

Adoption / Special Guardianship Orders

During the War, adoption was used as a remedy for illegitimacy, this became less significant with the introduction of the contraceptive pill in the 1960s.

The Adoption Act of 1976 resulted in children and their welfare became the integral issue and adoption was viewed as an alternative to normal family care, rather than a remedy for illegitimacy. After 1976, adoption completely extinguished the parental responsibility for the natural parents and transferred it to the adoptive parents. Thus meaning that the adopted person is to be treated in law as the child of the adopter. Any contact with the birth parents after adoption is done as a matter of "good will" rather than a formal order.

In December 2000, the government was endeavouring to promote and expand the use of adoption. The children and their welfare became the fundamental part of adoption process. This evolved into the current legislation of the Adoption and Children Act 2002 (ACA 2002), which was not implemented until 30 December 2005. This Act runs side by side to the Children Act 1989 in respect of the welfare test; orders were introduced which do not extinguish the parental responsibility of the birth parents; there were changes in legal test for dispensing with consent; a special guardianship

order was introduced; and there was an expansion of the range of persons who can apply.

A special guardianship order is more than just a residence order, and does not terminate the involvement of the birth parents by extinguishing their parental responsibility. The special guardian has parental responsibility to the exclusion of the birth parents or any other person with parental responsibility. This provides the half way house between residence and adoption and are more likely to be used for in-family placements. The special guardianship order can be concluded by an application to the court and permission of the court will be required for such an application to be made. Whereas, adoption orders can only be brought to an end by another adoption order.

Adoption orders have become more relevant to care proceedings involving the local authority, within welfare matters. Children can be placed for adoption under the current legislation in various ways: -

1. A voluntary placement (section 19 of the ACA 2002), whereby the birth parent can consent outside of court proceedings. The consent must be given unconditionally and with a full understanding of what is involved. In practical terms this is dealt with



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by the local authority holding a Public Law Outline Meeting, giving the birth parents the opportunity of having legal representation at the meeting and to consider the welfare concerns raised by the local authority and if the issues remain unresolved explaining the need for Public Law proceedings to be issued.

2. A placement order (section 21) permits the local authority to place a child for adoption with prospective adopters.

These orders do not remove the parental responsibility from the birth parents thus giving them the opportunity to challenge the welfare concerns or even apply back to the court to revoke the order, which is difficult in exceptional circumstances but not impossible. Effectively the adoptive parents are deemed to be the legitimate parents.

Leave of the court is required if a parent wants to revoke an adoption order. A leading case is *Warwickshire County Council (Appellant) v M (Respondent) & (1) M (2) L (by their children's guardian) (Interveners)* [2008] 1 FLR 1093. Where a mother argued that there had been a change in circumstance and sought leave of the court to revoke the placement order. The violent father had died and the mother alleged that she was no longer

taking crack cocaine, therefore there was no risk of harm if the children were returned to her care. The court stated that although the welfare of the child is a relevant consideration, this is not the paramount consideration. They also gave consideration to the prospects of success of her application, the welfare of the child and also if the mother would continue to abstain from taking cocaine. This was not enough to satisfy the court that leave should be granted, despite the death of the violent father.

In *Re T (Placement Order)* [2008] 1 FLR 1721, the court ordered that it was premature to have made placement orders and instead it would have been better to have adjourned the matter for some months, and to have assessed how the children settled into the foster placement for a period of months before making a final order determining long term placements. Therefore the orders were revoked.

Adoption has clearly evolved over the years, however the issue of applying for leave of the court to revoke a placement order is still in a state of flux, and is still developing with current case law. But will this cause further confusion for the child and the adoptive parents and departing from that sense of permanency? Is revocation of a placement order, really in the child's best interests?

Contact our family team who can provide you with the advise for your specific circumstances relating to adoption, special guardianship or public law matters.