

## President's Guidance: Listing Final Hearings in Adoption cases

### *Introduction*

1. This Guidance is issued with the purpose of clarifying the legal requirements and practical arrangements for final hearings in adoption applications and adoption visits.
2. In this Guidance:
  - (a) “the 2002 Act” means the Adoption and Children Act 2002;
  - (b) “the 1989 Act” means the Children Act 1989;
  - (c) any reference to a rule by number is a reference to the rule so numbered in the Family Procedure Rules 2010 (FPR 2010);
  - (d) the term ‘judge’ includes magistrates.

### *Previous guidance*

3. This Guidance replaces the ‘President’s Guidance: Listing Final Hearings in Adoption cases’ of 3 October 2008.

### *The adoption application*

4. An application for an adoption order should, if reasonably practicable, be issued in the Family Court in which any relevant Care Order (Part IV of the 1989 Act) and/or Placement Order (Chapter 3 of the 2002 Act) was made in relation to the child, so as to achieve (where possible) judicial continuity, and easier file management.

### *First Directions Hearing*

5. Once an application for an adoption order is issued, notice will be given to those identified in rule 14.3 (including birth parents with parental responsibility), and rule 14.4 (but note that a parent will not automatically receive a copy of the adoption application form: see para 1 PD14A FPR 2010, though the court may direct this). The court may at any time direct any other person to be a respondent to the proceedings (rule 14.3(3)); this may of course include a birth father without parental responsibility.<sup>1</sup> The obligation is on the court to ensure that each respondent to the application is thereafter given notice of each hearing and that they are kept informed of the progress of the case.<sup>2</sup>

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<sup>1</sup> For example, the father without PR who has nonetheless played a full part in recently concluded placement order proceedings; or the father who has indicated to the Local Authority (while discharging its functions under Regulation 14 of the *Adoption Agencies Regulations 2005*: see specifically regulation 14(3)) a wish to apply for party status; or the parent without PR who properly asserts ECHR rights: see *Keegan v Ireland* (No 16989/90) (1994) 18 EHRR 342, *Re H; Re G (Adoption: Consultation of unmarried fathers)* [2001] 1 FLR 646. See also *Re A and Others (Children) (Adoption)* [2017] EWHC 35 (Fam), [2017] 2 FLR 995, at paras 62-65 generally, and specifically in relation to parents who have a contact order.

<sup>2</sup> See *X and Y v A Local Authority (Adoption: Procedure)* [2009] EWHC 47 (Fam), 2 FLR 984.

6. Where an adoption application is made in relation to a child who would, by virtue of any order made within the proceedings, acquire British Citizenship, the Court should notify the Home Office of the application and invite the Secretary of State to indicate (within a defined period) whether he/she wishes to intervene.
7. Upon issue of the application, the court will give standard directions (rule 14.6), which may include the listing of the case for a first directions hearing (rule 14.6(1)(a)(ii)); it may also include the listing of a final hearing (rule 14.6(1)(a)(vi)). Where it considers it appropriate to do so, the court may give the directions provided for in rule 14.8 without listing a first directions hearing (rule 14.6(iv)). A first directions hearing should generally be held within 4 weeks beginning with the date on which the application is issued (rule 14.7). If, prior to the first hearing, a parent gives notice of his/her intention to apply for leave to oppose under section 47(3) or section 47(5) of the 2002 Act, the file shall be referred to the allocated judge who shall consider giving directions for the parent to file and serve a short statement setting out their case in relation to change in circumstances.
8. If a first directions hearing is held, the court will give consideration to the matters set out in rule 14.8. If a birth parent with parental responsibility (see section 52(6)) attends that hearing and seeks leave to oppose the adoption under section 47(3) or section 47(5) of the 2002 Act, or otherwise notifies the court (generally in writing, though not necessarily by way of formal application) of a wish to oppose the application, directions will be given for the listing of that application. If it appears that there is no opposition from the birth parent to the adoption, and everything else is in order, the court will list the application for a final hearing.

*Notice of final hearing*

9. Section 141(3) of the 2002 Act and rule 14.15 place an obligation on the court officer to give to the persons listed in rule 14.3, including birth parent(s) with parental responsibility (unless that parent has given notice under section 20(4)(a) of the 2002 Act), notice of the date and place of the final hearing of an adoption application.
10. The requirement to give notice is mandatory; the general rules about service in Part 6 FPR 2010 apply save as directed by the court or otherwise provided by PD. Notice of the final hearing must be given to any person listed in rule 14.3. If a person to whom service should be effected cannot be found, a formal application should be made for an order that notice of the hearing on that person be dispensed with; this application will be treated as being made under rule 6.36. It is unlikely that service will be dispensed with in relation to a parent with parental responsibility unless there is evidence that significant efforts have been made to trace such a person. The provisions of rule 6.36 (power of court to dispense with service) will be applied exceptionally in relation to notice of the final hearing. By rule 14.16 any person who has been given notice under rule

14.15 has the right to attend the final hearing and, except where rule 14.16(2) applies,<sup>3</sup> to be heard on the question of whether an adoption order should be made.

*Application for leave to oppose*

11. The court shall never list the parent's application for leave to oppose the adoption application, and the final hearing of the adoption application on the same day.
12. If an application for leave to oppose the adoption is listed and determined, and is unsuccessful, the court may then list the application for final hearing.
13. No fewer than 21 days shall elapse between the refusal of leave and the listing of the final hearing<sup>4</sup> (which is now likely to be the final 'adoption' hearing). It is not appropriate to abbreviate this time-period.
14. While it may be possible for the judge to indicate, when dismissing an application for leave to oppose an adoption application, that an adoption order is likely, on the basis of the current information, to be pronounced at the next hearing,<sup>5</sup> it should not be forgotten that at the listed final hearing it is still open to another party (i.e. one who has not been refused permission to oppose the adoption application) to "attend ... and, subject to paragraph (2), be heard on the question of whether an order should be made" (Rule 14.16).

*Practical arrangements for the final hearing*

15. In some cases, the welfare of the child will require arrangements to be made to ensure that the birth parent(s) and the applicant(s) or the child do not meet at or in the vicinity of the court. This will apply particularly to proceedings in which a serial number has been assigned to the applicant under rule 14.2(2). Rule 14.2(5)(b) provides that, in such a case, the proceedings will be conducted with a view to securing that the applicant is not seen by or made known to any party who is not already aware of his identity except with his consent.
16. Rule 14.16(6) provides that the court cannot make an adoption order unless the applicant and the child personally attend the final hearing. However, rule 14.16(6) is subject to rule 14.16(7), (8), which give the court a discretion to direct that the applicant (or one of them) or the child need not attend the final hearing; this provision permits the court, where appropriate, to direct that the attendance of the applicant or the child

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<sup>3</sup> A person whose application for the permission of the court to oppose the making of an adoption order under section 47(3) or (5) of the 2002 Act has been refused is not entitled to be heard on the question of whether an order should be made.

<sup>4</sup> McFarlane LJ in *Re B* [2013] EWCA Civ 421.

<sup>5</sup> See Sir James Munby P in *Re W (Adoption Order: Leave to Oppose); Re H (Adoption Order: Application for Permission for Leave to Oppose)* [2013] EWCA Civ 1177, [2014] 1 FLR 1266, at para 30; *Re W (Adoption: Procedure: Conditions)* [2015] EWCA Civ 403, [2016] 1 FLR 454.

or both of them at the final hearing is not required. Special arrangements can of course be made for the attendance of the applicant(s) and/or child (see further para 19 below).

17. When giving directions for the conduct of the final hearing of an adoption application, the court should consider in particular:
  - (a) whether to give a direction under rule 14.16(7) that the applicant or the child need not attend the hearing;
  - (b) whether to give a direction under rule 14.16(4) that any person must attend the hearing;
  - (c) whether arrangements need to be made to ensure that the birth parent(s) and the applicant(s) or the child do not meet at or in the vicinity of the court;
  - (d) the arrangements for ensuring that the ascertainable wishes and feelings of the child regarding the adoption decision are placed before the court;
  - (e) the facilities at the place where the final hearing is to take place, including:
    - the availability of suitable accommodation;
    - the use of any electronic information exchange and video or telephone conferencing links
  - (f) whether any documents filed in any earlier proceedings should be obtained and made available in these proceedings;
  - (g) whether the social work Annex A report should be disclosed to the parties, and if so in what form.
18. In proceedings in which a serial number has been assigned to the applicant under rule 14.2, it will generally be appropriate to excuse the attendance of the child at the final hearing. It is likely also to be appropriate to excuse the attendance of the applicant, to ensure that confidentiality is preserved. Where in such a case the attendance of the applicant is required, arrangements must be made to ensure that the applicant is not seen by or made known to any party who is not already aware of his identity.
19. In any case in which a direction is given that the applicant or the child need not attend the final hearing, the order and any notice of hearing issued by the court must state clearly that the applicant or the child, as the case may be, should not attend.
20. At a final hearing, if a birth parent with parental responsibility attends and seeks leave to oppose the adoption (and no such application has been made or disposed of during the proceedings), the court will give directions for that application and list it for hearing. If that application is subsequently unsuccessful, the court will then re-list the application for final hearing, giving notice to the birth parent.
21. Each court which hears adoption applications must have arrangements in place to provide information to the relevant parties about any special arrangements made for their attendance at and the conduct of the final hearing.

22. The application for an adoption order should be determined at the hearing of which notice has been given under rule 14.15. If the application is not determined at that hearing, notice of any adjourned final hearing should be given under rule 14.15 and this Guidance shall apply equally to the adjourned hearing.
23. If an adoption order is to be made, it should ordinarily be pronounced at the conclusion of the listed final hearing, but may be deferred for example to enable the applicants to attend in person. The adoption order should be dated and takes effect on the day it is made, unless either the court specifies otherwise (rule 14.25), or grants a stay pending appeal.<sup>6</sup>
24. It is expected that no fewer than 21 days shall elapse after the making of the adoption order before the holding of any adoption visit. However, an adoption visit could exceptionally, in the discretion of the judge, be held within this period; this may be appropriate if, for instance, the birth parent has taken no part in the adoption application proceedings, and some other pressing reason arises for the visit to take place within the 21-day period.

#### *Adoption visit*

25. An adoption visit (“adoption visit”) which follows the making of an adoption order is an informal celebratory occasion held at the discretion of the judge for the benefit of the adoptive parents and child if they desire it.
26. The adoption visit shall not be held prior to the expiry of the appeal period (generally no fewer than 21 days, or more safely 28 days) following the making of the adoption order. Save for the exceptional circumstances referred to in para 24 above, it is not appropriate to abbreviate this time-period.
27. Ideally, the visit should take place at the court where the adoption order was made, and in those circumstances, it should be possible for the visit to be conducted by the judge, or where the order was made by magistrates at least one of the bench, who made the adoption order. It is recognised that for practical reasons, however, the adopters may prefer the adoption visit to take place in the Family Court nearer their home.
28. It is expected that any adoption visit(s) shall take place outside normal court sitting hours. They shall not be listed or referred to in the daily court list.
29. An adoption visit is not a ‘court hearing’; it is not specifically provided for in the rules and should not be introduced into, or confused with, the formal steps of the adoption process.

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<sup>6</sup> See *Re W (A Child) (No 2)* [2017] EWHC 917 (Fam), *Re W (A Child) (No 3)* [2017] EWHC 1032 (Fam), [2017] 2 FLR 1714 (Sir James Munby P).

James Munby, President of the Family Division

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