

## AFKA Cymru Legal Newsletter

### Summer 2025

Welcome to the summer 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.

#### Kinship care

For some considerable time now AFKA has been collaborating with CoramBAAF to ensure that the new Form K is fit for purpose in Wales.

The English Form K has a generic support plan as part of the form, which covers all legal frameworks for kinship (SGO's, child arrangements orders, kinship foster care, private family arrangements). In Wales we wanted to keep our special guardian support plan and so have developed a kinship support plan that looks very similar to run alongside it.

This kinship support plan may be used with the Form K, Form C or connected persons / unified assessment.

There is also a new Competency Framework and these two new initiatives are being launched on the 10 July:

#### **Free Webinar: Launch of New Connected Persons / Kinship Foster Care Tools for Wales - AFKA Cymru**

 **Thursday 10th July**

 **1:00 PM – 1:45 PM**

**No need to book**, just join the link below.

AFKA Cymru is pleased to launch two essential new tools to support connected persons foster care in Wales:

- **The Kinship Carer Support Plan and**
- **Competency Framework: Skills and Qualities for Kinship Foster Carers in Wales.**

These resources have been developed in response to feedback from practitioners and carers, recognising the need for tools that are accessible, aligned with Welsh policy and regulation, and tailored to the unique nature of kinship care.

The updated competency framework clearly outlines the role and responsibilities of kinship foster carers, while the support plan offers a structured, child-focused approach to identifying and planning for support.

Join us for a free webinar introducing these tools, exploring how they can enhance practice, strengthen assessments, and support placement stability and positive outcomes for children.

#### **Join Zoom Meeting**

<https://us06web.zoom.us/j/89479094014>

Meeting ID: 894 7909 4014

Meanwhile the Form K itself is starting its pilot in July. The LA's involved are Monmouthshire, Swansea, RCT, Powys, Pembrokeshire, Denbighshire and Bridgend. Other LA's, whilst not taking on the Form K during the pilot, are taking a keen interest in the process.

## Recent case law (care proceedings / welfare analysis)

Re T: Risk Assessment [2025] EWCA Civ 93

Re A: (A Child) [2025] EWCA Civ 424

Two recent Court of Appeal cases have highlighted the need for the court, within care proceedings, to ensure that a local authority evaluates any risk to the child in a proposed placement and provides an analysis of how those risks may be mitigated. This very much follows the established case law on the assessment and approval of kinship foster carers and the principal question, set out in the revised kinship good practice guidance and competency framework mentioned above: 'Can these carers meet fostering competencies with support?'

In Re T the Court set out seven questions which should be addressed when conducting a final welfare analysis:

- '(1) What type of harm has arisen and might arise?*
- (2) How likely is it to arise?*
- (3) What would be the consequences for the child if it did?*
- (4) **To what extent might the risks be reduced or managed?** (my emphasis)*
- (5) What other welfare considerations have to be taken into account?*
- (6) In consequence, which of the realistic plans best promotes the child's welfare?*
- (7) If the preferred plan involves interference with the Article 8 rights of the child or of others, is that necessary and proportionate?'*

*'A structured analysis of this kind, adapted to the facts of the individual case, is of benefit to those who make decisions and to those who are affected by them. The analysis need not be lengthy, but it ensures that undue weight is not given to one factor, however notable, and that other important factors are not overlooked.'*

In Re A the issue surrounded the maternal grandmother's ability to protect the child from harm given that her previous partner (no longer involved with the family) had sexually abused her children, including the child's mother.

The Court of Appeal held:

*'She (the judge) did not need to be satisfied that the MGM would keep P safe from harm but whether the risk of harm was such that, effectively, it outweighed all the positive factors in support of P remaining with the MGM and. I repeat, the profound harm she would suffer if removed from the MGM.'*

These cases are helpful in bringing into focus the need for that analysis of risk and if / how it may be 'reduced or managed'. It is only when the risk factors outweigh all other factors and cannot be mitigated that the plan for adoption can be seen as necessary and proportionate.

## **More on the welfare analysis and, in this case, looking at delay**

### **Re M (A Child) (Placement Order) [2025] EWCA Civ 214**

A further Court of Appeal case has looked at the welfare analysis and whether 'nothing else will do' but adoption for a child when a possible kinship placement (here in Pakistan) was not going to be effected within the child's timeframe (the child being 18 months old).

We know that the test 'nothing else will do', taken by itself, is nonsensical – it is nothing else will do having had regard to an analysis and weighing up of all relevant welfare factors. In AFKA we think it's more helpful to think that only adoption will meet this child's needs, both now and over their life course.

The LA concerned commissioned a report from CFAB, assessing aunt and uncle. The court commended the quality of the assessment and the recommendation was that the aunt and uncle were suitable to be considered to care for the children, but only if they were provided with financial support (not just for the household but also for the child's education).

The possible placement was 'fraught with difficulties' according to the first instance judge (finances / visa applications for the aunt and uncle to come to the UK / relocation arrangements / finding the parallel order in Pakistan) and consequently made a placement order. The aunt and uncle appealed.

The Court of Appeal upheld the judge's decision and were very complimentary about the child's social worker's commitment to the child and ability to reflect in the witness box.

Those representing the aunt and uncle in the proceedings have subsequently written on the case, reminding local authorities of the importance of front loading in identifying kinship carers, particularly if living overseas, where time will be even more of the essence.

All of these Court of Appeal cases point to the all round analysis of relevant factors – delay being one of them (s1(3) ACA 2002). The Court in re A reiterated Peter Jackson's remark in Re S-L: any court should be '*acutely aware that for babies and young children the passage of weeks and months is a matter of real significance*'. Or, as John Simmonds says, 'days matter ...'.

## **Adoption**

### Disruption

The findings of a recent report published in April 2025: **Pre-Adoption Order Disruptions in England: Learning from disruption reports 2017-2024 (Natasha Rennolds, Anne Murphy and Elsbeth Neil)** have highlighted the complexity of the transition and early placement period and focused on the complex web of relationships and connections interdependent on each other for success.

The 4 key themes explored illuminate the fragility of each connection and the fallibility of interdependence when

- feelings and concerns were **not said**,
- issues came to light that were **not known**,
- issues were **not challenged**,
- thoughts and realities were **not heard**.

1. **NOT SAID.** Where adopters did not feel able to share concerns/ vulnerabilities openly with SWs. An adoptive placement involves multiple people, moving towards a common goal of placing a child in a permanent new home. It requires huge commitment from everyone – and this makes it challenging for adopters to express negatively or doubts. Multiple reports hindsight concerns.

**Honesty about feelings** – when adopters or foster carers had significant concerns about going forward but did not share this with professionals. Highlights the need for trusting relationships with social workers and time and space to reflect.

**Active concealment** – purposeful withholding of information by adopter (from the agency and sometimes from their partner) which only comes to light late in process/ after child placed. (eg drugs/ gambling/ relationship); this significantly impacts trust in adopters. Different to above (feelings) as related to purposeful omission because adopters thought or knew it would impact, whereas honesty about feelings relates to emerging feelings as the process unfolded.

2. **NOT KNOWN.** Information that was not available before placement in terms of the child, and also the adopters not understanding the impact parenting would have on them.

**Reaction to placement** – where adopters had an unforeseen/ unexpected reaction to the child being placed when their assessment had not raised concerns. This was not seen to be primarily linked to the demands of parenting an adopted child. For example: a deterioration in the mental health of an adopter (issue identified in assessment but felt to be manageable) affecting the care of child presenting in the adopter unwilling to accept help and requesting immediate end to placement. Most notable was mental health deterioration in male partners often when parenting means that usual coping strategies like regular exercise or seeing friends was not able to happen.

Some adopters were shocked with how much a new child altered existing family dynamics and were unable to manage the change (sometimes relating to an existing child/ sometimes the couple dynamic). In some cases, unpredictable outside events especially in the adopter support network impacted.

**Understanding child and their needs** – how the child and their experience was historically and currently understood (or not) with poor or outdated information from assessment and a lack of knowledge about the day to day experiences of the child. This often occurred alongside poor preparation of the child resulting in them not understanding what is happening. There

was a noted absence of the child's voice, for example in introductions, a distressed child resulted in the process often being sped up when the opposite might be needed.

3. **NOT HEARD.** Where information was available but its significance was not fully understood. This related both to social work practice in adopter assessment and adopters expectations of the child in placement.

**Professional Optimism** – social workers wanting to think the best of prospective adopters with optimism or over emphasis on experience and capacity to manage the needs of traumatised children. This included giving too much credence to transferrable skills alongside underplaying potential negatives.

**Confirmation bias** – for example, placing too much emphasis on previous experience of children and not enough on the adopter's ability to flexibly apply existing knowledge to parenting a traumatised child. Those with professional experience of children could well struggle with the relentless nature of parenting and might struggle to ask for support as they were expected to cope.

**Misalignment of adopter's expectations** – gaps between adopters' expectations of adoptive parenting and the reality, especially relating to the challenges they faced in parenting traumatised children.

4. **NOT CHALLENGED.** Where identifiable issues were noted and/or communicated but these were not addressed at a point where they could be managed.

**Communication issues** – especially between foster carers and adopters. Common themes identified were: adopter feeling guilty about taking the child from the foster carers; foster carers wanting to keep the child; personality clashes that were not explored or acknowledged, instead just "pushed through"; lack of support for foster carers; poor communication between professionals; adopters unwilling to listen to advice (during and post introductions). The research identifies themes of the adopter being dismissive and/ or critical of the foster carer role with the child, and where social workers didn't always question or challenge this.

**Contrast in living situations** – and how the move brings many changes for the child. Issues highlighted when there is a lack of attention or curiosity given to the differences between the foster home and the adoptive home, and how the child is often left distressed and confused by the changes.

This includes **difference in parenting styles** (between the foster carer and adopter; but also within adopter relationships). "Boundaried" foster carers promote challenges for adopters committed to therapeutic parenting whereas foster carers with "no routine" were challenging to adopters as they sought guidance in what the child was used to and were unable to adopt an entirely unstructured, child led approach. This was compounded when introductions involved siblings in different foster homes.

There often seemed to be a challenge for adoptive parents in reconciling their thoughts on therapeutic parenting and managing children's behaviour/ setting boundaries alongside a lack of shared understanding of what is needed to therapeutically parent or adopters having idealised view of what this parenting should look like.

This also included **differences in environments**- for example, class differences between foster carers and adopters; the move the child experiences from a quiet, rural area to a busy, urban area; busy-ness in the foster carer home to a quieter home with less people living there or visiting; differences in lifestyle and expectations including a change in diet or not allowing plastic toys.

## KEY MESSAGES

**Centre the child** – applying curiosity and diligence to knowing all aspects of the child's experiences, including their current circumstances, with a view to the future can improve:

1. Successful matching outcomes
2. the preparation needed for the child to understand their emotions and what is happening during the transition phase and onwards
3. identification of short and long term support for the child, adopter and foster carers.

**Invest in all relationships** – disruptions are often characterised by inadequate communication resulting in poor, hostile or faltering relationships between key people (foster carer and adopter; social worker and child; social worker and adopter etc). Creating opportunities to build connections across the network will allow

1. the child to feel more secure
2. concerns to be aired earlier with opportunities for questions and exploration of possible solutions and potential outcomes
3. greater trust in the process

**Assumptions tested and evidenced** – approach assessments (of children and adopters) as dynamic pieces of work in which assumptions are regularly tested and evidenced. Assessments are not just an opportunity for social workers to test assumptions and conclusions about adopters, but also for adopters to test and evidence their own thoughts, assumptions and conclusions about adoption.

**Support best practice** – in relation to all aspects including early planning and preparation; direct work with the child; planning for introductions; keeping in touch; working with birth parents; providing the right support at the right time.

Thanks to Helen Hawksworth for this part of the newsletter.

These messages will be embedded in the new NAS family finding good practice guide

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