



Adoption cases reviewed: an indicative study of process and practice

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The review comprised a small scale, qualitative study of closed adoption cases in England, which had been contested formally and actively by birth parents at one or more key stages in the process between 2005 and early 2012. The study provides insights into case handling, decision making and practice quality assurance with a focus on whether due process was followed by local authorities and the judiciary. It is the first study of contested adoption undertaken in England, since the implementation of the Adoption and Children Act 2002 (ACA 2002). Further studies, of a larger and comparative kind, would be necessary to establish the extent to which the present findings can be generalised to contemporary practice in England and to enable the discrepancy between strong and weak performance at the case level to be accounted for more fully.

Key Findings

- The study confirmed routine local authority and judicial compliance with the required procedural and legal framework for adoption. Parents' rights to due process in contesting and opposing care, placement and adoption applications were ensured. Decisions were taken by the court in an appropriate way, following the full testing of evidence.
- Local authority practice in the study cases pre-dated current statutory guidance (DCSF (2010) Children Act Guidance and Regulations Volume 2: Care Planning, Placement and Case Review, London: TSO), in which permanence is required to provide the framework for all social work with children and families. Where it lacked this perspective, social work intervention could not be relied upon to effectively pursue the protection and care planning that might have secured child safety on a permanent basis at home.
- Quality assurance of child protection and care planning was insufficiently robust.
- Where risk assessment and protection and care planning lacked confidence and decisiveness, the right of the child to have a safe and permanent family life secured in a timely way could be compromised. Similarly, the right of parents to effective intervention to help them make necessary changes could be neglected where permanence principles were not applied equally to the process of rehabilitation.
- While no clear pattern of contestation emerged in these cases parents often argued that the local authority had sought merely to gather evidence to make the case against them, rather than intervene purposefully to support the changes required to keep the child safely at home.
- It was not always easy to see how the interventions, to which *parents* were asked to commit, could facilitate the changes required of them, if care proceedings and adoption placement were to be avoided.
- Extensive use of independent expert evidence and advice provided a guarantee that harm and risk had been assessed fully and decisions appropriately informed, once the case was in proceedings. However, the use of experts also caused duplication and delay.
- This study suggests that the enhancement and quality assurance of the expertise and effectiveness of social work within the inter-agency system should attract policy attention. Timely and proportionate decision making is undermined as much by lack of case management continuity and of grip in making a judgement about parents' capacity to change in the local authority as it is in the court.

- The reform process should be underpinned by a review of the philosophy, organisation and support of local authority case management in protection and care planning, to ensure reliability of compliance with current statutory guidance that a permanence perspective is employed as a matter of routine.
- The reform process should also include a review of the availability and effectiveness of post-placement support for birth parents in all forms of permanent placement, including placement at home.

Background

The contemporary legal framework for adoption was put in place by the AACA 2002. This reconciled adoption law with the principles embodied in the Children Act 1989. It ensured compliance with the European Court of Human Rights (ECHR) and the Human Rights Acts 1998 (HRA 1998). Law and statutory procedures are designed so that children can expect that their welfare will be given paramount consideration in decision making through care and placement proceedings. Birth parents can expect that due process will be ensured where they wish to contest the decisions made to remove children permanently from their care and place them for adoption.

Nonetheless, despite the integrity of the legal framework and the principles that underpin it, questions continue to be raised about the appropriateness of the decisions taken by the local authority and the court respectively, to recommend an adoption placement and to dispense with parental consent. A better understanding was needed of aspects of practice in evidence use and case handling in adoption that could and should be addressed to improve confidence in adoption decisions that have been disputed. This study was designed to illuminate the operation of adoption processes through an in-depth scrutiny of a small number of cases where decisions were contested by birth parents at the placement order stage and sometimes beyond.

Methodology

The study sought to show whether:

- required local authority and judicial procedures and timescales were followed, such that appropriate decisions could be made.
- there was any indication that children may have been inappropriately taken from their parents and placed for adoption, because the processes were weak or had not been adhered to.
- case handling within the local authority and court process delivered timely decisions for children.

Based on a review of court and local authority files, the research was not intended to question the legal judgements made in each case. Instead, the focus was upon the robustness of procedures and the quality of practice, as suggested by the file scrutiny. The ultimate objective was to evaluate the strengths of the current adoption process and establish what changes, if any, were required to ensure that the processes of local authority and court case handling and decision making are consistent with the principles underpinning the current legal framework of adoption in England. This evaluation was restricted to adoption cases that were actively contested by parents.

The cases

The study examined twelve closed adoption cases, which were contested by birth parents.

The criteria for case selection were as follows:

- the court had dispensed with birth parents' consent through the making of a placement order and had subsequently made an adoption order.
- adoption orders were made under the AACA 2002, and legal proceedings commenced after 2005.

Cases were taken from three family court jurisdictions covering a Northern conurbation, a Midlands city and county area and a Southern city and county area. Five local authorities were selected from these areas.

When judged against national standards these local authorities exemplified the range of practice currently to be found in the English adoption system.

Sampling was purposive rather than representative, consistent with the small-scale nature of the study. The sampling criteria were that:

- birth parents had contested the local authority adoption plan at the final care hearing and/or had sought leave to revoke a placement order;
- birth parents had sought leave to oppose the making of an adoption order, on the basis that they could demonstrate a change of circumstances;

In addition, examples of contested cases that had progressed to the Court of Appeal were also requested.

In ten cases one or both parents contested the adoption placement and in six cases there was opposition to the adoption application. In one case a parent sought leave to appeal the adoption placement decision in the High Court and the European Court of Human Rights (ECHR), in turn. These base figures obscure a complex pattern of contestation. The case sample included children admitted to care in their infancy and those who were older. In each case an 'index' child was identified. Overall, the twelve cases involved care proceedings in respect of twenty five children, of whom eighteen were subsequently adopted. Half of the twelve index children were described as white British, five as of mixed heritage and one as black African in origin. For seven of the children the care admission leading to adoption placement came within days or weeks of their birth. In the other five cases this admission came when the children were between twelve months and six years and five months of age.

Data collection and analysis

The research comprised a detailed review of case files (court files and local authority closed adoption files). Files held by CAFCASS and by the lawyers for the children were not consulted. No interviews were undertaken so it was not possible for the parties involved to explain more fully the reasons for the nature and timing of decisions taken. No direct observation was undertaken of evidence use and decision making in conferences or courts.

Given the volume and diversity of documents contained in the files, the review was guided by three data collection tools to enable the production of:

- the child's adoption journey timeline.
- the family profile and key details of child and family case complexity.
- a qualitative review and evaluation of local authority and court processes at the key decision points in the adoption system where parents could contest.

All documents contained in the court and local authority files were read until a point of 'saturation' was reached in each case, with no new data being revealed by further scrutiny. In some cases missing data was added following correspondence with relevant local authority officers. For the most part files were complete. Their size and construction indicated clearly the cumulative and repetitive nature of the documentation required of the local authority in making the case for adoption in the face of parental contestation.

Findings

The adoption journey

The study confirmed previous findings about delayed decision making in adoption in the local authority and the court in these contested cases. The child's journey to adoption placement was more likely than not to be delayed following admission to care. They waited between thirteen and forty nine months to be placed, following care admission. Only half the children were placed within the current government target period of 21 months. Care and placement proceedings were especially prolonged. The average time taken for care

proceedings to conclude was fifty two weeks. In only one case did the court conclude the care and placement proceedings within the proposed new statutory limit of twenty six weeks. The average time between the Panel recommendation of adoption and the adoption placement was just over the current twelve month national standard. Children waited between one and nineteen months to be placed once the placement order had been made. Estimating the adoption journey from the child's date of birth rather than from the date of the care admission enables a child-centred perspective to be taken on the child's experience and developmental trajectory.

The process of contestation

Any pattern of contestation by parents was hard to predict in most cases, and describe for the sample as a whole. The adoption process allows for parental opposition to applications and orders at all stages, even where these were unexpected or appeared unrealistic in the light of the circumstances. The fact of judicial discontinuity did not compromise parents' rights to contest. Thus, the legal and procedural framework for decision making in adoption is robust in this respect. The single parental claim that due process had not been observed was dismissed on appeal. Poor or unreliable standards of practice could generate expressions of grievance by parents, especially about the extent to which they felt they were given a chance to demonstrate their capacity to change.

The local authority care application and the adoption placement plan

When local authorities applied to the court for interim care orders, sufficient evidence was filed, such that in no case did local authority action appear unreasonable in the circumstances. Nonetheless, the standard of social work practice prior to application varied widely. Delayed court applications, and lack of effective intervention pre-proceedings, seriously compromised child development and well-being. In most cases local authority case handling was consistent with statutory regulations and guidance, once children had been taken into care. This applies equally to care and permanence planning for 'looked after children' and Adoption and Children Act 2002 regulations and guidance for Panel approval and court authorisation of adoption placement. Social work practice in making sense of child development and child experience and in communicating plans to children in care usually fell short of required professional standards. Options for alternative permanent placements with relatives or friends were considered by the local authority in a procedurally appropriate way in all but one case. Steps taken to enable parents to maintain care of children at home were rarely planned and sustained in a proactive way, once the case was in proceedings.

Court decision making processes in care, placement and adoption proceedings

In each case the evidence presented by the local authority was tested by reference to further, and sometimes numerous, assessments ordered by the court. This was either by agreement with the parties or as a result of the judge upholding applications made by parents. This process contributed to delay, which was exacerbated by frequent late filing of local authority and expert reports. Lack of judicial continuity, and the proactive grip on the process this would have allowed, was a factor in almost every case. Interim care orders were granted readily on initial application and renewed in accordance with due process. The adequacy of the local authority evidence that parents lacked the capacity or commitment to change was the main focus of debate. Parents questioned the extent to which the local authority judgement of them was accurate and fair. Experts were instructed in every case, often in large number and usually in a sequential way as the proceedings unfolded. Their contribution was seen by the court and the parties to be crucial to the judicial determination of both the facts of the case, especially the capacity of parents, and the appropriate care plan. There was no evidence in these cases that parents were unable to benefit from their own legal representation. In all cases, parents' legal representatives enabled them to respond to local authority concerns and to present their own case in contest from the outset.

Evaluation of the quality assurance roles of the Independent Reviewing Officer (IRO) and the court advisory role of the Children's Guardian

Case file review does not provide a full picture of professional activity, however, findings suggest that the role of the IRO was ineffective in averting drift for children in interim foster placements in a number of cases. Although Looked After Children (LAC) reviews were held on time and chaired by the IRO, adherence to these procedural requirements appeared insufficient in respect of progressing effective care planning for children. The sample has included a single case where very serious failings in progressing

permanence planning were evident. This case stands apart from the larger sample, but nevertheless, raises questions about whether the IRO is appropriately positioned to challenge serious failings such as this.

The profile of children's adoption journey timelines, suggest that weakness in the IRO role may relate to both the quality assurance of care planning for children in interim placements pre-proceedings and in duties to progress adoptive placement after the making of a placement order. Accounts of children's wishes and feelings and analysis of children's developmental trajectories were consistently below required professional standards in regard to care planning, such that further questions are raised about the quality assurance role of the IRO.

With specific regard to contestation, the Children's Guardian appeared, in a number of cases, to play a critical role in reminding the court of its primary focus on the welfare of the child. This included at the adoption application stage, although this was rare. There were examples of very effective assessment, advice and intervention from the Children's Guardian more broadly, which clearly aided judicial decision-making. Although the study sample is small, there is evidence that the Children's Guardian can play a key role in ensuring that contestation does not serve to detract from a focus on the welfare of the child. The Children's Guardian can command authority in the court as an independent advocate for the child, but this contribution is undermined by late appointment or absence in particular.

Conclusions

The study confirmed routine local authority and judicial compliance with the required procedural and legal framework for adoption. Parents' rights to due process in contesting and opposing care, placement and adoption applications were ensured. Decisions were taken by the court in an appropriate way, following the full testing of evidence. However, local authority child protection and care planning was not reliably informed by the permanence planning perspective now required for social work practice with children and families from the outset, where concerns about risk and harm are raised. In addition, quality assurance of child protection and care planning was insufficiently robust. Where risk assessment and protection and care planning lacked confidence and decisiveness, the right of the child to have a safe and permanent family life secured in a timely way could be compromised.

While no clear pattern of contestation emerged in these cases parents often argued that the local authority had sought merely to gather evidence to make the case against them, rather than intervene purposefully to support the changes required to keep the child safely at home. Extensive use of independent expert evidence and advice provided a guarantee that harm and risk had been assessed fully and decisions appropriately informed, once the case was in proceedings. However, the use of experts also caused duplication and delay. Current proposals for reform will need to ensure such evidence is deployed effectively within the sharper case management regime.

This study suggests that the enhancement and quality assurance of the expertise and effectiveness of social work within the inter-agency system should attract policy attention. Timely and proportionate decision making is undermined as much by lack of case management continuity and of grip in making a judgement about parents' capacity to change in the local authority as it is in the court. The reform process should be underpinned by a review of the philosophy, organisation and support of local authority case management in protection and care planning, to ensure reliability of compliance with current statutory guidance that a permanence perspective is employed as a matter of routine.

The reform process should also include a review of the availability and effectiveness of post-placement support for birth parents in all forms of permanent placement, including placement at home.

Additional Information

The full report can be accessed at <http://www.education.gov.uk/publications/>

Further information about this research can be obtained from

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