

Winter 2024 edition of the AFA Cymru legal newsletter

Welcome to the winter edition of the AFKA legal newsletter where we aim to provide Welsh specific legal advice and information on all matters relating to permanence planning for children.

Recent research undertaken by the Nuffield Family Justice Observatory: 'Understanding care pathways and placement stability for babies in Wales', December 2023

This piece of research is the seventh of the NFJO's Born into Care series, and for the first time tracks babies becoming looked after through the voluntary route, under s76 Social Services and Well-being (Wales) Act 2014 as well as babies coming through care proceedings. Babies are defined as children under a year and new born babies under two weeks old.

Between 1 April 2003 and 31 March 2021 in Wales, 6,333 babies entered care for the first time. Of these babies, 45% (2,879) were under 4 weeks old. Over one third (38%, 2,430) were newborn babies. The highest recorded incidence of babies entering care for the first time in Wales over the study period was in 2018/19.

There was considerable variation in the incidence rates of babies entering care for the first time between the 22 local authorities in Wales. There is a link with area deprivation, with the proportion of babies entering care increasing with greater levels of deprivation, although this finding needs to be treated with caution as data on deprivation was missing for 20% of the sample.

Over half (54%) of the babies in the study entered care for the first time under s.76 voluntary arrangements, while just over a third (37%) entered under an interim care order. Between 2003/4 and 2016/17, a greater proportion of babies entered care under voluntary arrangements each year. The trend was then reversed. By 2020/21 about the same proportion of babies entered care for the first time by an interim care order as under a voluntary arrangement. Variation in the use of voluntary and compulsory routes to care appears to be a matter of local cultural preference, but the reasons for these differences warrant further investigation and the Public Law Working Group guidance on the use of s76 with babies will probably reduce the number of babies being voluntarily accommodated. https://www.judiciary.uk/wp-content/uploads/2021/03/S-20-s-76-BPG-report_clickable.pdf

Initial placements on entry to care for 5,077 babies who entered care between 2003 and 2019 varied between newborn and older babies. A greater proportion of newborn babies were initially placed with unrelated foster carers, in a parent and baby unit, or in a residential medical setting, whereas a greater proportion of older babies were

placed in family or friends foster care or with their parents. Only around a quarter of babies placed with their own parents or with kin were newborn babies. So immediate separation from parents and kin is the outcome for most newborn babies (73%), whatever the route into care.

The route of entry to care appears to be associated with the final permanency outcome for babies, with greater family preservation (with parents or kinship carers) for those who initially entered care on a voluntary basis.

A significant proportion (some 30%) of newborns and babies aged less than 6 months, experienced 3 or more placements within the 2-year follow-up window. Newborns were likely to experience more placements than those who entered care when they were 6 to 12 months old. While it is worth noting that some moves are planned for positive reasons, it is the very youngest babies subject to care proceedings – newborns – who record the highest rates of placement instability.

As has been previously argued, it is newborn babies who are the most likely to be subject to emergency or hasty decision making (Pattinson et al. 2021; Broadhurst et al. 2022) – and this may explain the number of moves in care.

The study states that these findings reinforce the need for investment in the **Welsh Early Permanence Framework**, which aims to reduce the number of placements a child experiences and help them to achieve stability as soon as possible following removal from their family.

Welsh Early Permanence is making slow but steady progress, both in the referral of children and the preparation and assessment of carers. We'll provide an update in the spring edition of the newsletter.

England's Kinship Care Strategy

England has launched its first ever kinship strategy, which, amongst other things, sets out the Westminster Government's aim to:

- Provide fostering allowances in 8 local authorities to special guardians who have taken on the care of previously looked after children
- An expansion of the role of virtual heads so as to provide support for all kinship carers, regardless of the order (or no order)
- Guidance for employers
- Information, training and support for kinship carers, including peer support
- Independent advocacy for children in kinship care
- Asking the Law Commission for a review of the legal status and orders for kinship care

The last point will affect Wales as orders made under Parts 11 and 1V Children Act 1989 (child arrangements orders, special guardianship orders, care orders, s34 contact orders) are not devolved.

There are areas covered in the English strategy which we are addressing in Wales (see later). AFKA is consulting with practitioners on what's in the English strategy through the kinship special interest group.

There has been a mixed response to the strategy. Family Rights Group has stated that it has failed their seven core tests for kinship care.

Developments in special guardianship

Welsh Government has commissioned AFKA to devise and produce a wallet sized card for special guardians that can be carried anywhere and when required the guardian can show the card to health or education practitioners. It will contain key information on what a special guardian is and what PR they have. This way a discussion will not need to take place in a waiting room or in front of the child concerned as to whether the guardian has the authority to make a particular decision. The card will also have QR code link to more information if required. The cards will be sent to all our local authorities in the spring for distribution along with advice to special guardians as to how they can make the best use of the card.

It has been agreed that more work needs to be done on the transfer of special guardianship support from one local authority to another, if the special guardianship family either lives or moves to a different local authority to the placing authority after three years. AFKA is about to embark on some consultation on this with experienced practitioners with a view to any agreed protocol becoming integrated into the special guardianship support plan. This will take place alongside a review of the SGO support plan now that it has been embedded in practice for some time.

A new contact planning tool where there is a care plan for adoption

The National Adoption Service has devised a new contact planning tool, for child care social workers, to use where the care plan is for adoption.

This tool and accompanying guidance complement and extend the NAS good practice guide on contact. It's intended that it will be used by the child's social worker to help decision making and planning when the plan for adoption is being considered.

The guidance states:

'The aim of the tool is to ensure that those involved in planning for post adoption contact reflect on the long-term implications and the need to review the arrangements as the child develops and circumstances change over time.'

The tool seeks to help the social worker analyse the factors, based on research, that indicate whether contact will have a beneficial or detrimental effect.

It aims to incorporate all those who are or who have been significant in the child's life and asks the social worker to consider indirect, remote and direct contact and consequently move away from the old, entrenched practice of seeing twice yearly letterbox contact as the most appropriate contact plan.

The tool is based on a five step model developed by Professor Elspeth Neil, UEA and Polly Baynes:

1. Consider what the purpose of contact is for the child.
2. Identify the strengths and risks for each person involved.

3. Devise a provisional contact plan in relation to each person with a significant connection to the child.
4. Develop a provisional support plan for all those involved to help ensure that contact is meaningful and can be sustained.
5. Review the plan when changes are needed or in response to a request from one of those involved.

There is a particularly useful checklist looking at the strengths and weaknesses, for both child, adult relatives and siblings. This should be a real help to the social worker in reaching a decision that is going to meet this child's long term needs and help them and their adoptive family.

The contact plan will form part of the CAR/B and will be reviewed at linking and matching. It will also inform the adoption support plan.

The tool and guidance are available from the NAS. <https://www.adoptcymru.com/>

Alternatives to step parent adoption

Applications for step parent adoption continue to be steady. For some children an adoption order is the right way forward. However, in a number of cases there are far more proportionate and easier ways of a step parent acquiring parental responsibility, without a birth parent losing theirs.

Firstly, s4A(1)(a) Children Act 1989 enables a step parent, who is married to or has a civil partnership with the parent, to obtain PR through either:

- 1) A parental responsibility agreement. If the father does not have PR then there is no need for consent. In cases where both parents have PR then both mother and father would have to consent. The remaining parent retains their PR (unlike a step parent adoption) and all three with PR would need to agree to a change in the child's surname and removal from the UK for more than a month. These agreements must be made in the prescribed form and can only be brought to an end with an order of the court;
- 2) A PR order obtained through the family court. The step parent could apply to the court for a PR order if there is no consent from the parent with PR and / or matters such as a change of surname cannot be agreed upon between the three of them. Decisions will be made on the basis of the s1 Children Act 1989 principles.

A child arrangements order may also be appropriate when contact arrangements cannot be agreed upon.

The PR agreement or order will be able to provide the child with security in relation to their step parent without the removal of the remaining parent's PR. It is worth discussing these options in some detail before taking a step parent adoption application forward. Applicants often don't realise how lengthy and intrusive an assessment to become an adoptive parent can be and may be able to see the attraction of the alternative options. As Theis J reminds us in a recent and complicated case on surrogacy and step parent adoption (Re Z (Surrogacy: Step-

Parent Adoption) [2024] 2024 EWFC 20) in step parent adoption applications, as in all adoption applications, if there is no consent, the court has to conclude that the child's welfare requires the court to dispense with the parent's consent, taking into account the s1 ACA 2002 principles.

Of course, an adoption order is the only order that continues beyond the child's 18th birthday, and that is a consideration for the assessor and applicant when looking at the individual circumstances of a family.

AFKA Cymru contact details:

029 2076 1155

Info-afacymru@stdavidscs.org