

Dunn & Baker Family Team

14. ADOPTION

- 1) Every Local Authority must maintain a service to meet the needs of children who have been or may be adopted, their parents and guardians, and prospective or actual adopters – the Adoption Service. The law on Adoption was radically overhauled through the Adoption and Children Act 2002 which repealed and replaced most of the provisions of the Adoption Act 1976. The present law came into effect on the 30th December 2005. The main aims of the reforms were to align adoption law with the Children Act 1989 and to try to ensure that the consent of the birth parents is addressed at an earlier stage.
- 2) There should not be unnecessary delays whilst the perfect ethnic, cultural or religious match is found for the child. There must be a reasonable expectation that adopters continue to enjoy good health, but there should not be blanket exclusions in respect of age, health or smoking without regard to the position of the child in question.
- 3) Planning should not be delayed because of an indefinite commitment to rehabilitation with the natural family.
- 4) Investigations by an adoption agency before and during the placement of a child for adoption should be thorough and wide ranging. This includes: -
 - a) The personal and social history of the child and each parent.
 - b) The parent's health past and present.
 - c) A medical report on the child and how his/her health and medical history have affected his/her physical, intellectual, emotional, social or behavioural development. Also the report explores whether there are any special needs.
- 5) The agency must enquire into the wishes and feelings of the parent in relation to adoption and freeing for adoption and in respect of the child's religious and cultural upbringing.
- 6) Where the identity of the father is known but he does not have parental responsibility, the agency must ascertain whether he intends to apply for a parental responsibility order.
- 7) The adoptive parent has the same checks and a report on the premises they intend to use as their home together with interviews with their nominated referees and a report from their Local Authority. The agency enquires into their reasons for wishing to adopt, their previous experience of caring for the children and assessment of their ability to do so.
- 8) There is a check on any criminal convictions relating to the adopter and other adult household members. If the person has been convicted/cautioned of any specified serious offence, the agency must not consider him/her suitable. However the prospective adopter can ask the Court to make an adoption order in their favour if in all the circumstances this is in the child's interests.
- 9) The agency notifies the prospective adopter that his/her application is to be referred to the adoption panel and invites him/her to send any observations in writing within a short period of time. Thereafter the agency passes it written report onto the adoption panel.
- 10) The adoption agency report to its adoption panel must include the views of the children's guardian and any other professional involved.
- 11) The panel can make recommendations on any one or more of the following matters: -
 - a) Whether adoption is in the best interests of the child and whether an application should be made to free the child.
 - b) Whether a proposed adopter is suitable.
 - c) And a proposed adopter is suitable for this child.
- 12) Although the natural parent is allowed by the Adoption Panel to make sure that their written representations are made available to the Panel, the parent is not entitled to appear before the Panel.

- 13) The agency then notifies the prospective adopter in writing whether or not they are suitable. If they are not then they are sent reasons together with a copy of the Adoption Panel's recommendations and the prospective adopter can then make further representations.
- 14) If the proposed adopter would be a suitable adoptive parent for a particular child, the agency must provide them with written information about the child, their history and background. It must also inform the parents, and any professionals currently working for the child.
- 15) Regular review and assessments of the placement are undertaken and the findings are recorded in writing.
- 16) The Court must be satisfied that each parent or guardian freely and with full understanding of what is involved agrees unconditionally to the making of an adoption order. Any agreement given by a parent or guardian less than six weeks after her child's birth is ineffective unless in writing.
- 17) A father must consent if he has a parental responsibility order, or if the mother has appointed him a guardian. Otherwise the Court has the discretion whether or not to make him a party. However the Court must bear in mind the right to respect for family life and to a fair hearing under articles 8 and 6 of the European Court of Human Rights.
- 18) The Court may be unwilling to join the father if he is violent or if the relationship between him and the mother never created family ties.
- 19) Agreement can be dispensed with on 2 grounds; -
 - a) The Parent/Guardian cannot be found or is incapable of giving agreement; or
 - b) The welfare of the child requires consent to be dispensed with.
- 20) The kinds of question most relevant when weighing up the question of whether consent is incapable of being given are: -
 - a) Is there a serious risk of harm to the child if returned to the parent?
 - b) What is the likelihood of a recurrence of any earlier harmful conduct by the parent?
 - c) Is there a serious defect in the mental condition, stability of character and temperament or parenting ability or mode of living of the parent which could be harmful to the child?
 - d) Is there a reasonable prospect of the parent being able to provide a home for the child?
 - e) If the parent's refusal to agree, due to a wish to bring up all his/her children together?
- 21) In determining the question of whether the welfare of the child requires a parent's consent to be dispensed with it is clear that the child's welfare will be paramount. The court must have regard to a number of given factors called the "welfare checklist".
- 22) The new rules provide for the appointment of reporting officers, Children's Guardians and Children and Family Reporters. Either at the request of the local authority or adoption agency, or alternatively if ordered by the court, the reporting officer must ascertain whether the parent consents unconditionally and with full understanding and must report to the court.

In all placement applications, and a wide range of circumstances in adoption proceedings, notably contested adoptions and adoptions where contact is an issue, the child must be a party and the court must appoint the Cafcass officer as Children's Guardian unless satisfied that it is not necessary in order to protect the interests of the child.

For the first time, the child or young person may instruct his or her own solicitor. The power to appoint a Children and Family Reporter in adoption is also new.
- 23) An unmarried father may apply to the Court for a parental responsibility Order, to give him standing to make various applications including contact with the child, for the discharge of the care order and for opposing adoption.
- 24) It is too late for any natural parent to make an application once an adoption order has been made, since parental responsibility has already been irrevocably transferred to the adopters.
- 25) Revocation of any Placement for Adoption Order, will restore parental responsibility to all who had it previously.

- 26) The duty of an Adoption Agency is to review regularly an adoption placement which includes reviewing the case of a child who within 6 months of placement is not in an adoption placement. It must determine why and what action can safeguard and promote the child's welfare.
- 27) Once a year has elapsed since the date of the Placement Order the Agency has to provide the natural parent with a progress report advising that the child is not in an adoption placement and this may lead to him/her seeking revocation of the Order.
- 28) High Court, County Court and Family Proceedings Court are all authorised to hear adoption applications.
- 29) Domicile, age and marital/civil partnership status are the main legal conditions governing eligibility to adopt. On the basis that a child should normally be brought up by two parents, most adoptions are by married couples (but not inevitably so). The stability of a relationship will be considered before granting an adoption order, but a relationship is not an absolute bar.
- 30) A mother may make a joint application with her spouse or partner to adopt her own child provided she has reached 18 years old and her partner is 21 years of age. A father may also do the same.
- 31) A residence order is often preferred over an Adoption Order in step-parent situations. A residence order provides effective security, but without the permanent and irrevocable consequences of adoption. However since Adoption Orders legitimises an illegitimate child, an Adoption Order can be made if the natural father has nothing to offer the child in comparison, even if it should mean depriving him of contact with the child.
- 32) To be adopted a child must be under the age of 18 and never have been married or been a civil partner.
- 33) Before an Adoption Order can be made there must be sufficient opportunity to see whether the child is likely to settle in the home of the Applicants and whether they appear to be suitable parents to bring him/her up. As a result of this a child must have had their home with the adopters for a minimum period of time prior to the application being made.
- 34) An Order cannot be made where it is a relative adoption or an Agency adoption unless the child has had their home with at least one of the Applicants during the 10 weeks preceding the application.
- 35) If the applicant is the partner of a parent of the child, the child must have had his/her home with one or both of the Applicants for the preceding 6 months.
- 36) If the Applicants are a Local Authority foster parent the child must have lived with them for one year preceding the application. In any other case the child must have spent not less than 3 years (whether continuous or not) during the period of 5 years preceding the application. (unless the court orders otherwise)
- 37) A proposed adopter must (unless the child was placed with them by an adoption agency) give the Local Authority not more than two years, nor less than 3 months, notice before the date on which the adoption order is made. The Local Authority must then carry out an investigation and prepare a court report.
- 38) Every adoption must be registered by the Registrar General in the Adoptive Children's register. Parliament has established the procedure intended to allow an adopted child to trace his/her birth parents, but it had not given a comparable right to the birth parent to make contact with the adoptive child. A birth parent wishing to make even indirect enquiries about his/her adopted child has to show circumstances of an exceptional nature and also that contact would result in some need or benefit to the adopted person. Strong emotional curiosity will not suffice.
- 39) The general effect of an Adoption Order is to create between the adopters and the child a legal relationship almost wholly the same of that between a parent and his/her natural legitimate child.

Placing A Child for Adoption

The Adoption and Children Act 2002 lays down specific conditions to provide for circumstances in which a child can be placed for adoption and if necessary there is the opportunity for the court to be involved greatly within the process. A parent must be fully in the loop and in the decision making process either by giving their consent to the placement or by having the opportunity to resist the application through the court. In addition in circumstances where a natural parent agrees to the placement for adoption or the court makes a placement order despite it being resisted by the parents it is now far more difficult than previously to overturn the move towards an adoption order.

In so far as parental responsibility is concerned where a placement order is made the birth parents will remain the child's parents until any final adoption order is made and they will continue to possess parental responsibility for them. The parents in these circumstances will share parental responsibility with the adoption agency and with the prospective adopters with whom the child is placed and they may find that the extent of their parental responsibility is limited.

There are two ways in which an adoption agency can place a child for adoption: -

1. With parental consent or
2. Placement under a Placement Order

It is only the consent of a parent who has parental responsibility for the child that is relevant although where a father who does not have parental responsibility becomes known to the adoption agency they are expected to contact the father to explain the implications for the proposed placement and adoption.

It is not possible for a child who is less than 6 weeks old to be placed for adoption unless the parent or guardian of the child has agreed in writing.

Once consent has been given and the child has been placed with a view for adoption the implications for the future are very serious indeed: -

1. The parent may only oppose any adoption application with permission of the court
2. The parents ability to apply for residence order is restricted
3. The parents ability to have contact with the children will be limited and regulated by the adoption agency and the court
4. Parental responsibility is also given to the adoption agency and the prospective adopters
5. The parent's ability to force the removal or return of the child is restricted.

Where a child is placed for adoption in accordance with the parents' consent no person may change the child's surname or remove the child from the United Kingdom unless the court provides permission or each parent or guardian provides written consent. It is possible however for a person who provides a home under a placement to remove the child from the United Kingdom for a period of less than one month.

Once the Placement Order has been made no application may be made for a contact order unless it is to be heard at the same time as the adoption application.

It is possible for a parent or guardian who has given their consent to the placement of the child to withdraw it and this will mean that the authority for the adoption agency will come to an end. The consent can only be withdrawn. The consent can only be withdrawn using a specified form or a notice in writing to the adoption agency.

A court can only make a placement order if: -

1. The child is subject to a care order; or
2. A court is satisfied that certain threshold conditions are met; or
3. A child has no parent or guardian; or

4. Each parent or guardian has consented to the child being placed for adoption with any prospective adopters and has not withdrawn consent or the consent should be dispensed with

Before making a placement the question of contact must be considered by the court. All parties to the proceedings would have the opportunity of stating their views and feelings on the question of contact.

In every application for a Placement Order a children's guardian must be appointed unless it is not necessary to do so to safeguard the child's best interests.

The respondents to an application for a placement order will be: -

1. Each parent who has parental responsibility for the child or guardian of the child;
2. Any person who has an existing order in force under the Children Act 1989 regarding that child;
3. Any adoption agency or other organization who has parental responsibility for or is looking after or caring for the child
4. The child
5. The parties or any person who are or have been parties to the proceedings for a care order in respect of the child where those proceedings have led to the placement order application

Once the application has begun the court will timetable the proceedings towards a final hearing and this will include the preparation of a report by the children's guardian and evidence from all parties including a report from the local authority outlining the reasons behind their proposed placement.

A placement order will remain in force until one of the following takes place: -

1. The Placement Order is revoked; or
2. An Adoption Order is made; or
3. The child marries or forms a civil partnership; or
4. The child attains the age of 18

In limited circumstances Placement Orders can be revoked.

DUNN & BAKER – HERE TO HELP YOU
dunnandbaker.co.uk

July 2009

Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.