

## PRACTICE NOTE 67

# Local authorities' duty of fairness towards a parent seeking to revoke a placement order

The Association of Lawyers for Children has assisted with and endorses this Practice Note

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### What does this Practice Note consider?

- Circumstances where the court has made a placement order and the parent has told the local authority they intend to challenge the court's order and oppose the adoption plan by seeking revocation of the placement order.
- Achieving the balance between the child's right to have the adoption plan proceed under the placement order and the parent's right either to appeal against the placement order or to seek permission to apply to revoke (end) the placement order.
- The restrictions on the local authority to proceed with placing the child for adoption with the adopters when a parent has applied for permission to make an application to revoke a placement order.

### What is the issue?

When a parent seeks permission to appeal against the placement order or permission to apply to revoke the placement order, the local authority is faced with decisions about how to avoid delay in progressing the adoption plan for the child that the court has authorised, while also respecting the parent's legal right to either appeal or to seek to revoke the order. The courts have stated that the process of placing a child for adoption must not be 'procedurally unfair' (*Re F (A Child) (Placement Order) [2008] EWCA Civ 439*) (*Re F*) ([www.bailii.org/ew/cases/EWCA/Civ/2008/439.html](http://www.bailii.org/ew/cases/EWCA/Civ/2008/439.html)).

The child's adoption plan may end up being put on hold and plans for introductions, if the child has been matched, may be deferred. This is likely to impact profoundly on the child's well-being. Such circumstances create anxiety for social workers and their managers who will need clear legal advice about the options and how to proceed.

### What are the requirements of the Adoption and Children Act 2002?

The placement order authorises the local authority to proceed with the permanency plan through adoption;

good practice is to have a timeline for the process of finding adopters, matching (including panel date), and the date of decision of the agency decision-maker. Once the matching decision is made, the local authority is required to have an adoption placement plan for the child, the details of which must include the matters set out in Schedule 5 to the Adoption Agencies Regulations 2005; this includes the plans for introductions leading to placing the child in the adopters' care (see also Department for Education, 2013, para 5.3 to 5.10).

A parent who opposes the adoption plan has two options, both of which, if pursued, will mean that progressing the adoption plan is likely to be delayed. The parent will first usually notify the court at the end of the hearing that they want to appeal and will apply for permission to appeal against the placement order. If permission to appeal is granted, it is imperative that the full appeal hearing is "fast tracked" to minimise delay for the child. The parent's legal representative should assist the appeal court in making a speedy decision on permission to appeal by expediting a transcript of the judgement and providing a copy of the court bundle. If the parent is not represented, the local authority's legal representative should assist by taking these steps. The appeal court should be given details of the proposed timetable for the child so that it can prioritise listing a hearing, as appropriate. A parent seeking to appeal will need to show that the decision was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

If the parent's appeal fails, or if permission to appeal was not granted, or if the parent did not seek to appeal against the placement order, the parent will have a right under s.24(2) of the Adoption and Children Act 2002 to ask the court for permission to make an application to revoke the placement order. The parent will have to show the court that there has been a "change of circumstances" that indicates that the parent should be granted the opportunity to have the court reconsider whether the adoption plan is still right for the child. The court at this

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hearing is not required to apply the “child’s welfare is paramount” test: it will be one of several matters that the court will consider when deciding whether the facts put before the court indicate that there has been a “change of circumstances” since the placement order was made that justifies granting permission to make the application to revoke. It is important to note that the wording is a “change of circumstances” – not a *significant* change of circumstances. The change in circumstances need not be in the parent’s situation – it could be that the child’s needs have changed or that a family member has come forward to care for the child. In effect, this works as a second pathway to challenge the placement order if the parent is either refused permission to appeal or the court hearing the appeal upholds the placement order.

Section 24(5) states that the local authority is not permitted to place the child with the adopters once the parent has made an application to revoke a placement order until there has been a final hearing of that application. The local authority can, however, make an urgent application for permission to go ahead with the adoption plan to place the child with the adopters immediately, once it is notified that the revocation application has been made. The purpose of this is to ensure that the matter is allocated for a court hearing without delay.

Because the process under s.24(2) is a two-step process, the local authority will have to consider what to do when it knows an application for permission to apply (to revoke) has been made but this first step in the process has not yet been concluded. This situation arises where the parent has made an application for permission to apply (to revoke the placement order) but permission to apply has not yet been granted and so in fact there is no live application before the court for revocation of the placement order. Should the local authority go ahead with its adoption plan for the child, or should it put the plan on hold and prepare to make an urgent application under s.24(5) once the outcome of the permission application is known?

See also Department for Education, 2013, para 5.2.

### **What have the courts said?**

The courts have stated in *Re F* and confirmed in a recent case *R (On the Application of EL) v Essex County Council [2017] EWHC 1041 (Admin) (Re EL)* ([www.bailii.org/ew/cases/EWHC/Admin/2017/1041.html](http://www.bailii.org/ew/cases/EWHC/Admin/2017/1041.html)) that when an application for permission to apply to revoke the placement order has been made – the first step in the process – the local authority cannot proceed with its adoption plan in the absence of permission to do so from the court. This has caused delay in placing the child because there may be delay in the parent getting legal advice to progress their application, and possibly delay

in determining if they will obtain legal aid. This impacts on the timescale set out in the adoption placement plan and will create anxiety for the child’s present carers, the prospective adopters and, most importantly, the child. It also creates anxiety among professionals about how to manage and reduce delay whilst respecting the parent’s right to pursue the application.

The expectation is that the parent will notify the local authority in writing of their intention to make the application, issue the application promptly and ensure that the court, as well as the parent, informs the local authority. At the same time, particularly where the parent has legal advice, it is likely that the parent’s legal representative will ask the local authority to provide an undertaking not to place the child for adoption until the permission application is concluded.

### **What causes delay and anxiety?**

Where the parent has not yet instructed a legal representative, or is planning to make the application without legal assistance, or is awaiting the determination of a legal aid application and thus no active steps are taking place, there is potentially delay and drift. If the local authority goes ahead with the adoption plan, it is likely to be criticised for not being fair and not giving the parent sufficient time to make the permission (first step) application. It may find the parent challenging its decision not to defer the timelines in the adoption placement plan by arguing in court that the process and decision-making was unfair and not transparent. For example, moving forward the introductions to ensure that the child is placed before the parent has been able to get permission to make their application to revoke the placement order may be seen by the court as unfair. If the court agrees that the local authority’s process was unfair, it will quash the decision to place (meaning that the child has not been lawfully placed for adoption) and, inevitably, there will be yet further delay.

This situation is compounded by the delays that may have occurred in the care proceedings that concluded with the placement order being made. There are likely to be further delays if an appeal hearing takes place. Social workers very properly want to go ahead with the adoption plan that has been approved by the court, and will be anxious about the impact on the child’s present and future well-being if that plan is not progressed in a timely way.

Likewise, particularly where the child has been matched – which the local authority has permission to progress under the placement order – prospective adopters, who may also have been waiting, will be left uncertain about whether or when the child will be placed with them. They may have made arrangements for adoption leave with their employer or resigned from their work; other children

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and their extended family may know about a new sibling joining the family; or introductions may have already begun. This is an additional anxiety for social workers, who may fear that prospective adopters will withdraw from the match, creating further uncertainty and delay in achieving permanency for the child.

### **What can the local authority do?**

The High Court recently in *Re EL* has stressed that communication between the local authority and the parent and their legal representative is central to ensuring that the right balance is struck between progressing the child's adoption plan and the parent's right to seek to revoke the placement order.

In both reported cases, *Re F* and *Re EL*, the respective local authorities acted in strict accordance with the statute, in that they placed the child for adoption before the parent had made an application for permission to apply to revoke the placement order (the first step). However, the local authority will be acting unfairly if it has reason to believe that an application for permission to apply to revoke (the first step) is imminent or has been made (but has not yet been decided by the court) and takes advantage of that situation, for example, delays in making an application caused by an unrepresented parent's unfamiliarity with the procedure or difficulties in obtaining legal advice.

We suggest that if the local authority understands either directly or indirectly that the parent has stated they intend to seek revocation of the placement order, it should, without delay, write to the parent (translating any letter if necessary), setting out the duties on the local authority to proceed with the child's adoption plan, and provide a copy of the placement plan that will set out key dates in the process. It should also meet with the parent to communicate the contents of the letter in a way that the parent can understand. It is helpful if the parent understands the key steps they need to take to go ahead with their intention and what the local authority intends to do, prior to an application for permission to apply to revoke being made, issued by the court and served on the local authority. It is also advisable to ensure that communication with the court is clear so that there is no delay in being informed once the application has been issued. Local authorities may wish to consider agreeing a local protocol with their Family Court, whereby the court informs the local authority if an approach is made for permission to revoke, even if there are difficulties in the

court issuing an application, for example, non-payment of the court application fee or an error in the completion of the application form.

However, the local authority cannot simply halt the adoption placement process because a parent has made a remark about opposing the adoption. The parent must understand that they cannot delay placement for adoption indefinitely and that fairness to the parent requires only a reasonable and limited pause in the process to allow them to bring the matter before the court. A parent must be made aware of deadlines after which the local authority will proceed with their placement plan.

The local authority will need to be clear about managing timelines that are reasonable from the parent's standpoint but that place the child's rights and needs at the centre of its decision-making. This will become more relevant the closer the planned date of placement is to the intimation of an intention to revoke. An experienced manager should be appointed to oversee and co-ordinate the planning by both the child's social worker and the social worker for the prospective adopters and to robustly manage timelines. The local authority's legal representative – preferably someone experienced in adoption practice – should be involved throughout.

The local authority should also consider planning to make an application without delay under s.24(5) for permission to place the child and ensure that supporting statements and documents are organised. The court should be approached and an early listing of all matters be requested.

### **Professional decisions and actions**

A further placement planning meeting should be held to consider whether introductions should be postponed or, if they have started, whether they should continue at the same pace or be slowed down. If the circumstances and child's welfare require it (for example, if the child's current carers can no longer be available), the child could still be moved to the prospective adopter's home by approving the adopter/s as temporary foster carers under Regulation 25A of the Care Planning Regulations 2010, although this should not be standard practice. The prospective adopters may need to be supported in obtaining their own legal advice on their position, or be given the opportunity of discussing the likely outcomes with the agency's legal representative.

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## Template letter

**This template letter to the parent can be adapted to address the particular circumstances of the child or children's case and the current intentions of the parents. The names of the child or children will need to be included in any completed letter.**

Dear [Parent]

You have told us that you do not agree with the decision of the court on [date] to make a placement order. The placement order gives the local authority permission to go ahead with their plan for your child/children [names] to be adopted.

You have told us that you want the court to reconsider their decision. This can be done in two ways:

- by appealing the decision of the court, if you think that the court has made a fundamental mistake of fact or law; or
- by applying to the court that made the order to revoke (end) the placement order because circumstances have changed.

If you wish to appeal, you must file an application with the appeal court **within 21 days of the decision**. The appeal court will not consider an appeal that is filed late unless there are good reasons for the delay. Difficulties in getting legal advice or legal aid are not generally considered as being good reasons.

You can only ask the court to revoke the placement order before your child is "placed for adoption". This means before your child moves to live with the prospective adopters, or if your child is living with foster carers who are intending to adopt, before that placement becomes a "placement for adoption". After your child is placed with prospective adopters, the court is not able to consider an application to revoke. You would then need to apply to the court for permission to oppose the making of an adoption order once the prospective adopters have made their application to the court for the adoption order.

It is usually helpful and important to get legal advice if you want to challenge the adoption plan. We can provide you with a list of local solicitors who have experience in dealing with adoption cases, or you may wish to contact the Law Society: [www.lawsociety.org.uk/for-the-public/using-a-solicitor/find-a-solicitor/](http://www.lawsociety.org.uk/for-the-public/using-a-solicitor/find-a-solicitor/)

This letter tells you what the local authority is now doing to go ahead with the adoption plan for [name] and also gives you information about what you will need to do if you want to ask the court to end the placement order.

### **What does the placement order mean for [name of child/children]?**

We will now look for approved adopters. This means that they will have been thoroughly prepared and assessed. We will have information about a number of approved adopters to help us decide which family is best able to meet your child's needs now and in the future. Our adoption panel will consider which adopters your child will be placed with and make a recommendation to a senior manager for approval. The manager has experience and knowledge about making adoption plans for children. We will write to tell you when this decision is being made.

### **What happens after a decision to match your child [name] with an adoptive family has been made?**

The law requires the local authority to act quickly when making decisions about placing a child for adoption. Our next step is to make a plan that will set out the steps for introducing your child/children [name] to their adoptive family. Sometimes, we need to alter the plan so if anything changes, we will send you our revised dates. Attached to this letter is our plan including the dates we are working to.

### **What will you need to do if you want to ask the court to end the placement order?**

You may need to get legal advice, but it may help if we set out the two key steps:

- Firstly, you will need to get the court's **permission** to make the application to end the court's order. Before granting you permission, the court will have to agree that there has been a **change in circumstances** that might enable a revised plan for your child to be made. The court will need factual information about what has changed.

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- The second step goes ahead if the court gives you permission. You will then be able to make the application to end the placement order. At the second court hearing, the court will have to consider carefully what has changed for you and your child before it will end the order.

### **What is the local authority allowed to do to avoid delay in going ahead with the adoption plan?**

Until you make an application to the court to ask for permission to apply to revoke (end) the placement order, we will **continue to put our plan to place [name] into action**. That is our duty and responsibility. This means that you should consider getting advice without delay and you must write to us to tell us what you intend to do. If you do not tell us that you are making an application, we will continue with the placement plan. If you make an application, it will be for the court to decide whether or not the placement for adoption goes ahead.

### **What changes for you when [name] is placed with their adoptive family?**

You will no longer be able to ask the court for permission to end the placement order. The adopters will be able to apply to the court to make the adoption order 10 weeks after [name] has been living with them. You will be told by the court when this application is made. If you do not agree, you will again need to ask the court for permission to oppose the adoption plan. You will need to show to the court that there has been a “change of circumstances” that means the court needs to reconsider the adoption plan and not make the adoption order.

### **What happens next?**

If you want to talk to us about this letter, please contact [name of social worker or manager]. You should show this letter to your legal representative if you have one. It is important to us that you understand this letter and discuss this with your legal representative or others who can help you do what you think is right for [name of child/children].

Yours sincerely

[Adoption manager]

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## **Reference**

Department for Education (2013) *Statutory Guidance on Adoption: For local authorities, voluntary adoption agencies and adoption support agencies*, available at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270100/adoption\\_statutory\\_guidance\\_2013.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270100/adoption_statutory_guidance_2013.pdf)

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