

Adoption—Court of Appeal guidance on revocation of placement orders (Re C)

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Family analysis: This case is the first reported decision about applications for leave to revoke a placement order in which permission had been granted to make the substantive application. The application, made by the mother, was ultimately refused by the trial judge. The mother was granted permission to appeal the decision. Having considered the first instance judgment in some detail, the appeal was refused, but the Court of Appeal took the opportunity to make observations about the appropriate way in which such an application should be considered. Mark Senior, counsel at St Johns Buildings Chambers, Liverpool, and junior counsel for the children in the appeal, provides an overview of these observations.

Re C (children) (revocation of placement orders) [\[2020\] EWCA Civ 1598](#), [\[2020\] All ER \(D\) 02 \(Dec\)](#)

What are the practical implications of this case?

[Section 24](#) of the Adoption and Children Act 2002 ([ACA 2002](#)) allows a parent to make an application to revoke a placement order. Such an application from a parent requires the leave of the court, which can only be given if the court finds there to have been a change in circumstances. Hitherto the reported cases about such applications have focused on the leave stage under [ACA 2002, s 24\(3\)](#). This case provides guidance about how courts should approach an application in which leave has been granted, and the court goes on to consider the merits of the application itself.

The Court of Appeal also took the opportunity to restate guidance provided in two earlier cases, *Re G (a child) (care order: proportionality)* [\[2013\] EWCA Civ 965](#), [\[2014\] 1 FLR 670](#) and *F (a child) (placement order: proportionality)* [\[2018\] EWCA Civ 2761](#), [\[2018\] All ER \(D\) 94 \(Dec\)](#), about the correct approach to evaluating risks arising in cases where the options to be considered include adoption and a rehabilitation to parental care. It had been argued on behalf of the appellant that the first instance decision did not properly address the balancing exercise as required by this guidance.

What was the background?

The mother had three children who were made the subject of care and placement orders in November 2018. By May 2019, she felt that her circumstances had improved sufficiently to make an application to court for permission to revoke the placement order, as required by [ACA 2002, s 24\(2\) and \(3\)](#).

In July 2019, the local authority approved a potential couple as prospective adopters for the three children. Because of the terms of [ACA 2002, s 24\(5\)](#), the children could not be placed with the prospective adopters pending the determination of the mother's application.

The proceedings were subject to delay for various reasons. By February 2020, the mother was pregnant by her new partner. The same local authority assessed the mother's situation and concluded that this child should remain in the care of the mother and her partner and that no

proceedings would be warranted for this child. The local authority and guardian conceded that the mother had demonstrated the change of circumstances required for her application to be allowed to proceed.

The substantive application was heard in September 2020. The prospective adoptive placement was still available for the children. Having heard all of the evidence, including a report from an independent social worker, the trial judge evaluated the risks and advantages of both placement options, and determined that a plan for rehabilitation would involve too many risks and unacceptable further delay which may lead to separation of the sibling group. The application was therefore dismissed.

The mother appealed against the decision and argued that the trial judge's evaluation of the comparative advantages and risks of the options was flawed.

What did the court decide?

This was the first time a substantive revocation application had been considered by the Court of Appeal. In its survey of previous authorities it observed that the factors for consideration in the evaluation of risk, as suggested by Lord Justice Peter Jackson at para [2] in *F (a child) (placement order: proportionality)*, were applicable, ie:

- the type of harm that might arise and the likelihood of it arising
- the consequences, ie what the likely severity of the harm to the child would be
- risk reduction and mitigation, ie whether the chances of harm happening would be reduced or mitigated by support services that were or could be made available
- the comparative evaluation, ie in the light of the above considerations how the welfare advantages and disadvantages of the child growing up with their mother compared with those of adoption, and
- proportionality, ie ultimately, whether adoption was necessary and proportionate

Para [23] of the judgment set out the legal framework adopted by the trial judge, derived in particular from *Re B (Care Proceedings: Appeal)* [\[2013\] UKSC 33](#), [\[2013\] 2 FLR 1075](#), and which in summary was as follows:

- that the child's or children's welfare is the most important consideration
- that welfare should involve maintaining connection with birth parents as much as is possible
- any order should interfere with this principle as little as possible consistent with the child's/children's welfare and this approach reflects the right to family life under Article 8 of the European Convention on Human Rights—the right to family life is a right of parent and child which can only be interfered with in a way that is legal, necessary and proportionate
- that the permanent breaking of family ties through adoption should only be approved in exceptional circumstances and to come to that conclusion, it must be the case that parental

care or care by the wider family is shown to be unrealistic either because it is not available or would not meet the needs of the child/children

- that parental or wider family care should not be rejected if it can be achieved with proportionate support and assistance, even if that means for an extended period of time
- a conclusion to approve adoption can only be made by considering each realistic option, that option's strengths and weaknesses, and comparing each option against the other, and
- having identified which option best meets the child/children's needs, the court should determine whether that outcome is a proportionate interference with the rights of the child

The Court of Appeal described this as a 'clear and comprehensive' distillation of the principles to be applied and endorsed this formulation. Ultimately, the court found that the trial judge had carried out the balancing evaluation of the options with the necessary detail, and the appeal was dismissed.

Case details:

- Court: Court of Appeal, Civil Division
- Judge: Underhill VP, Baker and Phillips LJ
- Date of judgment: 27 November 2020

Mark Senior is counsel at St Johns Buildings Chambers, Liverpool, and acted as junior counsel for the children in the appeal. If you have any questions about membership of LexisPSL's Case Analysis Expert Panels, please contact caseanalysis@lexisnexis.co.uk.

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