**Should a putative father/ close relatives be notified of a mother’s decision to relinquish a child for Adoption?**

**A recent decision of the Court of Appeal in A,B, and C ( Adoption: Notification of Fathers and Relatives) (2020) EWCA Civ 41 sets out the approach that Local Authorities and Courts should take in deciding this question and usefully summarises the procedure for relinquishing a child for adoption.**

This case emphasises that in a case of a relinquished child where the mother requests confidentiality, a Local Authority will have to decide at a very early stage, whether an application should be made to court to determine whether or not the putative father or close relatives should be informed and consulted about the birth/ care of the child.

There will be cases where, applying the principles below, the LA can be very clear that no application is required and planning for placement can proceed, but in a less clear cut case, an application should be issued straight away to avoid problems later on.

In relation to a putative father, application needs to be made under Part 19 of the FPRs 2010, unless there are already proceedings for care/ placement orders. In relation to notification of close family members the application should be made under the inherent jurisdiction of the court.

The principles governing decisions (by local authorities as adoption agencies or by the court) as to whether a putative father or a relative should be informed of the existence of a child who might be adopted can be summarised in this way.

1. The law allows for 'fast-track' adoption with the consent of all those with parental responsibility, so in some cases the mother alone. Where she opposes notification being given to the child's father or relatives her right to respect for her private life is engaged under Article 8 and can only be infringed where it is necessary to do so to protect the interests of others.

2. The profound importance of the adoption decision for the child and potentially for other family members is clearly capable of supplying a justification for overriding the mother's request. **Whether it does so will depend upon the individual circumstances of the case.**

3. The decision should be prioritised and the process characterised by urgency and thoroughness.

4. The decision-maker's first task is to establish the facts as clearly as possible, mindful of the often limited and one-sided nature of the information available. The confidential relinquishment of a child for adoption is an unusual event and the reasons for it must be respectfully scrutinised so that the interests of others are protected. In fairness to those other individuals, the account that is given by the person seeking confidentiality cannot be taken at face value. All information that can be discovered without compromising confidentiality should therefore be gathered and a first-hand account from the person seeking confidentiality will normally be sought. The investigation should enable broad conclusions to be drawn about the relative weight to be given to the factors that must inform the decision.

5. Once the facts have been investigated the task is to strike a fair balance between the various interests involved. The welfare of the child is an important factor but it is not the paramount consideration.

6. There is no single test for distinguishing between cases in which notification should and should not be given but the case law shows that these factors will be relevant when reaching a decision:

(1) ***Parental responsibility*.**

The fact that a father has parental responsibility by marriage or otherwise entitles him to give or withhold consent to adoption and gives him automatic party status in any proceedings that might lead to adoption. Compelling reasons are therefore required before the withholding of notification can be justified.

(2) ***Article 8 rights****.*

Whether the father, married or unmarried, or the relative have an established or potential family life with the mother or the child, the right to a fair hearing is engaged and strong reasons are required before the withholding of notification can be justified.

(3) ***The substance of the relationships.***

Aside from the presence or absence of parental responsibility and of family life rights, an assessment must be made of the substance of the relationship between the parents, the circumstances of the conception, and the significance of relatives. The purpose is to ensure that those who are necessarily silent are given a notional voice so as to identify the possible strengths and weaknesses of any argument that they might make. Put another way, with what degree of objective justification might such a person complain if they later discovered they had been excluded from the decision? The answer will differ as between a father with whom the mother has had a fleeting encounter and one with whom she has had a substantial relationship, and as between members of the extended family who are close to the parents and those who are more distant.

(4) ***The likelihood of a family placement being a realistic alternative to adoption****.*

This is of particular importance to the child's lifelong welfare as it may determine whether or not adoption is necessary. An objective view, going beyond the say-so of the person seeking confidentiality, should be taken about whether a family member may or may not be a potential carer. Where a family placement is unlikely to be worth investigating or where notification may cause significant harm to those notified, this factor will speak in favour of maintaining confidentiality; anything less than that and it will point the other way.

(5**) *The physical, psychological or social impact on the mother or on others of notification being given****.*

Where this would be severe, for example because of fear arising from rape or violence, or because of possible consequences such as ostracism or family breakdown, or because of significant mental health vulnerability, these must weigh heavily in the balancing exercise. On the other hand, excessive weight should not be given to short term difficulties and to less serious situations involving embarrassment or social unpleasantness, otherwise the mother's wish would always prevail at the expense of other interests.

(6) ***Cultural and religious factors*.**

 The conception and concealed pregnancy may give rise to particular difficulties in some cultural and religious contexts. These may enhance the risks of notification, but they may also mean that the possibility of maintaining the birth tie through a family placement is of particular importance for the child.

(7) ***The availability and durability of the confidential information****.*

Notification can only take place if there is someone to notify. In cases where a mother declines to identify a father she may face persuasion, if that is thought appropriate, but she cannot be coerced. In some cases the available information may mean that the father is identifiable, and maternal relatives may also be identifiable. The extent to which identifying information is pursued is a matter of judgement. Conversely, there will be cases where it is necessary to consider whether any confidentiality is likely to endure. In the modern world secrets are increasingly difficult to keep and the consequences, particularly for the child and any prospective adopters, of the child's existence being concealed but becoming known to family members later on, sometimes as a result of disclosure by the person seeking confidentiality, should be borne in mind.

(8) ***The impact of delay.***

A decision to apply to court and thereafter any decision to notify will inevitably postpone to some extent the time when the child's permanent placement can be confirmed. In most cases, the importance of the issues means that the delay cannot be a predominant factor. There may however be circumstances where delay would have particularly damaging consequences for the mother or for the child; for example, it would undoubtedly need to be taken into account if it would lead to the withdrawal of the child's established carers or to the loss of an especially suitable adoptive placement.

(9) ***Any other relevant matters****.*

The list of relevant factors is not exhaustive. Mothers may have many reasons for wishing to maintain confidentiality and there may be a wide range of implications for the child, the father and for other relatives. All relevant matters must be considered.

7. It has been said that the maintenance of confidentiality is *exceptional,* and *highly exceptional* where a father has parental responsibility or where there is family life under Article 8. However exceptionality is not in itself a test or a short cut; rather it is a reflection of the fact that the profound significance of adoption for the child and considerations of fairness to others means that the balance will often fall in favour of notification. **But the decision on whether confidentiality should be maintained can only be made by striking a fair balance between the factors that are present in the individual case.**

**Good Practice and Procedure for dealing with a Relinquished Child**

Social workers should refer to guidance in the TRIX manual and seek legal advice if necessary.

In the above case, the protocol jointly developed by CAFCASS/ ADCS <https://www.cafcass.gov.uk/glossary/relinquished-babies-children/> was referred to and it’s guidance to Local Authorities helpfully summarised as follows:-

1. A local authority should take these steps as soon as it is notified that a mother, or mother and father, are expressing a wish that an infant is placed for adoption without notification to either the child's father or extended family:

(i) The local authority files should be checked for background information about the mother and extended family and for contacts with other relevant agencies, such as health and police.

(ii) The allocated social worker, ideally accompanied by an adoption worker, should undertake at least one visit but preferably a series of visits to the mother, or mother and father, if she/they are willing, to discuss:-

* The decision to place the child for adoption.
* The reasons for not notifying the child's father, or extended family, where possible gathering details about the father's background and that of the family.
* The mother's background and information about her family.
* Any cultural issues and how they have affected the decision made by the mother, or mother and father.
* The implications of adoption for the child
* The legal process required to achieve adoption
* Other possible options for the care of the child
* The adoption counselling service and how to access it
* Whether the mother, or mother and father, require any other form of support and how that might be achieved

No assurance should be offered to a parent during the social work visit/s that notice of the birth of the child will be withheld from the father and/or extended family members.

(iii) The mother, or mother and father, must be provided with written information, where available, about the process and adoption counselling services.

(iv) Where the father is identified, the local authority should check its records for any background information known about him.

(v) The placement team must be informed immediately and it should begin the process of finding a suitable placement, preferably with 'foster for adoption' / early permanence carers.

(vi) CAFCASS must be informed as soon as the local authority is notified so that it can allocate a worker to the case for the purpose of meeting with the mother, or mother and father, to discuss and where appropriate take consent for adoption.

2. The local authority should critically examine all information that it receives and, in circumstances where the mother states the identity of the father is unknown to her, the local authority should carefully consider her statement and her explanation to consider whether there is any basis for considering that the statement might be false. If the local authority does form that view~~,~~ it should consider if there is any reasonable way by which the identity of the birth father could be established.

3. The social worker should, as a matter of urgency, seek legal advice to ascertain whether the matter should be placed before the court in all cases where:

(i) the mother opposes notification to the father, if identified;

(ii) the mother knows the identity of the father but is unwilling to disclose this information;

(iii) the local authority has reason to doubt the reliability of the mother's claim that the identity of the father is unknown, or

(iv) the mother is opposed to any notification to her family or the father's family.

4. The legal advisors will need to consider and advise as a matter of urgency whether a Part 19 application or other proceedings should be issued.

5. If a decision is made that a Part 19 application is not required, the local authority should immediately notify CAFCASS, and provide detailed reasons for that decision, to allow CAFCASS to consider this information prior to meeting with the mother, or mother and father, when discussing consent under section 19 or for any later adoption application.

6. As non-means/non-merits tested public funding is unavailable to parents for a Part 19 application (and emergency funding may be difficult to access on an emergency basis even if merits and means tests are met), a local authority should provide the mother, or mother and father, with advice concerning access to independent legal advice and how that might be obtained and funded (including by the local authority considering the funding of such advice). A list of specialist solicitors available in the area should be provided.

7. Where an application is to be made, the social worker should prepare a detailed statement setting out the information gathered and providing the local authority's position regarding the wish of the mother, or mother and father, to relinquish the child without notifying the father and/or extended family members.

**Considerations when an application is issued under Part 19/the inherent jurisdiction**

In cases where an application to the court is issued, the court should be equally alert to the need for urgency, bearing in mind that time has already passed in preparation for the application and the hearing. The following matters will require attention:

* ***Identity of judge****:* If the application is under Part 19, it must be heard in the High Court and appropriate listing arrangements must be made. Upon issue, the application should immediately be referred to the DFJ for consultation with the FDLJ as to whether the application should be allocated to a High Court Judge or a section 9 Deputy High Court judge.
* ***Identity of parties:*** (a) It is not mandatory for a respondent to be named in the application, although it will usually be appropriate for the mother to be identified as a respondent; (b) directions should be given on issue joining the child as a party and appointing a CAFCASS officer to act as Children's Guardian in the application; (c) neither a father (with or without parental responsibility) nor members of the wider maternal/paternal family are to be served with or notified of the application or provided with any of the evidence filed in support of an application.
* ***Case management:*** The application should be listed for an urgent CMH, ideally attended by the CAFCASS officer. At the hearing, consideration should be given to the need for any further evidence, the filing of the Guardian's analysis and recommendations, the filing of written submissions and the fixing of an early date for the court to make a decision.
* ***Receiving the mother's account:*** It is a matter for the court as to whether it should require written or oral evidence from the mother. Given the importance of the issue, the court will normally be assisted by a statement from the mother, whether or not she gives oral evidence, rather than relying entirely upon evidence from the local authority at second hand.
* ***The listing of the hearing*** of the application should allow time for whatever evidence and argument may be necessary, and for a reasoned judgment to be given. Even allowing for the pressure on court lists, these decisions require prioritisation.

Legal People Team

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