

Winter 2023 edition of the AFA Cymru legal newsletter

Welcome to the winter edition of the AFA legal newsletter where we aim to provide Welsh specific legal advice and information.

Starting on 16 January – a ‘relaunch of the PLO’

The President of the Family Division, Sir Andrew McFarlane, has set out his hopes and expectations for a ‘radical recalibration of the approach to case management’ in care proceedings.

Local authority legal departments are aware of this initiative, but information may not have reached practitioners.

These are the basics that are required during a set of proceedings. There is nothing new, but we should expect to see the courts imposing these principles with a renewed vigour.

- The PLO Pre-proceedings process, with the engagement of parents and a thorough assessment exercise, following the DfE Guidance [\[1\]](#) and the PLWG recommendations, is essential;
- Only those very rare cases that are truly urgent should be the subject of an ‘urgent’ first hearing. Too often an ‘urgent’ hearing is sought as a matter of course. Urgently fixed hearings are seldom fully effective and a further hearing or hearings will normally be required;
- The first hearing should be the Case Management Hearing [‘CMH’], held ‘not before Day 12 and no later than Day 18’; an advocates meeting is to be held no later than 2 days before the CMH [see PLO Stage 2];
- Parents to be expressly required to identify any family members for assessment at, or within a week of, the CMH;
- No other hearing should normally be listed after the CMH until the Issues Resolution Hearing [‘IRH’];
- Since 2016/7 there has been a 33% rise in the number of experts instructed. Experts should only be instructed where to do so is ‘necessary to assist the court to resolve the proceedings justly’, rather than where it is merely desirable or helpful [C+FA 2014, s 13(6)].
- The third hearing in the case, if necessary, will be the Final Hearing;
- At the IRH or Final Hearing the court is *only* required to evaluate and decide upon the following issues:

- Are the s 31 threshold criteria satisfied?
- If so, what are the ‘permanence provisions’ of the care plan [CA 1989, s 31(3A)+(3B)]; and
- What are the contact arrangements [CA 1989, s 34(11)]?
- By affording paramount consideration to the welfare of the child, what final order(s), if any, should be made.
- The court is not required to consider any aspect of the care plan other than the permanence provisions;
- Robust case management by the court is required at all stages. This will include, where necessary, regular ‘compliance’ hearings to deal with any failure by a party to meet dates. All parties will be expected to monitor compliance with the court timetable and, if needed, report any failures to the court.

This tightening up on timescales, particularly in respect of kinship assessments, brings even more clearly into focus the need for that early exploration, during the pre- proceedings part of the PLO, of possible kinship carers, through family group meetings or conferences.

This early identification is essential to be able to undertake kinship assessments in the pre proceedings stage, as expected in the President’s case management guidance of last March.

Early identification of ‘realistic options’ in the family is also crucial for the identification of a family where a Welsh Early Permanence placement may be appropriate.

Delays in obtaining GP reports during kinship assessments

This is one of the many challenges inherent in kinship assessments. The problem seems to be patchy across the country, often depending on the individual GP surgery.

This was discussed at a recent AFA medical advisers group who asked if the court might be able to help here with making a direction for the GP to provide the report.

The answer is no – the court has no power to direct someone who is not a party to the proceedings to do something.

Advice from the AFA legal group is that a solicitor’s letter from the local authority’s legal department, advising the GP’s surgery that the court’s timetable is being affected by the absence of the information, required under the regulations, will often prove effective. Given the additional pressure that local authorities are going to be placed under, it may be a good idea to send this letter out automatically.

The All Wales Special Guardianship Support Plan – a couple of points

There has been a number of queries arising from some of the aspects of the plan and in particular the section on contingency planning which discusses 'legacy carers' and 'testamentary guardians'. Some practitioners have requested an explanation of the terms.

Legacy carers

This term has been adopted in some, but not all, areas of the country. It refers to the members of the family who have been identified, by the proposed special guardians, often in consultation with the assessing social worker, to take on the care of the child/ren in the event of death, serious illness or incapacity of the special guardians. We know that many of our special guardians are grandparents and, in order to plan for the child's long term future, other younger members of the family should be encouraged to step up if needed.

The courts have differing expectations of the assessing social worker's involvement with, and assessment of, legacy carers. This may depend on the special guardians themselves and their age and health. As with any family, it's a good idea to talk and make provision for circumstances where illness or death may intervene.

Testamentary guardians

Once the legacy carers have been identified (and ratified by the court to some degree) then it is advisable for the special guardian(s) to make these carers testamentary guardians, under s5 Children Act 1989:

- This can be done by drafting a short document, often contained within a will, but it doesn't have to be, appointing the legacy carers (one or two) as guardians in the event of the death of both (if there are two) of the special guardians
- If the document is outside the terms of a will then it needs to be in writing and signed and dated by the special guardians (both if two)
- In the event of the death of BOTH special guardians, the testamentary guardian(s) will obtain PR for the child/ren
- This guardianship can be created even if parents are still alive
- The testamentary guardian(s) theoretically 'share' parental responsibility for the child. In reality the parents would have to apply to the court for a s8 specific issues order or prohibited steps order to override the testamentary guardians' PR
- In some circumstances (particularly where there is a lot of opposition from parents), it may be necessary to apply to the court for a child arrangements order under s8 Children Act or even an SGO to ensure the sufficient strength of PR needed to safeguard and promote the welfare of the child.

It is advisable to take some legal advice on this aspect of special guardianship and LA's should consider funding this advice as it will help to provide long term security for the child.

The role of the IRO and adoption reviews.

We have become aware of some confusion over the role of the IRO once a child is subject to a placement order and in particular once the child has been placed with prospective adoptive parents.

The short answer is that a child remains looked after until such time as the adoption order is made and therefore need to be subject to reviews. Of course those reviews will change in nature but the IRO's fundamental role in reviewing the planning of the placement remains critical.

The Welsh Government practice standards and good practice guide for reviewing and monitoring a child or young person's Part 6 care and support plan, has the following information:

P9:

Reviews where there is authority to place for adoption

*Once a child becomes the subject of a placement order or once their parents have consented to their adoption, the reviewing duties set out in the SSWB(W)A no longer apply and new duties are set out in the Adoption Agencies (Wales) Regulations 2005. These regulations are replicated in Chapter 8 of this guide. Although the child remains looked after, the placement order changes the focus of the review. During reviews held under the AA(W)R, the adoption plan and **adoption support plan, rather than the Part 6 care and support plan**, will be reviewed. These reviewing arrangements continue throughout the placement with prospective adoptive parents and until the adoption order is made.*

P40:

Adoption

Where authority to place (placement order (s21aca) or consent (s19 aca)) The CPPCR(W)R continue to apply but there is the additional imposition of reg37(3) Adoption Agencies (Wales) Regulations 2005: 37(3) when there is authorisation but child is not yet placed with prospective adoptive parents, the AA must carry out a review of the child's case:

- a. Not more than three months after the date on which the agency first has authority to place; and*
- b. Thereafter not more than six months after the date of the previous review, until the child is placed for adoption.*

Child placed for adoption

When a child has been placed for adoption, the provisions of CPPCR(W)R cease to apply and the provisions of reg 37(4) Adoption Agencies (Wales) Regulations 2005 apply: 37(4) where the child has been placed for adoption, the AA must carry out a review of the child's case –

- (a) not more than four weeks after the date on which the child is placed for adoption;*
- (b) not more than three months after the first review; and*

(c) thereafter not more than six months after the date of the previous review, unless the child is returned to the agency by the prospective adopter or an adoption order is made.

The role of the IRO remains the same but the reviewing framework changes. Until the day the adoption order is made the IRO continues to hold that statutory responsibility for reviewing and monitoring.

Modern adoption is looking different and everyone needs to understand the changes that are happening

It's sometimes difficult for child care practitioners within local authorities to keep up with what's happening with adoption and how adoption practice is moving on. We are still overwhelmed with the wrong doings of the past where terrible actions were taken in the name of adoption. However, today's adoption practice is very different and as we get to know more about the relationship and identity needs of children and young people who have been adopted, we have adapted practice in lots of different ways, particularly in the sphere of post adoption contact, or 'keeping in touch'.

Child care practitioners may be interested to know that prospective adoptive parents currently going through their training and preparation in Wales, are learning that keeping in touch with birth family, be that with grandparents, brothers and sisters or parents, is an integral part of being an adoptive family, and that a meeting between prospective adopters and the child's birth parents is now a normative part of practice unless there are very specific reasons why this cannot happen. This keeping in touch may well include face to face meetings, if this is in the best interests of the child, as determined by those who know the child and family best, the child's social worker.

Prospective adoptive parents are now able to understand, through research and best practice, that it is in the adoptive family's interests to keep lines of communication open with their child(ren)'s birth family.

If you are a child care social worker and are thinking about a plan for adoption within care proceedings, on the basis that family members cannot meet the child's long term needs, but you are concerned that there are important family connections that the child needs to maintain, have a read of the NAS good practice guides on Contact and post Adoption Support and be confident that our current adoptive parents are ready to commit to these keeping in touch arrangements.

NAS is commissioning AFA to prepare some resources for child care practitioners on the role of modern adoption in permanence planning. This will include a recorded module on permanency planning as well as a number of live webinars. They will be available later this year.



To access all the NAS Good Practice Guides, go to:

<https://www.adoptcymru.com/good-practice-guides>

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