Current topic

Progress in adoption

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Adoption practice has changed during the past few years, partly because of changes in the law which followed the recommendations of the Houghton Stockdale committee in 1972. These gained statutory expression in the Children Act 1975, and various regulations under the Act have been implemented fairly recently. This paper is a review of the changes.

Provision of an adoption service

There has been a fundamental shift from an emphasis on matching the needs of illegitimate babies and infertile couples to a perception of adoption as an essential component of a wide range of child care facilities. One of the changes, not yet legally enforced but taking place in practice, is the establishment of an adoption service in each local authority area. At present it may be provided either by local authority social service departments or by voluntary, non-profit making societies approved by the Secretary of State.

The legal requirement to provide an adoption service has been accompanied by restrictions on private placements for adoption. Unless the proposed adopter is a relative of the child, nobody can lawfully enter into any agreement or arrange to facilitate placement of a child with a view to adoption. Likewise it is an offence to receive an unrelated child with a view to adoption except through a statutory or approved agency. This is intended to prevent abuse and ill considered placements, but it is not entirely watertight because private foster parents are permitted to seek an adoption order after a child has been with them for 12 months.

The Adoption Agencies Regulations (1983) set out various duties of agencies including a requirement that they must establish at least one adoption panel. Panels have medical advisers who are usually either paediatricians or senior clinical medical officers. Their duties include obtaining medical reports, evaluating them, and advising the agency. Regu-

lations govern confidentiality, disclosure, and transfer of records, and require that they are kept in a secure place for 75 years.

Regulations (the Adoption Agencies Regulations, schedule 3, rule 15 (4)) also define the content of reports on the health of the child and of the applicants; greater detail is required than in the past. The child's report has to include a health history of each natural parent (so far as is possible), a neonatal report, and a full health history and examination including a developmental assessment. Reports on applicants must include a family health history, marital history including (if applicable) the reasons for infertility, medical and obstetric history, a full medical examination, and details of consumption of alcohol, tobacco, and habit forming drugs.

Applications to adopt

The age qualification for adopters has changed slightly in that applications may now be made by people who are at least 21 years old. A sole applicant must not be married, or if married the court has to be satisfied that the spouse cannot be found, or is separated and the separation is likely to be permanent, or is incapable of applying because of ill health. The law does not now prevent adoption by unrelated, unmarried, male applicants nor the adoption of female children by sole male applicants.

When an application for a hearing is filed, a reporting officer is appointed by the court. His or her duty is to ensure that the agreement of both parents in the case of a legitimate child, or of the mother in the case of an illegitimate child, is freely and unconditionally given. Signatures are witnessed and circumstances relevant to the agreement are investigated. A confidential report to the court is then provided.

Panels of guardians ad litem and reporting officers have been formed by regulation, and usually comprise experienced social workers and probation officers. They have to take an independent view and

are not assigned to cases in which they have been involved with arrangements for adoption, nor to cases in which their employing authority has an interest.

There is still a trial period before an adoption order can be made. When an applicant is a parent, step-parent, or relative, or when placement has been by an adoption agency or pursuant of a High Court order, the child has to have his home with the applicants, or one of them, continuously for 13 weeks. Residence before an infant is 6 weeks old does not count and the earliest age at which an order can be made is therefore 19 weeks, as in the past. For all other cases, however, the child must now have had his home with the applicants, or one of them, continuously during the preceding 12 months. If placement was not by an adoption agency, the applicants have to give at least three months' written notice to the local authority of their intention to apply for an adoption order. When an application is made the child becomes a 'protected child' and the local authority must arrange for him to be visited periodically to satisfy themselves about his well-being and to advise about his care.

Parental agreement

There have been several changes in relation to parental agreement to adoption. It must be given freely, with full understanding and unconditionally. The parent cannot now (as formerly) make her agreement conditional on a particular religious upbringing, although the agency must have regard to her wishes. She may give verbal agreement at the hearing but it is more usual to present a written agreement that has been signed and witnessed. It may be withdrawn at any time before the order is made. The agreement of a putative father of an illegitimate child is not required unless he has been made a guardian of the child.

A new procedure allows agreement to be given or dispensed with at an early stage in the adoption process. It is called 'freeing' for adoption, and since 1984 adoption agencies have been able to apply to the courts for a 'freeing order' if at least one parent agrees to the adoption, or if the child is in care of the local authority and an application is being made to dispense with parental agreement. The effect of a 'freeing order' is that the rights and duties of the parent(s) cease and are taken over by the local authority of an approved adoption agency. Parental rights remain with the local authority or agency until an adoption order is made or the freeing order is revoked. Revocation is likely to be uncommon because a birth parent can only apply for it after 12 months if an adoption order has not been made, or

the child is not living with parents with whom he has been placed for adoption. The attraction of the freeing procedure is that it reduces the period of uncertainty for all parties. Adoptive parents often become anxious before an order is made and in difficult cases this can be damaging because they may not commit themselves totally to the child.

Dispensing with agreement

The statute with respect to dispensing with agreement has not changed, and the requirements are essentially the same as in the Adoption Act of 1958. They are that the parent(s) cannot be found or are incapable of giving consent, are withholding consent unreasonably, have persistently failed to discharge the duties of a parent without reasonable cause, have abandoned or neglected the child, have persistently ill-treated him, or have seriously ill-treated him, and there is no likelihood of rehabilitation.

There has been a good deal of case law, particularly in connection with the clause 'withholding consent unreasonably'. It was easily foreseeable that there would be considerable legal argument about what is or is not reasonable. In the germinal case it was stated that welfare of the child must be taken into account because 'a reasonable mother surely gives great weight to what is better for the child'.¹ The view that welfare is of great importance was approved as authoritative in a House of Lords' judgment,² and since that time courts have, in varying degrees, subjugated other considerations to that of the child's welfare. Health and development is objective evidence of welfare and may therefore be important, as it is in wardship proceedings when welfare is the paramount consideration.

In adoption cases the child's interests are not quite paramount but courts do take serious account of the effect of moving him or her from a foster home in which he or she is settled. Time begins to run out on a mother whose child is placed with foster parents with a view to adoption, and a late change of mind was regarded as unreasonable.³ Vacillation may also be taken into account.⁴ On the other hand, it is the capacity of the parent at the time of the hearing rather than her history that is important,⁵ and a reasonable parent is entitled to consider not only the welfare of the child but other factors such as her own wishes and welfare, the welfare of other children, and the wishes and welfare of grandparents.⁶

Custodianship

This is a new type of order that has been available since December 1985. It differs from an adoption

order in that it maintains legal ties between biological parents and their child and it may be revoked or varied. Unlike adopters, custodians (unless they are guardians of the child) are not allowed to arrange for his emigration from the United Kingdom, administer his property, change his name or religion, or agree to his adoption. Biological parents cannot apply for custodianship but it may be sought by any other first degree relative or step-parent or (in the case of illegitimate children) by those who would have been paternal first degree relatives had the child been legitimate. The person having legal custody has to agree, and the child has to have lived with them for three months. Unrelated people may apply with the agreement of the present legal custodian if the child has lived with them for a total of 12 months (including three months continuously) before the order. Anybody may apply without the consent of the custodian if the child has lived with them for three years.

The attractions of custodianship are that it gives legal security to step-parents or other relatives who look after children without facilitating dishonest relationships within families. It may also be used to make long term foster placements secure without severing links with biological parents. It has been recommended that custodianship should be used rather than adoption proceedings in long term fostering cases, unless the case for dispensing with parental agreement is strong.⁷ The problem with custodianship is that it might give rise to future litigation and cause recurrent uncertainty for the child and his foster parents.

Access to birth records

Adoption orders are generally final and their effect

is that children are treated in law as if they had been born to the adopters. Some adopted persons wish to know about their biological parents and to have access to their birth records. In Scotland this has always been possible, but it has been available only since 1975 in England and Wales. The Registrar General is obliged to supply a copy of their birth record to any adopted person over 18 years of age provided that, if the adoption took place before 1975, the person has attended an interview with a counsellor. For adoptions after 1975 counselling is optional; it is available either at the Registrar General's office or at the relevant offices of the social services departments or adoption agencies.

Adoption has changed remarkably since the days when it was predominantly concerned with infant adoption by strangers and intrafamilial adoption. There are now about 2000 adoption orders annually that are made in respect of children in the care of local authorities who are often deprived and difficult, and the adoption of severely handicapped children is common. Legal practice has adapted to the changes, and the Law Commission (which is at present engaged in a review of child care law) will no doubt recommend further legislation.

References

- ¹ Re L (an infant). *Solicitors Journal* 1962;106:611.
- ² Re W (an infant). *All England Law Reports* 1971;2:49.
- ³ Re H (infants). *All England Law Reports* 1977;2:339.
- ⁴ Re P (a minor). *The Times Law Reports* 19 May 1984.
- ⁵ Re H and Re W. *Family Law Reports* 1983;4:614.
- ⁶ Re EL-G (minors). *Family Law Reports* 1983;4:589.
- ⁷ Re M (minors). *Adoption and Fostering* 1985;9:58.

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