



PRESIDENT OF THE
FAMILY DIVISION

SIR ANDREW MCFARLANE

PRESIDENT OF THE FAMILY DIVISION AND HEAD OF FAMILY JUSTICE

ANNOUNCEMENT IN RELATION TO THE IMPACT OF NON-COMPLIANCE WITH THE ADOPTION AGENCIES REGULATIONS 2005 PROVISIONS CONCERNING MEDICAL REPORTS

1. This announcement is intended for all local authorities acting as adoption agencies, all Children’s Guardians and the judges and legal representatives involved in placement and adoption cases.
2. In *Somerset County Council v. NHS Somerset Clinical Commissioning Group & Anor [2021] EWHC 3004* Roberts J. considered a group of ten cases in which the local authority sought declarations under Part 18 Family Procedure Rules 2010 (“FPR 2010”) as to the lawfulness of placement orders made under the Adoption and Children Act 2002. In each case the Agency Decision Maker’s (“ADM”) decision to approve an adoptive care plan was non-compliant with reg. 15 and reg. 17 of the Adoption Agencies Regulations 2005 (“AAR 2005”) as regards the involvement of the agency medical adviser. Since the *Somerset County Council* judgment was handed down in November 2021, it has become clear that a number of other local authorities nationally (acting as adoption agencies) have identified similar issues of non-compliance. The number of local authorities and, hence, the number of affected children is at present unclear.
3. In early March 2022 the President will consider legal argument as to the best and most proportionate means by which cases involving this kind of non-compliance can be addressed. This will include consideration of an approach that does not require a judicial determination in relation to each individual child. A judgment will follow in which guidance will be given as to the approach to be taken by local authorities, Children’s Guardians and the courts.

4. In the light of these developments local authorities are invited to review their policies, practices, and procedures to ascertain whether there are systemic non-compliance issues which raise similar difficulties to those in the Somerset case and if so to begin the task of identifying affected children.

Dealing with non-urgent cases raising compliance issues before the President's judgment

5. In general, if local authorities identify other similar cases, they should not issue any further applications under Part 18 FPR 2010 in respect of non-compliance with the provisions of AAR 2005 relating to medical reports, until the President's judgment has been delivered.
6. Similarly, save where a case for urgency can be made out, local judges should not case manage or determine applications under Part 18 FPR 2010 pending delivery of the President's judgment.
7. It is open to a local authority, where placement proceedings are pending, but not urgent, to apply for leave to withdraw the application, for the ADM to re-take their decision and for a compliant application to be reissued without delay. Each local authority will need to determine whether to take that route or to await the President's judgment.

Dealing with urgent cases raising compliance issues before the President's judgment

8. There may, exceptionally, be small numbers of children subject to placement orders whose circumstances require Part 18 FPR 2010 applications to be determined without delay. These are likely to be children whose prospect of adoption will be significantly damaged by waiting for the judgment referred to above. These children may, for example:
 - (a) Risk losing an adoptive placement for which they have already been matched; or
 - (b) Risk losing a placement for which they are about to be matched;
 - (c) Already be in an adoptive placement which may break down if a pending adoption application is delayed.
9. In any case where genuine individual urgency can be established, the local authority will still be able to apply under Part 18 FPR 2010 for a declaration as to the lawfulness of the

child's placement order. In the first instance those cases will be considered by the Designated Family Judge for each court centre and, where possible, expedited. It is not anticipated that any urgent case will require an oral hearing, provided that all interested parties have the opportunity to make written representations.

10. One of the issues to be considered within the President's judgment will be the process by which birth parents should be notified of the litigation and served, where required, with the relevant case papers. In respect of any urgent cases issued in the interim, following the procedures used in the *Somerset County Council* case, the birth parents' last known address should be identified and a short letter sent explaining that an issue has arisen in respect of their child and asking them to contact a named local authority lawyer for further information. Once a secure and confidential address has been established, a fuller letter can be sent. Birth parents should be offered free legal advice funded by each local authority. Any parents indicating in response that they wish to make representations to the court should then be sent the relevant papers.



Sir Andrew McFarlane
President of the Family Division
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