

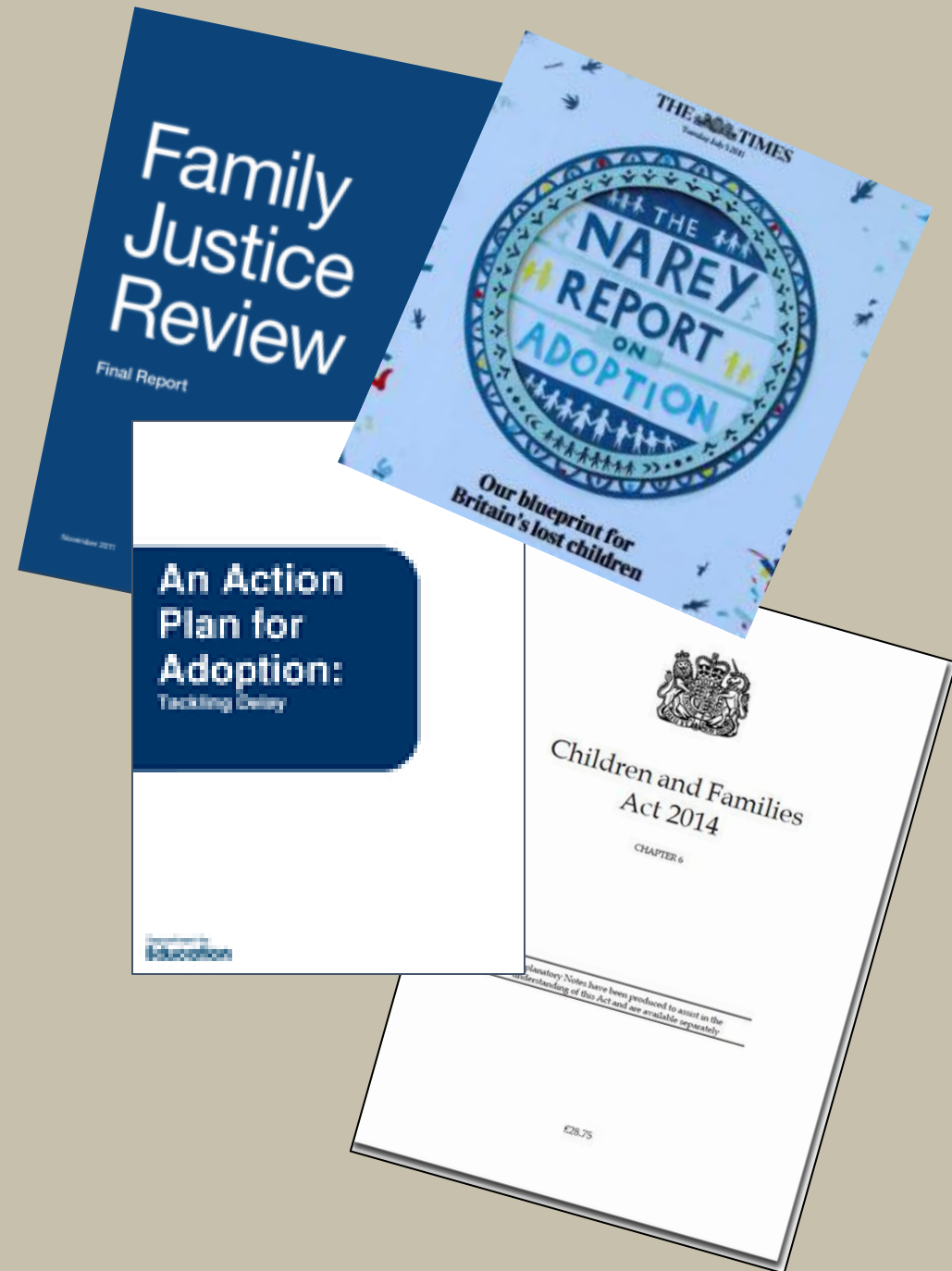


Early Permanence The Legal Framework

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Introduction

- **Concurrent planning** introduced into the UK in 1990s from USA. Projects set up in England eg Goodman in Manchester, Coram in London & Brighton & Hove – all except Coram failed
- **Government Concerns** – significant delays in proceedings; children being placed for adoption older and after multiple moves
- **Suggested solutions** – (inter alia) support for fostering for adoption and a statutory 26 week limit on care proceedings.





Children and Families Act 2014

2014 CHAPTER 6

PART 1

ADOPTION AND CONTACT

Adoption

2 Placement of looked after children with prospective adopters

(1) Section 22C of the Children Act 1989 is amended as follows.

(2) In subsection (7), after "subject to" insert " subsection (9B) and ".

(3) After subsection (9) insert—
“(9A) Subsection (9B) applies (subject to subsection (9C)) where the local authority are a local authority in England and—
(a) are considering adoption for C, or
(b) are satisfied that C ought to be placed for adoption but are not authorised under section 19 of the Adoption and Children Act 2002 (placement with parental consent) or by virtue of section 21 of that Act (placement orders) to place C for adoption.

(9B) Where this subsection applies—
(a) subsections (7) to (9) do not apply to the local authority,
(b) the local authority must consider placing C with an individual within subsection (6)(a), and
(c) where the local authority decide that a placement with such an individual is not the most appropriate placement for C, the local authority must consider placing C with a local authority foster parent who has been approved as a prospective adopter.

Children Act 1989 s22C

(9A) Subsection (9B) applies [...] where the local authority

(a) are considering adoption for C, or

(b) are satisfied that C ought to be placed for adoption but are not authorized [...] to place C for adoption.

(9B) Where this subsection applies —

(a) [...],

(b) the local authority must consider placing C with an individual within subsection (6)(a), and

(c) where the local authority decide that a placement with such an individual is not the most appropriate placement for C, the local authority **must** consider placing C with a local authority foster parent who has been approved as a prospective adopter

Statutory Guidance

The local authority may still be considering other outcomes for the child, and may still be attempting rehabilitation with family, but expects that adoption will become the plan should those alternatives not succeed. Local authorities **must** assess the appropriateness of placing the child in a FfA placement with dually approved carers on a case by case basis.

Statutory Guidance

3.55. The agency should discuss with the prospective adopter whether they may be interested in fostering a child for whom an adoption agency is considering adoption. Such placements are known as Fostering for Adoption (FfA) and include practices such as concurrent planning. There is no need for the agency to assess and approve the prospective adopter as a temporary foster carer at the same time as they are carrying out the adopter approval process although they can do so if they and the prospective adopter wish to do so. The child's local authority can arrange for the foster care assessment and approval of an approved adopter. A voluntary adoption agency can undertake the foster carer assessment if it is also a fostering agency

Care Planning, Placement and Case Review (England) Regulations 2010

25A.—(1) Where the responsible authority is satisfied that—

(a) the most appropriate placement for C is with a person who is not approved as a local authority foster parent, but who is an approved prospective adopter, and

(b) it is in C's best interests to be placed with that person,

the responsible authority may approve that person as a local authority foster parent in relation to C for a temporary period ("temporary approval period") provided that the responsible authority first comply with the requirements of paragraph (2).

C110A

Requires the Local Authority to indicate whether or not they are considering adoption and therefore triggering their statutory duty to consider an Early Permanence Placement

C110A
Application for a care or supervision order and other orders under Part 4 of the Children Act 1989 or an Emergency Protection Order under section 44 of the Children Act 1989

refer to or repeat the Care Plan.

To be completed by the court
The family court sitting at

Case number

Child(ren)'s name(s) Date issued

Fee charged

Name of applicant

Full name of respondent(s)

Nature of application
What order(s) are you applying for? (tick all which apply)

- Care and supervision or other Part 4
 - Care
 - Supervision
 - Interim care order
 - Interim supervision order
 - Other (please specify)
- Emergency Protection Order
 - information on the whereabouts of the child(ren) (Section 48(1) Children Act 1989).
 - authorisation for entry of premises (Section 48(3) Children Act 1989).
 - authorisation to search for another child on the premises (Section 48(4) Children Act 1989).
 - Other (please specify)

Additional information required

Is the Local Authority considering adoption?
 Yes No
 If Yes, please complete Section 7b

Is an urgent hearing required?
 Yes No

Are there previous or ongoing proceedings for the child(ren)?
 Yes No

Are there factors affecting litigation capacity?
 Yes No

Is this a case with an international element?
 Yes No

Will the child or any of the people involved need to use spoken or written Welsh during the course of the proceedings?
 Yes No

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Is the Local Authority considering adoption and Children Act 2002 this application?
 Yes No

Does the applicant for a placement order(s) accompany this application?
 Yes No

If not, why not and when will it be submitted?
 Yes No

Have you notified the relevant Central Authority or the competent authority in the foreign state in cases to which section 5 of this form applies?
 Yes No

C110A - Application for a care or supervision order and other orders under Part 4 of the Children Act 1989 or an Emergency Protection Order under section 44 of the Children Act 1989 (10.16)

Status of Early Permanence carers

- Carers are foster carers until they are matched to the child as prospective adopters and notified of the date on which the child will become placed for adoption
- Can be dually approved, or temporarily approved under Reg 25A Care Planning Regulations 2010
- No particular status because they are also EPP carers
- LA still has a duty to consider any family who come forward and place with family if appropriate (S22C duty to prioritise family placement continues)
- Shared Parental Leave Regulations 2014 – additionally defines placed for adoption at point of s22C placement for the purposes of adoption leave and pay **only**



Re T (A Child : Early Permanence Placement) [2015] EWCA Civ 983

- Child placed day after birth s20 with EPP carers
- ICO obtained within a month, DNA test confirmed paternity. PGP put themselves forward and after positive assessment LA changed plan from adoption to family placement;
- EPP carers applied for leave to issue adoption application.
- Judge allowed application for leave and joined them to the care proceedings to give her evidence to compare all realistic options for T's care
- C of A allowed appeal – wrong question was being asked, first consideration should be need for placement outside family.
- *“There is nothing in the recent case-law on adoption [...] which justifies, let alone requires, any change in approach. Nor, in particular, is there anything in the status or function of an early permanence placement foster carer which either justifies or requires any change in approach.”*
- *“Moreover, there is, [...], a very real risk that if, in a case such as this, the forensic process is allowed to become in effect a dispute between the prospective adopters and the birth family, the court will be diverted into an illegitimate inquiry as to which placement will be better for the child. That, it cannot be emphasised too much, is not the question before the court.”*
- *“I merely note what I would hope is obvious: that in every case of an early permanence placement there must, from the outset and at every stage thereafter, be complete frankness coupled with a robust appraisal of the realities.”*

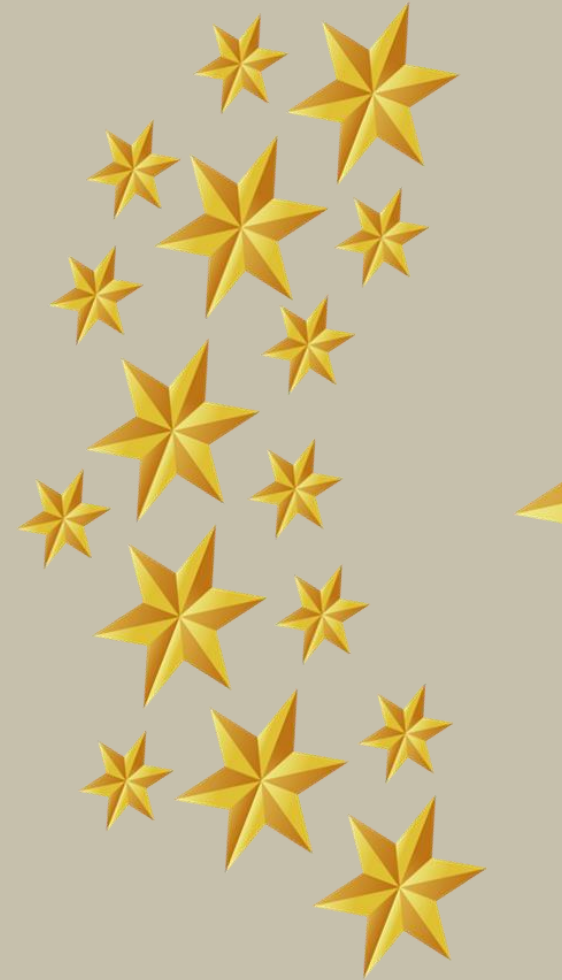
Re T (A Child: early permanence or kinship carers) [2017] EWFCB43

- Child born August 2016, placed with EPP carers, Final Hearing July 2017
- Aunt came forward and had positive viability assessment, with some concerns about number of children in her household, and family relationships. LA placed T in an EPP on discharge from hospital;
- Full positive kinship care assessment completed. ISW report felt T best option was adoption given his attachment to the EPP carers, but agreed aunt could meet his needs
- “The foster to adopt placement does not give any precedence or any rights to his current carers or require me to carry out an assessment of their individual qualities as carers”
- Child moved to relatives under ICO with plan of later SGO



In Re S (FC) In Re S and Others In Re W and Others (Conjoined Appeals) [2002] UKHL 10

- Starred care plans – invented by the Court of Appeal to ensure compliance with care plans
- *Re S* – care plan of reunification to mother with intensive support plan – support failed to materialise
- *Re W* – care plan of placement with grandparents, expecting them to be able to relocate from USA to care for the children
- C of A proposed starred milestones, failure to reach would require a report to the Guardian ad Litem and possible return to Court
- House of Lords rejected the concept – *“The [Children] Act delineated the boundary of responsibility with complete clarity. Where a care order is made the responsibility for the child's care is with the authority rather than the court. The court retains no supervisory role, monitoring the authority's discharge of its responsibilities. That was the intention of Parliament.”*
- *“Parliament entrusted to local authorities, not the courts, the responsibility for looking after children who are the subject of care orders”*



Re A (A Child) [2009] EWHC 865 (Fam)



“It is a cardinal principle of the Children Act 1989 (the 1989 Act) that once a care order has been made, whether interim or final, it is for the local authority, and not the court, to decide how to meet its parental responsibilities for the child. The decision-making power as to the care, residence and general welfare of the child is vested in the local authority, not in the court.” – Munby J

*“23. It is a ‘cardinal principle’ of the 1989 Act that, once a final care order has been made, it is for the local authority, and not the court, to decide how to meet its parental responsibilities for the child: see the speech of Baroness Hale of Richmond in *Re G (Interim Care Order: Residential Assessment)* [2005] UKHL 68, [2006] 1 FLR 601, at para [44], referring to the speech of Lord Nicholls of Birkenhead in *Re S (Minors) (Care Order: Implementation of Care Plan)*; *Re W (Minors) Care Order: Adequacy of Care Plan* [2002] UKHL 10, [2002] 1 FLR 815.*

*24. The same principle applies in relation to interim care orders. As Lord Browne-Wilkinson said in *Re C (Interim Care Order: Residential Assessment)* [1997] 1 FLR 1 at page 6:*

“Under the interim care order the decision-making power as to the care, residence and general welfare of the child is vested in the local authority, not in the court.” ”

R (Care Proceedings Joinder of Foster Carers) [2021] **EWCA Civ 875**

- Child removed at birth – placed with f/c – F mis-identified, incurring delays
- Paternal relatives came forward – full fostering assessment positive, but f/c decided they wanted to adopt. Court and CG supported f/c
- Both f/c and relatives underwent full positive adoption assessment (more delay) Court allowed delay for f/c to give notice and make application for non-agency adoption
- Court joined f/c to care proceedings
- C of A said not appropriate to join f/c, care proceedings have to be decided first, then placement, but as child had been with f/c for over a year, they were entitled to make adoption application and should be taken into account – application should be heard at the same time as the placement application



Current position

- Concerns about Courts and Guardians not supporting care plans with EPP placements
- We have a line of cases holding that EPP carers are foster carers, with no more rights in respect of the child than any other foster carer.
- We have a line of cases which lay down a ‘cardinal principle’ that the court cannot interfere in the local authority’s care of the child once a care order or interim care order is made
- BUT we don’t yet have a reported case considering a situation where a judge has prevented a local authority making an EPP placement and insisted on a mainstream short-term foster placement
- Early Permanence is being caught up in the general atmosphere of concern about adoption

Questions – at the end of the webinar



and thank you for listening

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