



### **Exemplar Litigation Portfolio – Family Proceedings**

Applicants compiling a portfolio of 3 or 5 cases in which they have been involved which demonstrate their experience in litigation in respect of Civil, Criminal or Family Proceedings, may use this template for each case.

**This exemplar has been produced to demonstrate the breadth and depth of information the External Advisers expect to see when they assess applicant's portfolios.**

## Litigation Portfolio Template

Provide a concise description of the case	Date instructed:	<a href="#">Click here to enter text.</a>
<p>I work in the Legal Department of XXXXXX Metropolitan Borough Council. I am in the team which deals with Children issues receiving instructions from social workers. My immediate supervisor is a solicitor and because most cases involve serious welfare issues, we have daily team meetings to agree the way forward and tactical/practical issues.</p> <p>In this particular case passed to me by my supervisor after our morning meeting I was instructed by a local authority social worker working with a family, where two children were residing with their aunt under a Care Order granted to the local authority in (xxxxxxx). The 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 now deceased. The social worker sought legal advice on how this could be achieved.</p> <p>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 (of which we obtained a provisional valuation of circa £125,000) 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.</p> <p>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 could dispense with her consent.</p> <p>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 the aunt's care and place them for adoption with alternative carers.</p>		
Provide a description of law arising in the case and its application to the facts		
<p>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 stepparent 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.</p> <p>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 with 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.</p>		

However unusually, the aunt who was the prospective adopter was also the children's legal guardian with parental responsibility under s5 CA 1989. Therefore, it was questionable 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 extensive case law. An often-cited case in recent times is Re B-S the so-called 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'.

**Describe the procedural and process issues, including the Court and, where relevant, the track to which the case was allocated**

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 the aunt was to be presented to the adoption panel to be recommended as a prospective adopter and be approved by Agency Decision Maker (ADM) as adopter on (xxxxxxx). 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 that 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.

**Explain the evidential issues arising in the case and how they were dealt with**

I submitted a statement of facts in support of the placement order applications. This sets 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 made 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 the case.

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, as to 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 point this out in court. I made submissions to the court on the local authority's 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 that its 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. An important authority was:-

*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 overview 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. However, once I had satisfied myself of the law there were no other ethical issues.

Naturally, in any case concerning welfare of the children there are background ethical issues.

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, I was able to cite authority that the children, having been named in the will would still inherit from their natural father regardless of any future placement or adoption order. The effects of s69(4) (a) and (c) ACA 2002 preserve contingent interest and inheritance from natural parents which is already in place prior to the making of an adoption order.

There is a further 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".

Despite this authority clearly where there is no "adverse interest", e.g. from living parents it is less likely that Article 8 issues will be engaged.

**Provide details of any funding issues arising 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 to 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 that 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, the aunt was grateful to be represented as well.

**Provide details of any research undertaken in the case, relating to law or procedure**

Already outlined above.

**Provide an outline of the decision making in the case and any advice taken on strategic issues in the case**

The court application was dealt with by the Family Court in (xxxxxxx) which is not the local circuit where I normally practice. It is some 60 miles from my Local Authority 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 was the advocate 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 on that circuit, I wanted to ensure that I made a good impression on 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 is usually more appealing to the Judge to have arguments in the form of position statements to consider in advance as well even if they have not been formally ordered. This is a personal strategy that I like to utilise.

**Detail any advice given in the case and how it was recorded**

My professional clients are the Social Work Department and the individual Social Workers. They are experienced in aspects of Law practice and Procedure in this area and what they seek from me is assessment (and sometimes) of evidence, procedural issues, advocacy in court. Naturally as with any client I may form views that differ from their initial assessment and I do not hesitate to give this where appropriate.

Because of the nature of Care Proceedings it is important to create a clear chain of process and decision-making since (Subject to privilege and redaction) the file may be open to forms of inspection. Hence at every stage full notes of advice given; case-plans; and action taken (and indeed considered but rejected) are made.

**Provide information on any training or development needs identified arising from the case**

I found this case to be very useful for professional development 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 Bailli 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.

**Please identify and provide the knowledge and understanding of the learning outcomes you have met through this portfolio**

I am extremely experienced in this field which clearly can give rise to endlessly varied scenarios, facts, and types of evidence. This case gave rise to the need for research into finance and inheritance as an element of child welfare. Awareness of every aspect of the "paramountcy" of welfare considerations is vital and this case provoked a need to be aware of the more subtle ways this might arise.

I confirm that the information contained on this form is accurate to the best of my knowledge and belief.

**Signed:**

**Date:**