

**SCRUTINY BOARD  
(CHILDREN'S SERVICES)**

**INQUIRY: ADOPTION IN LEEDS**

**LEGAL BRIEFING**

**Steve Boorman  
Social Services (Legal)  
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## **Adoption – The law**

The purpose of this briefing is to provide the Board with a short summary and overview of the law in relation to adoption.

The Board is also referred to the attached “HMCS” leaflet “Adoption – a Guide for court users” which has been produced by the Court Service to give a simple overview of the adoption court process for prospective adopters.

## **Effect of Adoption**

The effect of an adoption order is to extinguish the parental responsibility of the child’s birth parents and to transfer it permanently and solely to the child’s adopters. Essentially, the adopters become the child’s legal parents and the child is treated in law as if they had been born to the adopters.

The child’s birth certificate is replaced by an adoption certificate showing the adopters to be the child’s parents.

For many children, particularly younger children with limited attachments to their birth parents, adoption is seen as the ideal in terms of obtaining a secure, permanent, stable placement for children who cannot be cared for by their birth parents or extended families.

## **Legislative Framework**

The key piece of legislation in relation to adoption law is the ADOPTION AND CHILDREN ACT 2002 (“ACA”).

The main provisions of the ACA came into force on 30 December 2005.

These provisions represented probably the biggest changes to children law since the Children Act 1989 and had huge implications for social work and legal practice.

The ACA, although long in gestation, followed the Prime Minister's Office own review of adoption law and practice in 2000. The ACA's stated primary objectives are to update adoption law and to increase the number of looked after children who are placed for adoption; only time will tell whether the new provisions will deliver the latter goal.

## **BRIEF SUMMARY OF ADOPTION LAW AND PROCEDURE**

### **a) who can be adopted**

A child who is to be adopted must not be married or have entered into a registered civil partnership, can be of any nationality and must be 18 or under. The application for adoption must be made before the young person reaches 18.

### **b) who can adopt**

Please refer to the HMCS leaflet (p2).

A significant change brought about by the ACA was that unmarried couples (including same sex couples) are now able to adopt a child jointly provided they are deemed to be in an "enduring family relationship."

### **c) the adoption process**

#### **1. Agency/Non-agency adoptions**

"Agency adoptions" are those organised/arranged by adoption agencies. These agencies are either local authorities or registered voluntary agencies. They are required to comply with Regulations which govern, for example, the assessment

and approval of prospective adopters and the supervision and review of adoptive placements.

Other adoptions (ie non-agency adoptions) are essentially adoptions by step parents, close relatives or foster carers (whose adoption applications are not approved or arranged by the Local Authority). In such cases, the prospective adopters have to give the local authority at least 3 months notice before making an adoption order application. This enables the Local Authority concerned the time to undertake enquiries in relation to the applicants and to prepare a report for the court.

However, by far the most adoptions that take place in England and Wales are those organised by adoption agencies.

How does an Agency Agency come to arrange for a child to be placed for adoption?

Some children are put forward for adoption because they are “relinquished” for adoption by their birth parents; other children are the subject of adoption plans as a result of hard fought care proceedings where the local authority has come to the conclusion that the child’s welfare requires that they should be placed for adoption rather than rehabilitated to their parents’ (or other relative’s) care.

## 2. Role of Adoption Panel

The Adoption Panel has a key role in the adoption process where an adoption is arranged by an adoption agency (ie such as Leeds City Council).

All adoption agencies are required to have an Adoption Panel whose membership and procedures are determined by Regulations and Guidance. Leeds City Council has two Panels which each meet on a monthly basis.

The role of the Panel is to make recommendations to the Agency Decision Maker (ie Edwina Harrison in Leeds) in relation to the following decisions:

- whether a child should be placed for adoption
- whether an individual or couple should be approved as prospective adopters
- whether a child should be placed for adoption with specific prospective adopters

To inform its work, Panel receives detailed reports on the children and/or prospective adopters concerned. These reports in turn are the result of detailed and comprehensive social worker assessments.

### 3. Authorisation for placement of a child for adoption

A child cannot be placed for adoption by the Local Authority unless it is **authorised** to do so by either a Placement Order (“PO”) or by parental consent.

#### PLACEMENT ORDERS

Local Authorities have to apply to the court for a PO in care proceedings if the Agency has decided that the child should be placed for adoption (ie Panel have recommended that the child’s welfare requires this).

If the birth parents do not consent to a PO, their consent will have to be dispensed with; the legal criteria for dispensation is that the welfare of the child requires this.

Unlike with previous “freeing for adoption” orders (which were abolished by the ACA), the birth parents’ parental responsibility is not extinguished by the making of a PO. This

is a big change from the previous legal situation prior to the ACA.

When a child is placed with prospective adopters, the Local Authority will share parental responsibility with them and the birth parents; the Local Authority will determine the extent to which the adopters and the birth parents exercise their parental responsibility.

Subsequent to the making of a PO, birth parents are able to apply for leave to oppose the making of a adoption order; to be granted leave, they will have to show that there has been a “change in circumstances” since the PO was made.

The Local Authority is able to apply to revoke a PO if the plan for the child changes (eg from adoption to long term fostering if an adoptive placement for the child proves elusive); parents (with parental responsibility) will be able to apply to revoke a PO if the child is not placed for adoption and there has been a change in circumstances since the PO was made.

If a PO is revoked, a care order is revived if it was in force before the PO was made.

## PARENTAL CONSENT TO PLACEMENT FOR ADOPTION

Birth parents can relinquish a child for adoption by giving formal consent under s19 ACA; this has to be witnessed by a CAFCASS officer.

The giving of consent gives the Local Authority parental responsibility; when the child is placed for adoption, the prospective adopters will also share parental responsibility. The Local Authority determines the extent to which the prospective adopters and the birth parents exercise their parental responsibility.

Once the prospective adopters apply for an adoption order, if the birth parents have not withdrawn their s19 consent, they will not be able to oppose the adoption order without the court's leave; they will have to demonstrate a "change in circumstances."

#### 4. Adoption order application by prospective adopters

Once a child is placed with prospective adopters, the latter can apply for an adoption order after 10 weeks of placement.

Adoption and placement order applications may be heard by the Magistrates' (Family Proceedings) Court, County or High Court.

The public are excluded from all adoption court hearings.

The identity of the prospective adopters can be kept confidential from the birth parents. In such circumstances, the adopters will be given a serial number by the court, which will appear on all the papers instead of their names and addresses.

Under the ACA, the birth parents have the right to be given notice of the date and place of the adoption final hearing and also are able to attend to be heard on the question of whether an order should be made (unless they have applied unsuccessfully for leave to oppose the adoption order).

Locally, Judge Hunt has agreed that adoption hearings will be dealt with in 2 stages, with the prospective adopters (and the child, where appropriate) excused from the first stage. The second stage is essentially a "Celebratory" hearing.

#### 5. Other issues – contact

Once a child is placed for adoption, the Local Authority has no duty to promote contact between the child and his birth parents under the Children Act 1989.

The Local Authority, the child, any parent, legal guardian or any relative can apply for contact with a child under s26 ACA, during or after PO proceedings.

The court must consider whether to make a s26 contact order when deciding whether to make a PO.

s26 orders will not be enforceable once an adoption order made. Birth parents etc will have to apply for contact orders under s8 Children Act 1989, as previously, in relation to post-adoption contact.

#### **d) alternatives to adoption**

A special guardianship order (“SGO”) is a new permanency option created by the ACA as an alternative to adoption.

SGOs are more secure than residence order – they last until the child reaches 18 and are harder to discharge (ie by birth parents) than residence orders.

They are deemed to be particularly suitable for older children who need ongoing contact with their birth families.

The Special Guardian has the upper hand in relation to decision making in respect of the child concerned.

The Local Authority has a responsibility to assess all prospective Special Guardian’s suitability.

The Local Authority also has duty to assess for Special Guardian Support Services on request where a child was or is

a Looked After Child; the Local Authority has discretion as to whether to provide Special Guardian Support Services.

Other alternatives to adoption include long term fostering and the placement of children with extended families under residence orders (rather than under a SGO).

#### **e) foster carers/family network carers**

Leeds, like many other local authorities, is keen to encourage foster carers, particularly family network carers, looking after children under care orders to consider other permanency options, where appropriate. Thus, such carers are encouraged to consider applying for either adoption orders, SGO or residence orders. To ensure that such decisions are made with paramount regard to the child's welfare rather than financial issues, Leeds has tried to ensure that the financial benefits which accrue to the 3 options are identical in nature – that there is a “level playing field”.

#### **f) key principles underlying adoption legal process**

One of the key changes brought about by the ACA has been the harmonisation of adoption law with other legal provisions relating to children (ie the Children Act 1989).

The welfare of the child throughout their life is now the paramount consideration in adoption decisions made by the Court **and** adoption agencies (such as Leeds City Council).

In making adoption decisions, the Court and adoption agencies also must have regard to a welfare “checklist”, including consulting birth parents, ascertaining the child's wishes and feelings etc.

Regard must also be given to the “delay” and “no order” principles – the former stipulates that any delay in coming to a

decision is likely to prejudice a child's welfare; the latter states that a court must not make any order unless it considers that making the order would be better for the child than not doing so.

### **g) adoption support services**

The Board should also be aware that Local Authorities have a statutory duty under the ACA to provide support services generally to adoptive families in their area and support for birth families for contact to agency adopted children. Support services include advice, counselling, discussion groups, therapy services for children, respite care, as well as financial support.

Local Authorities also have a duty to assess the need of an individual adoptive family for adoption support both before matching Panel and on request at any time during the child's minority. Local Authorities, however, have legal discretion as to whether to provide any support.

### **Further information**

Please refer to the British Adoption And Fostering ("BAAF") website for useful information about the ACA and the adoption process generally - **[www.baaf.org.uk](http://www.baaf.org.uk)**

Steve Boorman  
Social Services (Legal)  
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