

ANNEX 2: Experience Portfolio

Instructions:

- You must provide 3 portfolios which cover a range of matters you have handled from your caseload.
- These portfolios should demonstrate your experience in the relevant area of practice.

(If you have completed portfolios at **Annex 1** you do not need to complete this section).

Date you were instructed in the case: [REDACTED]

Provide an outline of the facts of the case.

I was instructed by a social worker working with a family, whereby two children were residing with their Aunt under a Care Order granted to the local authority in [REDACTED]. Aunt had also acquired parental responsibility as legal guardian under s5 Children Act 1989 (CA 1989). The Aunt communicated to the local authority that she would like to formally adopt the children as both of the children's parents were deceased. The social worker sought legal advice on how this could be achieved.

There were a few particular issues arising in the matter which required further research and consideration. Firstly, that prior to his death, the children's father had made a will leaving his estate to his children. Therefore the social worker was concerned that the making of adoption orders might have a detrimental impact upon the children inheriting their late father's estate.

Secondly, whether the Aunt could consent to the making of a placement order, given she held parental responsibility for the children. Or, whether the court should dispense with her consent.

Lastly, the court appointed children's guardian wished for the placement orders to be made with specified direction that the children only be placed with Aunt for adoption. His concern being that placement orders might mean the local authority would remove the children from Aunt's care and place them for adoption with alternative carers.

ANNEX 2: Experience Portfolio *continued*

Provide an explanation of the law arising in the case and how the law applies to the facts of the case.

There are two main routes to adoption; non-agency route and agency route. The agency route usually occurs via a placement order being made under s21 ACA 2002. This allows the agency to place the child with any adopter to be chosen by the agency, which may include an existing foster carer/family member as in this case. The non-agency route often occurs where there are no care proceedings preceding the placement for adoption, but perhaps where a step-parent seeks to adopt their partner's child. There are also scenarios where a child is 'relinquished' or 'gifted' usually at birth. The mother in this circumstance makes the voluntary decision to consent to her child being adopted by someone else.

In this matter, I made an application for placement orders under s21 ACA 2002. The court may not make placement orders unless a parent/guardian has consented or the welfare of the child requires the dispensing of consent. Usually, parents are alive where placement orders are sought and the local authority would invite the court to dispense with the consent of the parent with parental responsibility. However in this case both of the children's parents were deceased, therefore no parent with parental responsibility was available to consent.

However unusually, the Aunt would was the prospective adopter was also the children's legal guardian with parental responsibility under s5 CA 1989. Therefore, it was questioned whether she could consent to a placement order when she would be the beneficiary. In any event, the Aunt had not completed the prescribed forms with the children's guardian as required by ss19/20 ACA 2002. Therefore I invited the court to dispense with her consent.

Making an adoption order is considered in various case law. The most oft cited case in recent times is Re B-S the test that "nothing else will do". This does not necessarily mean that everything else must be considered.

Re R (A child) [2015] 1 FLR 715, para 59:

"Re B-S does not require the further forensic pursuit of options which, having been properly evaluated, typically at an early stage in the proceedings, can legitimately be discarded as not being realistic. Re B-S does not require that every conceivable option on the spectrum that runs between 'no order' and 'adoption' has to be canvassed and bottomed out with reasons in the evidence and judgment in every single case. Full consideration is required only with respect to those options which are 'realistically possible'.

Provide an outline of any procedural and process matters that arose in the case and how they were dealt with.

The application for placement orders was made on form A50 which is a court template. The applications were lodged with a copy of the children's birth certificates, Annex B reports (child permanence reports) prepared by the social worker, and I prepared statement of facts in support of the applications. The applications were lodged via email to the Family Court with the appropriate fee.

I outlined the timescale in the application that Aunt was to be presented to adoption panel to be recommended as a prospective adopter and be approved by Agency Decision Maker (ADM) as adopter on [REDACTED]. The children were also to be presented to adoption panel to make recommendations that they were suitable for adoption.

Upon receipt of notice, I duly served the Aunt with a copy of the papers and notice of the proceedings given she would be an automatic respondent on the application. I also served CAFCASS as a children's guardian had been appointed. Persons to be served are covered under Practice Direction 14A Family Procedure Rules 2010.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the evidential issues that arose in the case and how they were dealt with.

I submitted a statement of facts in support of the placement order applications. This set out the background of the case including the family composition and the circumstances of the children becoming orphaned. The statement further set out the applicable law concerning placement orders, and the eligibility of the children to be 'placed' for adoption. I outlined the timescales for the procedures taking place internally within the local authority.

In court, I gave submissions on the main issues discussed above. The court was satisfied that the law made clear that the making of placement or adoptions orders would not disinherit the children from their birth father's will. I further articulated the issues concerning the prospect of the Aunt consenting to the making of a placement order. I surmised that, given the prescribed forms had not been completed by the Aunt with support of the children's guardians, then the court had no alternative but to dispense with her consent (with no discourtesy intended). The advocate for the Aunt sought to persuade the court to adjourn the matter in order to allow her to complete those forms. The court determined this would be an unnecessary delay in permanency.

During pre-hearing discussions with the parties, I made my position clear that I did not believe the court had the powers to dictate to the local authority, with whom the children were to be placed with for adoption. This would exceed the powers of the court. The advocate for the children's guardian was keen to push this in court. I gave submissions to the court on the local authority view that the court had no powers to make a specific direction that the children were only to be placed in the care of the Aunt.

The court found in my favour, clearly setting out his powers that were limited to the making of a placement order to the local authority. It could not specify a prospective adopter. The Judge granted placement orders.

Y v United Kingdom (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134:

"Family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained".

Provide an outline of any ethical or conduct issues that arose in the case and how they were dealt with.

The main issue in this matter was the impact that adoption may have on the effectiveness of the late father's will, bequeathing his estate to the children. It felt unethical that the children should be disinherited of their father's considerable estate, if they were to be adopted.

The general rule, set out in section 67(3) of the Adoption and Children Act 2002, is that after adoption the child is regarded for all purposes as the legal child of the adopter or adopters, and has no other legal parents. This can have consequences for the child's interests in property, where those interests depend on the legal relationship between the child and the former legal parent or parents.

The Judge wanted to be completely satisfied that the parties were citing the law correctly, and so he ordered an expert report from Chancery Counsel to provide legal opinion to the court. Their advice confirmed the situation as I understood it to be. It was agreed that the children would still inherit from their father regardless of any future placement or adoption order. The effects of s69(4) (a) and (c) ACA 2002 preserves contingent interest and inheritance from natural parents of which is already in place prior to the making of an adoption order.

There is a significant consideration of the children's human rights to be considered when considering making placement orders for adoption. The children would cease to be the children of their natural parents. This brings Article 8 to be engaged; the right to respect for private and family life. The court may interfere where there is public interest or welfare of child requires it. *Re B (Care Proceedings: Appeal)* [2013] UKSC 33, [2013] 2 FLR, paras [74], [76], [77], [82], [104], [130], [135], [145], [198] and [215]:

Care orders with a plan for adoption, placement orders and adoption orders - are "a very extreme thing, a last resort", only to be made where "nothing else will do", where "no other course [is] possible in [the child's] interests", they are "the most extreme option", a "last resort - when all else fails", to be made "only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do".

ANNEX 2: Experience Portfolio *continued*

Provide an outline of any funding issues that arose in the case and how they were dealt with.

I advised the client department that it could offer to pay financial support to the Aunt under regulation 3 Adoption Support Services (Local Authorities) Regulations 2003. The local authority agreed funding for the applicant Aunt to obtain independent legal advice about the prospect of adoption for the children. As the children were already residing in the care of Aunt it was logical that she applied to adopt the children under the non-agency route. The prospective adopting Aunt took the funding offer and obtained independent legal advice. She applied to adopt both children.

I also advised the client department that they could offer to pay financial support for the Aunt to be represented at the hearings. Given the Aunt would normally be responsible for her own legal fees, it could have caused an inequality of arms. I represented the local authority and the children were also represented by a barrister. Therefore Aunt was grateful to be represented as well.

Provide an outline of the advice provided to the client and the outcome of the matter.

In order to obtain a placement order in the local authority, I had to provide legal advice to the Agency Decision Maker (ADM). The ADM is the person who makes the decisions as to whether the proposed care plan for adoption (or long-term fostering) is the right decision for that child. To assist their decision making, legal advice is provided confidentially.

I provided legal advice in writing, setting out the facts of this case and the applicable law. This involves setting out any prospect of challenges to the making of an adoption order, any alternative care plans or options for the children and whether any threshold or criteria are met.

I advised ADM of the test for severing the relationship between parent and child being very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do." Given the children's parents were both deceased, there were no persons with parental responsibility to challenge such an order being made, but it still had to be in the children's best interests and satisfy a welfare analysis under s1 ACA 2002.

I believe we did discuss the issue of the 'live with' period under s42 (2). My interpretation of this is that there is no requirement for the children to live with the prospective adopter for ten weeks after the formal placement. If that was the case I would have expected Parliament to have set that out. In which case, my view is that once 'placed' for adoption by the adoption agency you can make the application on Aunt's behalf.

If it assists, I wrote the following in my attendance note; [REDACTED] cited an analogous situation arises with 'foster for adoption' in those circumstances, the 10 week requirement does not operate for those ten weeks to come following that formal adoption. So Judge invited any application for adoption to be reserved to him.

ANNEX 2: Experience Portfolio *continued*

Provide an outline of the decisions that you had to make in the case and whether you had to take any strategic decisions in the case.

The court application was dealt with by the Family Court in [REDACTED] which is not the local circuit where I normally practice. It is some 60 miles from my employer's office. The initial hearing was listed on my non-working day of Wednesday. I considered that given the distance and my work pattern, that it would be beneficial to instruct a local barrister to the court to attend the first hearing which was attended. This was a strategic decision taken for the benefit of capacity, time and resource.

I represented at the subsequent two hearings as they were listed remotely so this did not cause any difficulty.

For each hearing I prepared a position statement in advance of the hearing. Given I do not practice that local circuit, I wanted to ensure that I appealed to the Judge and set out my case on behalf of the applicant clearly, concisely and effectively. I find it useful to prepare position statements to articulate my arguments which also reduces the length of time 'on my feet' giving verbal submissions. I find it more appealing to the Judge to have arguments to consider in advance as well. This is a personal strategy that I like to utilise.

Provide a description of any training or development needs you have identified as a result of having dealt with the case.

I found this case to be immensely insightful as I had limited knowledge or experience of adoption matters prior to this case. I had to read the Adoption and Children Act 2002 fully, in addition to the FPR 2010 Part 14 and statutory guidance around adoption. I was unfamiliar with non-agency adoption and so had to research this, utilising LexisNexis and Bailii for case law.

The issue around inheritance, adoption and probate was particularly interesting as this is not a common feature of the type of case I usually deal with. So this provided ample opportunities for additional reading, learning and training. I had to learn whilst working on the case, putting into practice what I was learning as I went along.