made in respect of a person who:

- has attained the age of 19 [s.47(9)] OR
- is OR has been married [s.47(8)].

- Domicile/Habitual Residence

One of the applicants (if a joint application) or the applicant (if a single application) must either:

- be domiciled in the British Islands (ie. England, Scotland, Wales, Northern Island, the Channel Islands or the Isle of Man) [s.47(2)] OR

- have been habitually resident in the British Islands for a period of at least 1 YEAR ending with the date of the application [s.47(3)].
- Child Living with Applicant(s)
 There are a variety of time periods for which a child must have 'had his home' with the applicant or applicants, BEFORE THE APPLICATION is made, depending upon the STATUS of the child and of the applicant(s) [s.42(1)]. The periods are as follows:
 - **10 WEEKS**, if the child was placed by an adoption agency OR by order of the High Court OR if the applicant is a parent of the child [s.42(2)]
 - **6 MONTHS**, if one of the applicants is the PARTNER of a parent [s.42(3)]
 - **1 YEAR**, if the applicants are LOCAL AUTHORITY FOSTER PARENTS [s.42(4)]
 - **NOT LESS THAN 3 YEARS**, (need not be continuous) during the period of **5 YEARS** preceding the application, in ALL other cases [s.42(5)].

BUT in respect of applications within ss.42(4) & (5) which DO NOT fulfil those time periods, the court

may nevertheless give leave to make an application [s.42(6)].

10. Preliminaries to Adoption Order

• Reports – Adoption Agency Placements

The adoption agency must:

- report to the court on the SUITABILITY of the applicant(s) AND on any matter relevant to SECTION 1 of the Act [s.43(b)] [The old ‘Schedule II report’]
- take account of matters to be set out in regulations in making decision and in making the report: AND in particular to have proper regard to the need for STABILITY and PERMANENCE in the relationship of applicants who are a couple [s.45]
- assist the court as it directs [s.43(b)]

• Non – Adoption Agency Placements

Where any person applies to adopt a child who was NOT placed by an adoption agency:

- they must serve on the appropriate local authority a NOTICE OF INTENTION TO ADOPT [s.44(2)] ‘Appropriate’ means the local authority where they live OR as prescribed in regulations [s.44(9)]
- the notice must be served not more than 2 YEARS and not less than 3 MONTHS BEFORE the application is made [s.44(3)]
- in the case of applications within ss.42(4) & (5), where the time periods are NOT met, NO notice

may be given without the LEAVE of the court
[s.44(4)]

- on receipt of a notice of intention to adopt, the local authority MUST investigate the application and submit a REPORT to the court as required by s.43 [ss.44(5) & (6)].

11. Conditions for an Adoption Order

An adoption order may not be made unless the following conditions are satisfied:

- Consents

If a child has a parent or guardian, **ONE** of the following **THREE** conditions must be satisfied [in each case, for 'parent' read 'parent or guardian']

- First Condition

- i. the parent CONSENTS to the order [s.47(2)(a)]
OR
- ii. has not withdrawn an ADVANCE CONSENT AND does NOT OPPOSE the making of the order [s.47(2)(b)]

[**NOTE:** a parent may ONLY oppose the making of an under this sub-section with the LEAVE of the court [s.47(3)] AND the court CANNOT give leave unless satisfied there has been a CHANGE OF CIRCUMSTANCES since consent was given [s.47(7)]]

OR

- iii. the parent's consent should be DISPENSED with [s.47(2)(c)] [see paragraph 17 below]

➤ Second Condition

- i. the child was placed with the applicants by an adoption agency [s.47(4)(a)]
AND
- ii. the child was so placed with the CONSENT of each parent OR was placed under a PLACEMENT ORDER [s.47(4)(b)]
AND
- iii. NO parent OPPOSES the making of an the order [s.47(4)(c)]
[NOTE: a parent may ONLY oppose the making of an under this sub-section with the LEAVE of the court [s.47(5)] AND the court CANNOT give leave unless satisfied there has been a CHANGE OF CIRCUMSTANCES since consent was given or a placement order was made [s.47(7)]]

➤ Third Condition

The child is FREED for adoption by virtue of an order made in under the relevant legislation in SCOTLAND or NORTHERN IRELAND [s.47(6)]

- Contact

The court must CONSIDER whether there should be some arrangement for CONTACT by ANY person with the child AND consider existing or proposed contact

arrangements AND obtain the views of the parties [s.46(6)].

- Dismissal of Previous Application

The court may NOT hear an application or make an adoption order in relation to a child where a PREVIOUS application to adopt (made in ANY court of the British Islands) by the SAME people in respect of THAT child was refused by any court UNLESS because of a CHANGE OF CIRCUMSTANCES it is PROPER to hear the application [s.48].

12. Dispensing with Parental Consent

- Consent means “consent given unconditionally and with full understanding of what is involved” [s.52(5)]. The consent must be given in the prescribed form. [s.52(7)]. A parent (meaning ‘a parent having parental responsibility’) may withdraw consent but the following restrictions apply:

- the withdrawal of consent AFTER the child has been placed with prospective adopters does NOT affect the placement of the child and it may continue until the adoption agency decides to remove the child or in consequence of court orders [s.19(4)]
- the withdrawal of consent given AFTER an adoption APPLICATION has been made is ineffective [s.52(4)]

- if an adoption agency has placed a child for adoption pursuant to consent given under s.19 and later, the other parent acquires parental responsibility, he is to be TREATED as having given the SAME consent as the other parent.
- Dispensing with Consent there are now only 2 GROUNDS for dispensing with parental consent:
 - the parent (or guardian) cannot be found or is incapable of giving consent [s.52(1)(a)] OR
 - the WELFARE OF THE CHILD REQUIRES the consent to be dispensed with [s.52(1)(b)].

13. Consequences of an Adoption Order

An ADOPTION ORDER:

- gives parental responsibility for the child to the ADOPTER(S) [s.46(1)]
- extinguishes
 - ANY order under the Children Act 1989 [s.46(2)(b)]
 - the parental responsibility which any person had BEFORE the making of the order [s.46(2)(a)]
 - any duty arising by virtue of an AGREEMENT or ORDER to make payments [s.46(2)(d)]
- does NOT affect:

- parental responsibility of any person BEFORE the making of the order [s.46(3)(a)]; AND
- the parental responsibility of the parent of the adopted child whose partner adopts the child pursuant to s. 51(2) [see s.46(3)]

14. Status of Adopted Children

An ADOPTIVE PERSON is to be treated as:

- if born the child of the adopter(s) [s.67(1)]
- the legitimate child of the adopter(s) AND if adopted by a couple OR one of a couple under s. 51(2), as the child of the COUPLE
- as NOT being the child of any person OTHER than the adopter(s) OR, if adopted by the partner of the parent , the parent and the adopter [s.67(3)]

The consequence of an adoption order on dispositions, peerages and inheritance etc are dealt with in ss.69-76.

Placement Orders

15. Freeing Orders are gone. They are replaced by Placement Orders [ss.18,19 & 21]. An importance consequence of the new provisions (and contrast with the previous position with freeing orders) is that an adoption agency, in the absence of parental consent, may NOT place a child for adoption without a court order. Gone are

the days when, under the auspices of an interim care order or a full care order, an adoption agency could place a child for adoption BEFORE the court determined the application for a freeing order.

16. Placement

An adoption agency may only PLACE a child for adoption (or if a child is already placed with carers, leave the child with them as PROSPECTIVE ADOPTERS) if:

- the child is at least 6 weeks old; AND
- the parents have CONSENTED to the child being placed with prospective adopters (who are IDENTIFIED in the consent OR with ANY prospective adopters chosen by the agency OR with ANY prospective adopters chosen by the agency in the event an identified placement breaks down) [ss.18(1) & 19(1)]; OR
- the adoption agency had applied for and been granted a placement order [ss. 18(1) & 21].

Note: A child may NOT be placed pursuant to parental consent if:

- an application under s.31 CA 1989 has been made and has not been disposed of [s.19(3)(a)];
OR

- a care order or a placement order has been made AFTER consent was given [s.19(3)(b)].

17. Parental Consent

Means “consent given unconditionally and with full understanding of what is involved” [s.52(5)]. The consent must be given in the prescribed form. [s.52(7)]. A parent may withdraw consent but the following restrictions apply:

- the withdrawal of consent AFTER the child has been placed with prospective adopters does NOT affect the placement of the child and it may continue until the adoption agency decides to remove the child or in consequence of court orders [s.19(4)]
- the withdrawal of consent given AFTER an adoption APPLICATION has been made is ineffective [s.52(4)]
- if an adoption agency has placed a child for adoption pursuant to consent given under s.19 and later, the other parent acquires parental responsibility, he is to be TREATED as having given the SAME consent as the other parent.

18. Advance Consent

A consent pursuant to s.19 is limited to consenting to the child being PLACED for adoption. However, a parent who

gives consent under s.19 may, at the same time or subsequently, consent to the making of a future ADOPTION ORDER:

- Where the consent was in respect of prospective adopters identified in the consent to placement, the consent to an adoption order may be to an adoption by them [s.20(2)(a)] OR
- by any prospective adopters chosen by the adoption agency [s.20(2)(b)]
- the advance consent to an adoption order may be withdrawn – subject to the provisions of s.52.
- a person who gives an ADVANCE CONSENT may, at the same time or subsequently, give notice to the adoption agency that:
 - he does NOT wish to be informed of any APPLICATION for an adoption order OR to withdraw such a statement [s.20(4)].

19. Placement Orders

A placement order by the court authorises the local authority (NOT an adoption agency – all local authorities are adoption agencies, but not all adoption agencies are a

local authority) to place a child with ANY prospective adopters chosen by the local authority.

- The court CANNOT make a placement order unless:
 - the child is subject to a CARE ORDER OR
 - the court is satisfied the conditions in s.31(2) of the 1989 Act ('the threshold criteria') are met OR
 - the child has NO parent or guardian [s.21(2)]

- The court may only make a placement order if satisfied that:
 - the parent has consented to placement and has not withdrawn the consent OR
 - the parents consent should be dispensed with [see paragraph 17 above for the grounds].

- In order to avoid a child simply drifting the care system, a local authority MUST apply for a placement order in a number of situations:
 - where the child is placed for adoption or accommodated by the authority AND no

agency is authorised to place the child AND the child has no parent or guardian or the conditions of 31.(2) 1989 Act are satisfied AND the authority are satisfied the child ought to be placed for adoption [s.22(1)]

- where an application under s.31 1989 Act has been made OR the child is subject to a care order but there is no authority to place the child AND the authority are satisfied the child ought to be placed for adoption [s.22(2)]
- A local authority MAY apply for a placement order if the child IS subject to a care order AND the authority are authorised to place under s.19 [s.22(3)]

20. Consequences of a Placement Order

- A placement order remains in force until [s.21(4)]:
 - it is revoked under s.24
 - an adoption order is made
 - the child marries or attains the age of 18.

- A placement order may be VARIED to substitute one local authority for another but ONLY on the joint application of both [s.23]
- A placement order may be REVOKED on the application of ANY person but:
 - anyone other than the CHILD or the LOCAL AUTHORITY must have the leave of the court [s.24(2)]
 - the court CANNOT give leave unless satisfied there has been a change of circumstances since the placement order was made [s.24(3)]
- Where the court determines NOT to make an adoption order it may REVOKE the placement order [s.24(4)].
- If on REVOKING a placement order the court decides the child should NOT remain with the prospective adopters, they must return the child to the authority within the period specified AND if the court decides the child should be returned to a parent the local authority must return the child at once or whenever the child is returned to the authority [s.34(3) & (4)].

- Pending resolution of an application to revoke, the local authority may NOT place a child for adoption who is not already placed for adoption [s.24(5)].
- While a child placed under s.19 OR a placement order is in force, the adoption agency has PARENTAL RESPONSIBILITY for him and while he is placed with prospective adopters, they have parental responsibility for him [s.25(1)-(3)]. The adoption agency may determine the extent to which any parent or prospective adopter may exercise parental responsibility [s.25(4)].

NOTE: a placement order, unlike a freeing order, DOES NOT extinguish the parents' parental responsibility and NOR does it render the natural parents as 'former parents'.

- Where a child placed under s.19 OR an adoption agency is authorised to place a child for adoption:
 - no PARENT may apply for a RESIDENCE order UNLESS an application for an adoption has been made AND the parent has LEAVE under s.47(3) or (5) NOR

- may a GUARDIAN apply for a SPECIAL GUARDIANSHIP ORDER [s.28(1)]
- Where a child placed under s.19 OR an adoption agency is authorised to place a child for adoption OR a placement order is in force NO person may :
 - cause the child to be known by a new surname OR
 - remove him from the United Kingdom, SAVE by those who provide the child's home for a period of less than one month [s.28(2)-(4)].
- A care order (made before OR at the time of a placement order) DOES NOT HAVE EFFECT whilst the placement order is in force [s.29(1)].

NOTE: a care order is not extinguished by a placement order (cf. freeing orders)

- On the making of a placement order, any order under S.8 OF THE 1989 ACT or a SUPERVISION ORDER ceases to have effect [s.29(2)].

- Where a placement order is in force NO APPLICATION made be made for a prohibited steps order, residence order, specific issue order, supervision order or child assessment order SAVE if an adoption application HAS BEEN MADE a residence application may be made with the court's leave under s.47(3) or (4)

21. Contact

Where an adoption agency is authorised to place a child for adoption ALL provisions for contact under the 1989 Act (both ss.8 & 34) cease to have effect [s.26(1)]. For so long as an adoption agency is authorised to place a child for adoption OR the child is placed for adoption:

- No application may be made for contact under the 1989 Act BUT
- An application may be made for contact under s.26(2).
- An application for an order under s.26(2) may be made by the child, the agency, the parents or a relative of the child (and others mentioned in s.26(3)(c)-(e)) or any person with leave of the court [s.26(3)] or by the court on its own initiative [s.26(4)].

- HOWEVER an application under s.8 of the 1989 Act may be made where it is to be HEARD WITH an application for an adoption order [s.26(5)].
- BEFORE making a placement order the court must consider the adoption agencies proposals for contact AND must invite the parties to comment on those arrangements [s.27(4)].
- The usual provisions apply to a contact order under s.26(2) as to duration, variation, revocation, the making of conditions and the adoption agencies power to suspend contact for no more than 7 days [s.27(1), (2) & (5)].

35. Special Guardianship Orders:

s. 115 inserts new sections 14A-G into the 1989 Act to provide for a new species of order, 'special guardianship orders'. The features of the new order are:

- whilst the order is in force, the special guardian, or each joint special guardians, has parental responsibility for the child and may exercise parental responsibility to the exclusion of any other person with parental responsibility [s.14C(1)];

- a special guardian does not have the right to consent to an adoption or placement for adoption [s.14C(2)(b)];
- on making a special guardianship order the court may grant leave for the child to be known by a new surname [s.14B(2)(a)];
- a special guardian may remove the child from the United Kingdom for a period of less than 3 months, or longer with leave of the court [s.14B(2)(b) & 14C(3)(b)];
- a special guardian must be over 18 and must not be a parent of the child [s.14A(2)];
- a child's guardian (within the meaning of s.5 of the 1989 Act), anyone in whose favour a residence order is in force, anyone who satisfies the requirements of s.10(5)(b) & (c) of the 1989 Act and a local authority foster with whom the child has lived for at least one year preceding the application, is entitled to apply for a special guardianship order: all others must seek the leave of the court to make an application [s14A(3) & (5)];
- no-one may make an application for a special guardianship order unless at least 3 months

before making the application, he has given written notice of his intention to make the application to the local authority who is looking after the child or in whose area the child is ordinarily resident [s14A(7)];

- upon receipt of the notice the local authority must investigate the matter and prepare a report for the court [s14A(8)];
- the court may not make a special guardianship order unless it has received a report from the local authority [s.14A(11)];
- the court may make a special guardianship order or vary or discharge the order upon its own motion [s14A(6)(b) & 14D(2)];
- on making a special guardianship order the court must consider whether to make a contact order and whether any section 8 order in force should be varied or discharged [s. 14B(1)];
- each local authority must make arrangements for the provision of special guardianship support services, including counselling, advice, information and other prescribed services (including the provision of financial support). The section provides for local authority's

carrying out assessments of need and procedures for the consideration of representations from those to whom special guardianship support services are offered [s.14F & 14G];

- a special guardianship order ceases to have effect, if not discharged earlier, when the child reaches the age of 18 (s.91(13) of the 1989 Act).

Placement Order Case law Update

A. Leave to apply / revocation

Re P (Adoption: Leave Provisions) [2007] 2 FLR 1069

(Court of Appeal; Thorpe and Wall LJJ and Hedley J: 27 June 2007)

Prospective adopters issued adoption proceedings, the parents applied for leave to oppose the making of the adoption order, relying on a change in circumstances within s 47(7) of the 2002 Act. The parents claimed that they had addressed their problems successfully; mother had given birth to a second child who had not been taken into care, there had been a successful residential assessment, and the father had resumed contact with children from a previous relationship.

HELD:

1. In such cases it is a two stage process:
 - (i) Had there been a change in circumstances?
 - (ii) If so, exercising judicial discretion, should the parents be given leave to defend the proceedings having regard to section 1 of the 2002 Act and the paramount consideration of the child's welfare throughout his life?
2. A change in circumstances must be of a nature and degree sufficient to open the door to judicial discretion. It need not be 'significant'.

M v Warwickshire County Council [2008] 1 FLR 1093

(Court of Appeal; Thorpe, Dyson and Wilson LJJ; 1 November 2007)

A mother made an application for leave to apply for the revocation of placement orders under s.24(2) of the Adoption and Children Act 2002. The judge concluded that the mother had demonstrated a change in circumstances for the purpose of s24(3) of the Act, and that therefore leave *had* to be granted pursuant to s24(2) of the Act.

HELD:

1. On the establishment of a change in circumstances, a *discretion* arose under s.24(3). Considerations included the welfare of the child and whether the application had a real prospect of success.
2. The requisite analysis of the prospect of success would almost always include the requisite analysis of the welfare of the child, but the analysis of welfare would not always be satisfactorily subsumed within an analysis of prospect.

Re S-H (A child) subnom NS-H v (1) Kingston Upon Hull City Council (2) [2008] EWCA Civ 493 [2008] Fam Law 716

Following the granting of a placement the local authority stated that adoption was no longer being pursued until the child could thrive. The mother sought leave to apply for revocation of the placement order. The mother appealed the refusal to grant leave.

1. A long term plan for adoption was insufficient in itself for a placement order.
2. The child had to be in a condition to be adopted.
3. The question was whether in all the circumstances leave should be given.
4. the plans for adoption had been shelved and there was a real prospect that the placement order was no longer appropriate.

Re F (placement order) 2008 2 FLR 550

(Court of Appeal; Thorpe, Wall and Wilson LJJ; 1 May 2008)

A father sought leave to apply for revocation of the placement order. Although aware of the father's application the local authority chose to place the child with prospective adopters without delay.

1. The Court rejected the father's appeal: s25(5) referred to an application for revocation not an application for leave.
2. The Court was extremely critical of the local authority which had acted disgracefully in setting out to deliberately prevent the father being heard.
3. Parents should seek undertakings not to place pending the hearing of the leave application.
4. The Court was the ultimate arbiter and repetitions of such behaviour would most likely lead to judicial review and orders for costs.

Re B (Placement Order) [2008] 2 FLR 1404

(Court of Appeal: Thorpe, Arden and Wall LJJ; 17.07.08)

LA final care plans based on adoption. Panel not provided with expert reports or proper summary and a number of views of a child and adolescent psychiatrist were wrongly reported. Panel recommended adoption and the decision was accepted by the LA decision maker in a brief unminuted meeting. Court made care and placement orders. Parents appealed. LA conceded it had committed a “serious error” in the course of proceedings.

HELD:

1. Adoption agency’s error had been serious and material. If the decision of the Panel was flawed in any material respect then the decision maker could not properly consider the Panel recommendation and thus could not be satisfied that the child should be placed for adoption.
2. Parliament had laid down a careful process for the making of placement and adoption orders, to be respected and scrupulously implemented; the framework could not be bypassed or short-circuited. The Act and the Regulations were to be honoured and obeyed in their entirety.
3. The suggestion in *Re P-B* [2006] EWCA Civ 1016 that the court might have residual jurisdiction to approve an adoption involving procedural difficulties did not apply to these facts.
4. Panel members should be made fully aware of all of the available material relevant to their decision. Experts reports filed and served in care proceedings, addressing the present and future needs of the child should be provided to Panel.
5. A clear, full and accurate minute of the Panel meeting should be made during the meeting with particular attention to the documentation considered by Panel members, questions

asked by Panel members and the answers given by the social worker present.

6. Imperative that LA decision maker not a “rubber stamp” and the circumstances in which the decision was taken should be transparent and the decision itself and reasons for it minuted.

B. Consent

Re P (children)(adoption: parental consent) 2008 2 FLR 625

(Court of Appeal Thorpe, Wall LLJ and Munby J 20.5.08)

The mother appealed against placement orders in respect of 2 of 5 children.

Held

1. The proper test for dispensing with consent was whether the child’s welfare required adoption.
2. Welfare was to be considered throughout the child’s life and was paramount.
3. Welfare was defined by S1(4) ACA 2002.
4. Any placement without consent had to be proportionate and legitimate.
5. Adoption could be in the best interests even though the search for adoptive parents might be unsuccessful.

A Local Authority v C, X and C [2008] EWHC 2555, [2008] Fam Law 1175

(High Court, Mrs Justice King 24.10.08)

The Local Authority sought a declaration that a lawful consent was given by the mother and father to placement for adoption. The

issue was whether consent under s19 was effective despite being given before the child was 6 weeks old.

Held

1. A child under 6 weeks of age is an exception to general provisions under section 18, 19 and 20.
2. There can be a placement but no consent to making of adoption order.
3. Consent to placement when child under 6 cannot be relied upon as basis for adoption order.
4. The Court must be satisfied that consent should be dispensed with (s47(4)).
5. Good Practice is set out in the Statutory Guidance when child under 6 weeks old.

C. Contact Orders

Re R (Placement Order) [2008] 1 FLR 1259

(Family Division; Sumner J; 19 December 2007)

The case involved five children, three of whom had suffered physical abuse. The children were to be adopted in to two separate placements.

HELD:

1. It was in the children's best interests that no order was made under s.26 of the Adoption and Children Act 2002 for future contact with the parents and wider family or even between the siblings.
2. Such an order would be restrictive on potential placement, and given the potential difficulties surrounding placement of

Muslim children, it was important to maximise the adoption options available.

D. Appropriateness of Orders

Re T (Placement Order) [2008] 1 FLR 1721 [2008] EWCA Civ 542

(Court of Appeal; Thorpe and Hughes LJJ; 19 March 2008)

The children had significant learning difficulties and required a period of time in a therapeutic foster placement. The evidence was that adoption might not be achievable for the children, and that this could be more easily determined at the end of the therapeutic placement.

HELD:

1. It was wrong to make a placement order when it was too soon to say that adoption was in the best interests of the children. It might prove to be in the children's long-term interests to remain in a therapeutic foster placement.

E. Foster Carers Application

Re A; Coventry County Council v CC AND A [2008] 1 FLR 959

(Court of Appeal; Ward, Moore-Bick and Wilson LJJ; 21 December 2007)

The foster mother sought leave to apply for an adoption order in relation to a child in her care. The judge refused leave, emphasising the magistrates' approval of the final care plan and the need to avoid delay.

HELD:

1. The legal principles relevant to the exercise of the discretion whether to grant leave pursuant to s.42(6) of the Adoption and Children Act 2002 were identical to s.24(2) of the same Act.
2. The principles identified in *M v Warwickshire County Council* [2008] 1 FLR 1093, are relevant to the grant of leave to apply for revocation of a placement order under s 24(2).
3. The welfare of the child was a relevant, but not paramount consideration.
4. The judge should give proper consideration to the views of the guardian.
5. An application for a placement order required the magistrates to consider whether the best interests of the child required that she be adopted, not to determine the identity of the optimum adoptive home.

F. Contacting the natural family

Re L (Adoption: Contacting Natural Father) [2008] 1 FLR 1079

(Family Division; Munby J; 20 July 2007)

Mother abandoned the child at birth and provided only limited information about the father, which meant he could not be identified or traced. The mother came to court after one year and said she could not provide any more information.

HELD:

1. It was lawful to respect and maintain the confidentiality of mothers in some circumstances.
2. Whilst it was unlikely there had been any 'family life' within the meaning of Article 8, it was unsafe to proceed on that basis, given the lack of information.
3. There was no prospect of the mother providing more information and no effective mechanism for the court to obtain such information. On this basis the LA need not take any further steps to identify the father.

Re C v XYZ County Council [2008] 1 FLR 1294

(Court of Appeal; Thorpe, Arden and Lawrence Collins LJJ; 23 November 2007)

Mother abandoned the child at birth and did not identify the father. She requested the child be adopted. The judge ordered the LA to inform the maternal family and seek to identify the father.

HELD:

1. When a decision had to be made about the long-term care of a child whose adoption was sought by the mother, there was no duty to make enquiries that it was not in the interests of the child to make.
2. Enquiries were not in the interests of the child simply because they would provide more information about the child's background: enquiries must genuinely further the prospect of finding a long-term carer for the child without delay.

3. This interpretation did not violate the right to family life.
4. The LA should have brought proceedings under the 2002 Act rather than obtaining a care order initially.

Interplay with Special Guardianship

Birmingham City Council v R [2007] 1 FLR 564

(Court of Appeal; Thorpe, Tuckey and Wall LJJ; 20 December 2006)

Threshold crossed and all agreed the child could not live with parents. LA sought adoption outside the family, mother wanted maternal grandparents to be long-term carers.

Grandparents informed the court they would apply for special guardianship orders. The court orders a s. 14A(8) assessment on an undertaking that such applications would be filed in 7 days.

HELD:

1. The grandparents needed leave to apply for a special guardianship order and had not applied for or obtained leave. The court was in error in relying on the undertakings.
2. The LA could not be compelled to complete a s. 14A(8) assessment in these circumstances.
3. The judge had been wrong to exercise the s. 14A(9) discretion to compel the LA to perform their duties.

Re S (Special Guardianship Order) [2007] 1 FLR 819

(Court of Appeal; Thorpe, Tuckey and Wall LJJ; 6 February 2007)

Mother and foster mother both sought to care for the child. There was significant contact between child and mother. The judge made a special guardianship order in favour of the foster mother rather than an adoption order.

HELD:

1. A judge was entitled to make a special guardianship order of her own motion, under Children Act 1989, s 14A(6)(b), in adoption proceedings, subject to provision of the appropriate local authority report.
2. The key issue was which order would better serve the welfare of the child.
3. The statute implicitly envisaged such an order being made against the wishes of parties, and such orders are not limited to inter-familial placements.

Re S (Special Guardianship Order) (No 2) [2007] 1 FLR 855

(Court of Appeal; Thorpe, Tuckey and Wall LLJ; 14 February 2007)

Facts as above. The court clarified the need for section 14A(8) reports.

HELD:

1. The court could not make a special guardianship order of its own motion without having received a s 14A(8) report. Other reports containing relevant information were insufficient.
2. Where the court wants to make such an order of its own motion it should request the authority to conduct the investigation and produce such a report.

3. The court should be pragmatic when most of the relevant information is before the court. The LA should file a report providing (i) missing information; and (ii) cross-references to other relevant information.

Re M-J (Special Guardianship Order) [2007] 1 FLR 691

(Court of Appeal; Thorpe, Carnwath and Wall LJ; 6 February 2007)

Aunt applied to adopt the child. Mother argued for special guardianship.

HELD:

1. There is no rule that special guardianship should be preferred in family placements, the court must make the order to best meet the welfare needs of the child.
2. There is no rule that the court must take the least interventionist route. Whilst proportionality and the 'no order' principle should be considered, no such consideration should derogate from the welfare principle.
3. Court should follow guidance in *Re S* (above).

Re AJ (Special Guardianship) [2007] 1 FLR 507

(Court of Appeal; Scott Baker and Wall LLJ, 6 February 2007)

Uncle and aunt sought continuation of care orders, parents sought special guardianship. Father had been threatening to the aunt. Judge dispensed with parent's consent to adoption.

HELD:

1. Special guardianship orders have not effectively replaced adoption orders in cases in which children were to be placed permanently within their wider families.

2. Each case fell to be decided on the best interests of the particular child on the particular facts of the case (endorsing *Re S* (above)).

3. An adoption order was appropriate because it provided the security for the placement which was necessary to further the child's welfare needs.

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May 2009