

WILTSHIRE AGENCY ADOPTION PROCEDURE AND GUIDANCE

This procedure sets out the process to be followed upon service upon the local authority of the documents issued by the court in relation to an agency adoption, that is an adoption application made in respect of a child whom the local authority, as adoption agency, has placed for adoption (other than following voluntary relinquishment by the parents).

At all times when dealing with an adoption case it is essential that you ensure the confidentiality of all information and most especially that relating to the adopters and the placement. You must read and check all documents received and where any documents are being sent out of the council, those documents to be sent must be checked by a team manager or assistant team manager before being sent outside the local authority.

The Adoption Application

The application is normally completed by the applicant prospective adopters with any necessary advice from the adoption social worker and is submitted to the court by the adoption social worker.

It is important when completing the adoption application that the child's social worker and adoption social worker ensure that the address for the birth parents included within that application is the up to date address for the birth parents.

The Annex A report submitted with the application must include updated details for the birth parents, their address(es) and their views. It is unacceptable merely to cut and paste across the contents of the Annex B report from placement order proceedings.

Issue of the Proceedings by the Court

The court will send to the local authority hard copy bundle of the adoption papers issued including:

- A copy of the adoption application
- The General Order
- Notice of Hearing of the adoption application
- An acknowledgement of Service.

These are usually (but not always) passed to Legal Services by the Post Room. Where they are sent to Legal Services, a file will be opened and the documents will be scanned and emailed to Children's Services, to the social worker for the child and team manager and copied to the Adoption Team manager.

The social workers must read the documents, noting, particularly, the date of the adoption hearing, and then save them to the relevant Children's Services file.

A Father without Parental Responsibility

The adoption application should include details of a birth father without parental responsibility, including whether or not he intends to make an application for a parental responsibility order or a child arrangements order in respect of the child.

A birth father without parental responsibility is not automatically a respondent to the adoption proceedings. The court will send to him the notice of hearing and general order. These will be sent to him by first class post to the address for him shown on the application.

The general order will advise him that an adoption application has been issued and that if he wishes to be joined as a party and take part in those proceedings he must write to the court by a specified date setting out his position and must attend the hearing, the details of which will be included on the order and in the notice of hearing. If he fails to do this, he will receive no further notification about any future hearings or orders made in respect of the adoption proceedings. An order may be made in his absence.

Parents with Parental Responsibility

The court will send to birth parents with parental responsibility a “notice letter” (template attached as Appendix 1), the general order, notice of hearing and the acknowledgement of service. These will be sent by first class post to the address(es) for the parents shown on the adoption application.

The general order will tell the birth parents what steps they should take should they wish to make an application for permission to oppose the adoption application. This will include filing an application in the court for permission to oppose together with a statement in support of their application setting out fully their change of circumstances since the placement order was made. In the event of a failure to do so, no further evidence may be filed without the permission of the court.

See below procedure in circumstances where a parent makes an application for permission to oppose the making of the adoption order.

Ensuring the Birth Parents Know About the Adoption Proceedings and the Hearing

Following the conclusion of the care proceedings and placement of a child for adoption, there may no longer be ongoing contact between the parents and children’s services. The address recited on the application may no longer be correct. This would mean that the documents sent out by the court are not received by the birth parents.

To avoid the risk of an adoption order being made without proper notice to a birth parent and a subsequent application by the parent, perhaps many months later, to set the adoption order aside, the social worker should:

1. Attempt to contact both birth parents by telephone to check that they have received the notification from the court and are aware of the date of the hearing of the adoption application.
2. The social worker should be sure that it is the birth parent they have spoken to.
3. Having done so, the social worker must make a careful note of this discussion on the social work file. This will provide evidence, in the event the birth parents do not attend the hearing, that they were aware of the application and the hearing. This will help to reduce the risk of subsequent application to set aside the order and, if there is such an application, will assist the local authority’s position before the court that the birth parents were aware of the proceedings at the earlier stage and that their application to set aside should not be granted.

If the social worker is unable to make contact with the birth parents by telephone, the social worker should:

1. Hand-deliver to them in person a letter as per the attached template, Appendix 2, telling them the adoption application has been made and the date of the hearing. This is called personal service. It must be given to the birth parents in person and not just placed through their door.
2. The social worker serving the parents should then make a careful note on the social worker file of the details of personal service, who was served, by whom, and when and where and should also complete the statement of service, Appendix 3, and send this to Legal Services to file within the proceedings.
3. If there is concern about a social worker attending to serve the birth parents with the letter, a process server may be engaged to effect personal service.
4. If the birth parents' current address(es) are not known enquiries need to be made to establish their whereabouts. This can include, for example, enquiries of relatives, or friends, former or current employers or professionals who may be working with them e.g. probation. It may be necessary to engage a process server to locate and serve the birth parent. The process server will then complete a statement of service for filing in the proceedings. Service Manager/Head of Service approval will be needed to incur these costs.

If the social worker and process server are unable to locate the birth parent, directions may be sought from the court at the first hearing. It is possible for the court to make an order for disclosure by the Department of Work and Pensions. Alternatively the court may direct substituted service upon the parent for example, through service by email, text or upon a relative.

The First Hearing

The general order sets out the date, time and place of the first hearing. The birth parents do not have to attend the adoption hearing if they do not wish to do so, but if they do not do so, an adoption order may be made in their absence. The Family Court at Swindon may list the first adoption hearing before the magistrates or before a Judge.

If, however, the birth parents have applied for permission to oppose, the practice in the Swindon Family Court is to vacate any hearing before the magistrates and then relist as a "permission" hearing before a Judge. The birth parents must attend this hearing, together with any legal representative they intend to instruct. In the event they do not attend, the hearing may proceed in their absence and the judge may make a final adoption order.

The applicant adopters and the child need not attend this hearing and are, in fact, actively discouraged from doing so. If they do insist on attending, which as parties they may choose to do, arrangements will need to be made with the court to protect their anonymity.

Application for Permission to Oppose the Adoption Order

Section 47(5) of the Adoption and Children Act 2002 provides that a birth parent (with parental responsibility) may not oppose the making of an adoption order without the leave, i.e. the permission, of the court.

In considering leave to oppose the making of an adoption order the court undertakes a two stage process:

1. Has there been a change in circumstances, and if so,
2. Should leave to oppose be given.

The court cannot give leave unless it is satisfied that there has been a change in circumstances since the making of the placement order. The birth parents will, therefore, need to satisfy the court that there has been a change of circumstances of a nature and degree sufficient, on the facts of the particular case, to open the door to the exercise of judicial discretion to permit the birth parents to oppose the making of the adoption order. For example, have the concerns existing at the time of making of the care and placement orders been addressed at least to a level which may permit parenting of the child, or has there been a change of circumstances which would suggest that an order less than adoption would be sufficient e.g. a special guardianship order to the carers would suffice, or there is a relative who has come forward who could care for the child. The threshold to establish a change of circumstances is low.

Where the court is satisfied that a change of circumstances has been established, it must then, in order to decide whether or not to grant leave, go on to consider all the circumstances affecting the child's welfare (which is paramount), by reference to the welfare checklist set out in section 1(4) of the Adoption and Children Act 2002. Again the bar should not be set too high.

In reaching a decision about granting leave to oppose the court will consider the birth parents' ultimate prospects of success in opposing the adoption if leave were given. This is not necessarily about succeeding in obtaining return of the care of the child to the parents. It is about succeeding in opposing the making of an adoption order. For example, the parents may argue that a special guardianship order or child arrangements order would be more appropriate, or there may be other family members coming forward offering to care. The question is whether the birth parent's arguments are more than just fanciful; whether they have solidity.

Once the judge has reached the point of concluding that there has been a change of circumstances and that the birth parent has solid grounds for seeking leave, the judge must very carefully consider whether the child's welfare really does necessitate the refusal of leave. The judge will have in mind the case law that adoption is the "last resort" and only permissible "if nothing else will do", emphasising that the child's interests include being brought up by the birth parents or wider family unless the overriding requirements if the child's welfare make that not possible. Undertake a wide survey of welfare considerations is likely to be relevant to both these latter considerations.

The local authority will be invited to file a statement setting out its case for refusing permission to oppose the adoption. The social work statement will need to deal with

anything that is known about the birth parents and their current capacity to parent; any changes in their circumstances. There will also need to be clear information about the impact on the child if leave to oppose were given or if they were to return to their birth family; evidence about their circumstances, their attachment to the prospective adopters, their attachments to their birth family, the impact upon the child of ceasing to have a legal relationship with their birth family, the potential impact upon them of leaving their adoptive family (will any disruption be short term and manageable, for example). Would another type of order do? We are also likely to need information about the history of contact since the making of the care orders, and the quality of contact with the birth parents.

Applications for permission to oppose adoption are usually dealt with by way of filing of written evidence and then legal submissions before the judge.

The Court's Decision Upon an Application for Permission to Oppose the Adoption

Even if granting leave, this does not necessarily mean that the birth parents will be successful in opposing the making of the adoption order. If permission to oppose is granted, the case will proceed to a final hearing on the evidence. It is likely at that stage that the adopters may be asked to give evidence. This can be done in such a way as to protect their anonymity.

If permission to oppose the adoption is refused, a final hearing for the making of the adoption order will then be listed at least 21 days later. This is to allow for the appeal period during which a parent may appeal against the judge's decision to refuse permission to oppose the adoption. If no appeal is lodged (which would normally lie to the Court of Appeal), the adoption order is then made.

Following the making of an adoption order, the court will list the matter for a celebration hearing to be attended by the adopters, the child. The birth parents do not have notice of this hearing.

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