

AFKA Cymru Legal Newsletter

Autumn 2024

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

A CHILD'S IMMIGRATION STATUS NEEDS TO BE RESOLVED EARLY IN PROCEEDINGS

We have discussed this issue in previous newsletters, mostly when it comes to adoption and the child's legal status if their adoptive parents are not British Citizens. However, in the case of **Re Y (Failure to Clarify Immigration Status [2024] (01 July 2024)**, MacDonald J considered this subject in the context of care proceedings and the making of an SGO where the child's immigration status had not been addressed during the proceedings. The special guardian (maternal aunt) subsequently applied to the court for an order requesting the Home Secretary to grant the child British Citizenship. It was held that the family court is not able to make orders following the making of the substantive order (be that SGO or adoption) simply because it is in the child's best interests. The only thing the court could do was permit the special guardian to provide the Home Office with some of the care and SG bundle so that she could make the application.

The judgment sets out what should happen at the earliest point in proceedings in order to avoid these very difficult situations:

- 1) Part 12 Family Procedure Rules 2010 and Practice Direction 12A make clear that in proceedings under Part IV Children Act 1989 the court must consider 'at the outset of proceedings' issues arising from the subject child being a foreign national or the family having a connection to a foreign jurisdiction;
- 2) The court should make a Standard Direction on Issue and Allocation within one day of issue seeking disclosure from the Home Office via Form EX660 of the information on the immigration status of the child and the parents;
- 3) Once that information is available and pursuant to Stage 2 of the PLO, the parties must, at the Advocates Meeting, and the court must at the Case Management Hearing, identify any issues from the child's immigration status and finalise further directions for securing the evidence or expert opinion required to address those issues at the IRH, or at the final hearing if one is required before a final order is made;

- 4) It is not acceptable for issues regarding immigration status to be left to be investigated at the IRH or final hearing and even less acceptable for them to be left unresolved at the point the court makes the order.

CHILDREN'S WISHES AND FEELINGS IN A PROPOSED REMOVAL FROM A KINSHIP FOSTER PLACEMENT

Re D (Children: Interim Care Order: Hair Strand Testing) [2024] EWCA Civ 498

This case looked mainly at the evidence provided by hair strand testing when three children had been placed, under the terms of an interim care order, with maternal grandmother and uncle.

As a result of further hair strand testing of the children, the LA sought to remove the children and place them with LA foster carers.

Setting the issue of the nature of the evidence aside (the CA disagreed with the family court judge who thought the children's safety demanded removal), the CA made two other observations.

The first was in respect of the children's knowledge of and wishes and feelings about the proposed move from kinship to mainstream foster placement. Neither the social worker nor the Children's Guardian had spoken to the eldest child, aged 13, about either the hair strand test results or how she felt about a move from her grandmother. The CA reminded the Guardian that under the Family Procedure Rules 2010, PD 16A the Guardian must advise the court about the wishes of the child in respect of any matter relevant to the proceedings and advise the court about the options available to the court and the suitability of each such option. This was a situation where the child's views should have been canvassed.

Secondly the CA reminded us that there are cases where interim removal from a family placement is necessary, but the court must recognise that its short term order may have lasting consequences. A move into the care system (i.e. a mainstream foster placement) can become a watershed that progressively limits the options for family placements as time passes. The CA reiterated the test for removal from a family placement necessitates the LA demonstrating a 'high standard of justification' and / or that the children's physical safety or psychological or emotional welfare demand a removal. It must be both necessary and proportionate.

For those working in kinship care this is good read, particularly in respect of the CA's views of the way in which the grandmother's perceived lack of cooperation with the LA was viewed.

Continuing with the kinship theme, the following reports will be discussed in the SGO/Kinship SIG on the 5th December and we have Sam Turner, Head of Policy and Public Affairs at Kinship, attending to discuss the Kinship Publication:

- Foundations Guide: [Practice Guides: Embedding evidence in Children's Social Care - Foundations](#)
 - Whilst this was written to inform the kinship strategy work taking place in England, it is relevant across the UK, as it explores the research evidence in terms of what works to support kinship care
- Kinship: Forgotten: [Forgotten: Support for kinship children's education and mental health - Kinship](#)

If you've not attended the group but would like to, contact us by telephone or by e mail (see below).

CARE PLANNING FOR ADOPTION

The following case is of interest in relation to the discussion on post adoption contact / keeping in touch, particularly with siblings. There has been the practice in some courts to refuse the making of a placement order in the expectation that an adoptive family will not be found who will accommodate direct contact. This case, and a number of others, very much refute the assertion that contact should predominate over the need for permanence, but at the same time points to the move towards more openness in keeping in touch, post adoption

D-S (A Child: Adoption or Fostering) [2024] EWCA Civ 948

This case involved an 11 month old girl where the judge in the family court refused to make a placement order. Birth parents had learning difficulties and there were two older siblings, aged 10 and 5, whose care plan was for a long term foster placement.

The judge held that it was in C's best interests to be placed in long term foster care, as there was no evidence before him that 'nothing else would do'.

The local authority appealed, the Court of Appeal allowed the appeal and, unusually, made the placement order rather than sending the case back to the family court for a decision.

The reasons given for allowing the appeal were that the judge had not taken the correct legal approach as he needed to make an all-round assessment of C's welfare, but gave little or no weight to matters that were clearly important and was influenced by matters that were not.

One of the judge's reasons for refusing the placement order was that continuing direct contact with siblings and parents was thought to be in C's best interests.

What is interesting about the case is the CA's approval of counsel for the LA's note on the differences between long term fostering and adoption, which the CA said was a 'model of its kind'.

The full note can be found at p21 of the judgment, but a precis of it is as follows:

1. Wherever possible, consistent with their welfare needs, children deserve an upbringing within their natural families. Care plans for adoption are extreme and only made where 'necessary' and where 'nothing else will do' (re B [2013] etc);
2. In Re LRP [2013] EWHC 3974 (Fam), Pauffley J held:
 - a) Long term foster care is an extraordinarily precarious framework for a young child – it does not provide legal security;
 - b) Long term foster carers are not expected to be fully committed to a child in the same way as adoptive parents;
 - c) A long term foster child does not have the same and enduring sense of belonging within a family;
 - d) There is no way in which a long term foster child can count on the permanency, predictability and enduring quality of his placement as can a child who has been adopted;
 - e) The advantages of a placement order / adoptive placement are many and obvious. The overwhelming probability is that they will be able to provide the child with the priceless gift of a happy, secure and stable childhood from which they will derive long term advantages
3. The CA in re F-S (A child: Placement Order) [2021] EWCA Civ 1212) endorsed the weight placed on a child's sense of belonging
4. Addressing the judge's decision that adoption and contact were necessarily exclusive of each other, the CA in F-S said:

'It is also significant that an open adoption is hoped for. Nowadays it is well recognised that the traditional model of closed adoption without contact is not the only arrangement that meets the needs of certain adopted children. If the argument made against this placement order were sound, it is difficult to envisage a case in which adoption would occur without parental consent.'
5. The CA in V (Children) [2013] EWCA Civ 913 gave the following guidance:
 - a) Adoptions do fail but the commitment of the adoptive family is of a different nature to that of a LA foster carer. To the child it will 'feel' different

- b) A care order can be discharged but an adoption order cannot;
- c) Contact has a different purpose in adoption;
- d) The adopted child is not subject to reviews / medicals / the need to consult the social worker over aspects of PR.

6. RE T (Placement order) [2008] 1 FLR 1721 held that uncertainty about the prospects of finding an adoptive placement does not in itself rule out the making of a placement order.

The CA referred to a previous case where McFarlane, LJ had explained the dangers of using the slogan of 'nothing else will do' as a substitute for a proper welfare evaluation:

'Instead of making a rounded welfare assessment, the judge elevated fostering into something that in his view 'would do' and therefore ruled out adoption.'

The CA reemphasised the need to address the paramountcy principle and the reference to the paramount decision being the child's welfare throughout his life.

Lastly, the CA held that the LA could be expected to honour its care plan for direct contact with parents and siblings, post adoption order and for a three month search for prospective adopters who 'will accommodate meetings with family members'. The Court did not want to make a contact order as it might be detrimental to the greater priority of finding an adoptive family for C.

Readers are reminded of the NAS contact planning tool [Contact Planning Tool](#) for social workers to use during care proceedings where the care plan is for adoption, in order to evaluate the risks and benefits of contact / keeping in touch with a range of family members. The analytical thinking required by the tool, alongside the increased understanding of prospective adopters that keeping in touch, including direct contact, is beneficial for the adoptive family, if assessed as safe, will mean that the 'adoption v contact' debate should become a thing of the past.

The much awaited **Public Law Working Group report on adoption** should be published very shortly.

The revised CoramBAAF **CAR/B** form, which updates, modifies and improves the current 2015 document, will be ready for its pilot in the new year.

Adoption Qualities and Skills Framework – to accompany the PAR

Whilst the Prospective Adopter's Report (PAR) provides a robust framework for gathering information about an adoptive applicant, we have not had a unified set of principles to

enable us to evaluate our findings when assessing prospective adopters, and particularly when analysing the more nebulous presenting issues and their relevance to parenting through adoption.

To address the gap and enhance our commitment to professional growth and consistent practice across Wales, NAS is introducing the new adoption quality and skills framework. This framework serves as an overarching reference tool for practitioners, establishing a clear set of qualities and skills essential for successful adoptive parenting.

We will be officially launching the framework at a webinar on 27 November, 10 – 12 where we will:

- Provide background to the development of the framework and hear from practitioners involved
- Discover how the framework can further strengthen critical thinking and refine written analysis skills
- Outline the training opportunities designed to support practitioners in effectively utilising this resource.

The target audience is Regional/VAA Adoption Managers and Practitioners (Recruitment and Assessment, Family Finding and Adoption Support). Regions/ VAAs can decide whether they wish to invite panel members.

Please click this link to join on the day: <https://us06web.zoom.us/j/83976922562>

Any queries please email info@afkacymru.org

AFKA Cymru contact details:

029 2076 1155

info@afkacymru.org