

**Recommendations for Best Practice in respect of Adoption**  
**Interim report of the Adoption Sub-Group of the Public law working group (September 2023)**

**Resolution's response**

Resolution's 6,500 members are family lawyers, mediators and other family justice professionals, committed to a non-adversarial approach to family law and the resolution of family disputes.

Resolution members abide by a Code of Practice which emphasises a constructive and collaborative approach to family problems and encourages solutions that take into account the needs of the whole family, particularly the best interests of any children.

We also campaign for better laws and better support and facilities for families and children undergoing family change.

This response has been prepared by members of Resolution's Legal Aid, International and Children Committees made up of local authority lawyers, lawyers acting for parents and those acting for children on a day to day basis.

**General comments**

This paper is welcomed and broadly speaking, Resolution endorses almost all of the recommendations. Resolution thanks the Adoption Sub-Group for the hard work and detailed research and analysis that has led to the comprehensive report.

Before turning to the specific recommendations in the report, we hope it may be helpful to identify some areas of the adoption process that our practitioners consider regularly cause difficulties:-

*[Please note the abbreviations used: PA = prospective adopter(s); PR= parental responsibility and LA = Local Authority]*

1. The inconsistent approach of the courts in care proceedings to providing for disclosure of key documents when making the final care and/or placement order. This means that (i) PAs don't have the information they need to make and conduct their application for adoption and (ii) they don't have key information about the child(ren) they are adopting.
2. There is an almost universal view in any case that the only realistic contact is letterbox contact. We will comment further below but, in our view, this is only likely to change with substantial investment in training and a complete sea change in how social work practitioners at every level and adopters approach adoption.

3. Our experience is that we find that many PAs often have no idea that the birth parents are able to mount a challenge once the application for adoption has been made. This makes advising them/ representing them more difficult and leads to stress and often distress in first meetings between PAs and solicitors and beyond into contested proceedings. We sense that social workers will often gloss over this remaining right of birth parents so as not to have difficult conversations with the PAs, although this is only our supposition and is not of course the case in every LA.
4. PAs are always surprised and upset by the time it takes and the delays in the court process.
5. Birth parents often have no idea they still retain PR and that the placement order did not remove their PR. They are often not aware they can seek to challenge the adoption and /or ask the court to consider contact. Prior to the changes in legal aid recently, it was also very difficult for birth parents to find people to represent them as funding was not straightforward. The changes to legal aid may help but that said, many solicitors may be reluctant to take on these cases given busy caseloads and where they have not represented the parent in the care case. It is accepted that sometimes birth parents do not wish to re-instruct the solicitor who acted for them in the care case but most practitioners would usually suggest this to any new client caller about an adoption application.
6. The approach to the involvement of the PAs in adoption applications varies enormously between LAs. It ranges from the PAs being provided with funding by the LA to seek legal advice and representation throughout the case (although this is rare), to the PAs being funded only when an application for leave to oppose is made or there is another procedural difficulty, to the PAs not having any funding for advice or representation at all. It also follows that in some areas, PAs play a role in the adoption court process and in others they do not appear at all until the hearing when the judge meets the child, referred to as the “celebration hearing” (and in those cases the LA runs the application – even though they are in fact a respondent to the application and the PAs are the applicants). It does not seem right that PAs who are after all going to adopt the child are not routinely provided with legal advice and representation in every adoption application. The result of this is that PAs do not necessarily get to consider contact and other issues with independent legal advice and may feel obliged to follow the views of the LA (partly as they are so keen to get the adoption order). The other disadvantage of them not receiving advice is that they often are not fully aware of the adoption support they might receive.
7. Adoption support is chronically underfunded. We frequently hear the same sad stories from adopters who are caring for children often in their teens, where things have become so difficult that the LA is involved again, often with care proceedings. Adopters usually tell us they have been battling since day one for more support which has not been provided and/or that they have somehow been blamed for the difficulties. In addition, adopters tell us that they were not informed of the child’s experiences prior to being placed and they were not provided with reports and other vital information. We also make the point that in many cases there is no transcript of the judgement – the Court of Appeal has recently emphasised the need for this - M (A Child: Leave to Oppose Adoption) [2023] EWCA Civ 404 at §§5 - 7.

8. Practice varies as to whether the child is joined to the case when an application to oppose an adoption application is made.
9. We agree there is a lot of repetition in the CPR and the Annex B reports. In addition to consideration of merging them, guidance should be given that these reports whilst needing to provide full information, need to be written more concisely and without repetition and where appropriate, using bullet points and lists of issues/factors.
10. The issue of redaction of the reports presents a number of issues. We have had situations where the reports have been redacted by the LA without any discussion with the PAs and they have not been asked or consulted about what should or should not be redacted. It is also a rather uneasy situation working out who should redact the report and whose interests are being protected by the redactions. For example, we have had experience of the adopters' section only being redacted to remove identifying features but in other cases redactions about the adopters' backgrounds and personal family history are redacted. The balance between what is needed in the report and what should be redacted is not easy to strike and we comment on this further below in relation to para 149.
11. There are very significant delays in providing life story work for adopters. It is quite shocking to hear sometimes how little information has been given to the adopters when the child is placed with them and how lacking they are in the information about the child's journey through life so far. It is very, very common for PAs to say they have not had papers and/or information and life story work is often not complete by the time of the adoption.
12. We consider there should be a far greater emphasis on sibling contact. There is a particular concern when older children remain with their birth parents and a younger sibling is adopted as to the risk to the adoptive placement, but we sometimes think this is possibly overstated. Whilst this may be true in some cases, it should surely be possible in many cases to manage this risk. The sibling relationship will remain significant for the adopted child throughout their life.
13. Regarding legal fees, PAs should not have to fund their legal representation themselves. However, LAs are often unwilling to fund lawyers in private practice at sufficient rates to enable the work to be done by specialist lawyers. LAs who are paying for legal advice for PAs must make sure the solicitor chosen has experience in adoption with a background in public law cases.

## **Chapter 1 – Adoption and contact**

- Para 53 – We agree there needs to be a sea change in the approach to face to face contact and that generally there should be much greater openness in adoption. However, we do not want to suggest that direct contact can work in all cases, and we also suggest the consideration needs to focus heavily on siblings, grandparents and extended family members having contact. Not only is training required for adopters and social workers about the benefits and issues that arise in relation to direct contact, but the resources for

this contact need to increase significantly so that such contact can be arranged and supported properly by skilled adoption social workers, throughout the child's minority. The current position is that contact currently is massively underfunded and under resourced and this will need to change to enable contact to be achieved. These changes are going to be difficult to achieve and will require substantial investment and training. We also make the point that LAs need to be creative when making post adoption contact proposals, for example, the same contact centre used in the care proceedings cannot be used. Community contact should be very much the usual expectation to ensure the contact is as positive and successful as possible.

- We also make a follow up point that we are not convinced that the Family Group Conference (FGC) mechanism is the best way to identify those people who may be important in any future contact relationship. We also wish to emphasise that the child/ren should be asked who is important to them. It is important to note that the people the child may want to maintain contact with may not be invited to the FGC, for example it could be the family member is a child or it could be someone who is not able to offer care and therefore may not have thought the FGC was a meeting they should attend. The FGC is also held early on in proceedings, or pre proceedings, and this is too early to be considering future contact. We consider a specific contact meeting(s) or discussion(s) should be set up.
- Support for birth parents must be ongoing so that they can be assisted throughout the child's life, even if direct contact is not taking place, and in particular with the writing of letters.
- It is vital that when the case is transitioning from the social work team to the adoption team that the very final version of the care plan is made available and in particular any comments made during the final care and placement hearings about contact or any changes to the written contact are communicated to the adoption team.
- Para 71 – We consider this to be a very good idea particularly as needs change over time as the child grows older. We are unsure though how this would be arranged as there are consortia and agencies and it is not clear who would have the responsibility for this.

## **Chapter 2 – Access to records**

We have no comments on this section and support all the recommendations. We welcome the new research project that is proposed. It is clear that significantly more resources will be needed to ensure that access to records for adoptees is handled well and in a timely fashion.

## **Chapter 3 – Practice and Procedure**

- Para 136 – We note here that there is significant case law on the requirements to provide notice of intention to place to birth parents and the need to provide information as to the steps available to a birth parent. Often it is the notice of intention to place that leads to an application for leave to revoke the placement order. This is relevant to the expectations of information provided for in the template letter referred to later at para 184.

- An additional point that concerns us is that sometimes it is hard to be sure that the most recent address for a birth parent has been obtained and it is essential that the court interrogates this issue if a birth parent does not respond or attend a hearing. It seems surprising to us that notices are sent out by normal post given that such letters can go astray. All courts should in our view be concerned not to conclude adoption applications when the birth parents have not responded and/or have not been located.
- No birth parent acting in person should be expected to complete a formal application form or pay a fee to lodge an application for leave to oppose.
- It is not correct that legal aid for parents/those with PR is now provided without a merits test, there is a “light” merits test (it is correct that it is no longer means tested). It is also the case that parents and those with PR are entitled to non means tested legal aid for free standing placement applications (paras 134 and 173 seem to suggest that parents are not entitled to legal aid for free standing placement applications).
- Para 149 – We would also add that it would be helpful to consider the LA being directed to provide a short update in respect of the birth parents to avoid delay in collating information in the event of an application for leave to oppose. Careful consideration must also be given (in accordance with r.14.13) to disclosure of a redacted adoption report, which may be necessary if the report discloses evidence potentially adverse to the making of an adoption order and/or there is information relevant to reasons why a court might refuse an application for leave to oppose (for example, length of placement, attachment to prospective adopters etc ...). In our experience this consideration is not always undertaken (see our comments at the top of this submission).
- Para 155 – It is our understanding that an early permanence placement becomes an adoptive placement when the ADM makes a decision to place the child for adoption – not when the match is approved although it is accepted that the decision to place may be made on the same day as the decision to match. It is our understanding that a matching decision is not the same as a decision to convert a placement to a placement for adoption. It is also important to make this distinction as the decision to match could be made before a placement order is made but the decision to place a child can only be made once a placement order has been made.
- Para 159 - We cannot agree that any application for leave to oppose can be decided on paper. We strongly disagree with this. This is profoundly unfair to a birth parent and does not accord with Article 6 and Article 8 rights. This is not the solution to this problem and will arguably cause more delay if a birth parent appeals a paper refusal and the case is then sent back for hearing. The court must seek to manage applications for leave to oppose as quickly as possible and birth parents must be allowed if they wish, to attend court and be heard. It is also important to note that many birth parents if they remain unrepresented are less likely to be able to express themselves in writing and may fare better speaking to the judge in person. We are also concerned that a birth parent may submit something which may not get to the file or go astray and it may be assumed that the parent has not filed anything. We

have had experience of judges fixing a hearing and inviting the birth parent to attend, and the birth parent can then give evidence and answer questions which arguably many birth parents will find easier than formulating their written thoughts. This also has the advantage of the birth parent feeling they have had their say. We think this process works very well.

- Para 162 - We do not think a formal application is required – we consider that birth parents need to set out the reasons for their opposition but this can be done in other ways. It is also important to make sure that the payment of a fee is not required.
- Para 164 - Final orders should not be made on paper alone. It is often the only opportunity for the birth parent to ask about different contact – as the leave to oppose application does not deal with contact. For the reasons set out above the birth parents should be able to attend a final hearing for an adoption order which is after all the most draconian order the court can make.
- Para 182 – Contrary to the views expressed here, we consider it is helpful to have prospective directions made in anticipation of a placement order so these directions are made much earlier in the case, rather than awaiting the making of the placement application which can often be very close to the hearing.
- Para 186 – We support the recommendation for the CPR and the Annex B reports to be merged as one report and into which the information about the adopters could be added later. Alternatively, the CPR/Annex B could be one report and there could be a second report on the PAs (the Annex C section) so that confidentiality is more easily respected.
- Para 199 – The transcript of the judgement should also be added to this list to be lodged on application.
- Para 204 – We agree the facility to attend a visit should be retained. We note the reasons stated for this visit in the consultation document but it is our understanding that there is requirement for the judge to see the child, although this requirement can be dispensed with, so the visit is not just for the purposes of life story work.
- Para 205 – We do not have a strong view about the re-naming of the visit.
- Para 206 – Placing the burden on PAs to arrange a visit to the court with the child seems onerous and in the current times, getting in touch with the court is difficult for practitioners, let alone those not used to liaising with the court. This is likely to be something the LA adoption team should arrange if not arranged at the final hearing.
- Para 207 – We can see there may be instances when a local court is better able to arrange the visit but there is considerable advantage to the judge who dealt with the care and/or the adoption case to be the judge who the child and adopters visit as the judge will have an in depth knowledge of the child (and may have met him/her) and will know the case. This can be very valuable.

- Para 208 – We entirely agree with this point and this is why the adopters should not be responsible for arranging the visit (see our comment above) and the adoption social worker should arrange it.
- Paras 157 and 214 – We agree that 6 months is not sufficient time before a step parent application can be made.
- Para 216 – We do not agree to a summary procedure for dealing with applications for leave to oppose an adoption order (as set out above).

#### **Chapter 4 – Adoption with an international element**

- These applications are complex and we agree with the reasons set out as to why this is so.
- It is important that any lawyers advising applicants or appointed to represent children have experience in the field of inter country adoption which is different to domestic adoption.
- We agree that the various different types of international adoptions would benefit from being streamlined.
- It would be helpful if courts could try to list inter country adoptions in front of the same group of judges to ensure that the expertise is concentrated in a few judges. In addition, if a judge has dealt with a particular country, it would be helpful if that judge can where possible deal with future applications for that country so that the knowledge is used again and carried forward.
- We note that the introduction section (para 22) refers to a recommendation in this chapter to provide means tested legal aid for applicants in an inter country adoption case. This recommendation does not appear in chapter 4 itself. We do not consider that this is a necessary use of vital public funds particularly when those who have a case in private law children cases are not eligible for legal aid unless they have gateway evidence. We suggest that the court uses the mechanism of appointing the child as a party to a complex case where the court needs assistance. This will provide neutral evaluation of the application and missing information and also provide the court with specialist advice.

#### **Chapter 5 – Adoption by consent**

We fully support the recommendations made in this section.

For further information please contact:

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