**Contacting and disclosing information to family and friends in pre proceedings when parents oppose.**

**Introduction**

* 1. During workshops in 2019 on the Pre-Proceedings process social workers continually raised that they could not approach family members because parents would not agree to this. This briefing makes it clear that this is not the case, explains why and how to approach information sharing in these circumstances.

**Key Case.**

1. **Re H (Care and Adoption - Assessment of wider family) [2019] EWFC Cobb J**
   1. Mr Justice Cobb considered a case where a father in care proceedings did not want his family to know of the existence of his child. The Judge reviewed statute, guidance and case law asking the question what a court, local authority or adoption agency should do when faced with this dilemma.
2. **Statute**
   1. Statute gives strong indicators of the importance of wider family engagement in assessment, pre proceedings and decision making but there are no provisions of either the CA 1989 or the ACA 2002, the AAR 2005, or associated Practice Directions, which absolutely require or place a duty on a local authority to inform, consult, assess or otherwise consider members of the wider family.
3. **Guidance**
   1. Emphasises the unique role which family and friends play in enabling children and young people to remain with people they know and trust if they cannot, for whatever reason, live with their parents. Sets out good practice for Local Authorities working with families and the need to identify and prioritise family placements and ensure families contribute to decisions. Sets out the need to work in partnership with parents and family members.
   2. 'Family and Friends Care: Statutory Guidance for Local Authorities' requires local authorities to publish a policy setting out its approach towards meeting the needs of children living with family and friends' carers.  Such a policy should be designed (para [4.5]) to "promote permanence for children by seeking to enable those who cannot live with their parents to remain with members of their extended family or friends".  This Guidance contains this further important passage:
      1. *"[2.18] … voluntary arrangements for the provision of services to children and families, including the consideration of potential alternative carers, should always be fully explored before any application is made under*section 31 of the 1989 Act*for a care or supervision order. Statutory*Children Act 1989*guidance on court orders requires that a local authority should take steps as soon as possible, perhaps through a family group conference or other family meeting, to explore whether care for the child can be safely provided by a relative or friend, assessing the suitability of possible arrangements and considering the most appropriate legal status of such arrangements."*
4. **Case Law**
   1. Family placements must be fully explored before a plan of adoption can be considered.
   2. Not letting a family know about a child is a fundamental step which should only be justified where there are very cogent and compelling circumstances
   3. There are some exceptions relinquished baby cases where a mother’s wish for confidential and discreet arrangements carry significant weight
   4. Importantly:
   5. YC v United Kingdom (2012) 55 EHRR 33, the court held that the child's best interests will be served by his ties with his family being maintained, except in cases where the family has "proved particularly unfit", adding:
   6. "[134] It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained."
5. ***Summary of the position by Mr Justice Cobb***
   1. None of the provisions of statute, regulations or rules impose any **absolute duty** on either a local authority or the Children's Guardian, or indeed the court, to inform or consult members of the extended family about the existence of a child or the plans for the child's adoption However, the ethos of the CA 1989 is supportive of wider family involvement in the child's life unless not consistent with his welfare
   2. **The court, and/or the local authority or adoption agency, is enabled to exercise its broad judgment on the facts of each individual case, considering all the family circumstances, but making the welfare of the child the primary consideration**
   3. In exercising that broad discretion, it is important to bear in mind
   4. There will be cases (if, for instance, there is a history of domestic or family abuse) where it would be unsafe to the child or the parent for the wider family to be involved in the life of the child, or even made aware of the existence of the child.
   5. There will be cases where cultural or religious considerations may materially impact on the issue of disclosure.
   6. There will be further cases where the mental health or well-being of the parent or parents may be imperilled if disclosure were to be ordered, and this may weigh heavy in the evaluation.
   7. But in exercising judgment – whether that be by the local authority, adoption agency or court **–the wider family should not simply be ignored on the say-so of a parent.**
   8. Generally, the ability and/or willingness of the wider family to provide the child with a secure environment in which to grow (section 1(4)(f)(ii) ACA 2002) should be carefully scrutinised, and the option itself should be "fully explored"
6. **Information Sharing Guidance – Advice for Practitioners July 2018 – key extracts**

* Seek agreement to sharing information if possible.
* **Information may be shared without consent where there is a lawful basis to do so**
* Base decisions on the safety and well-being of subjects
* Ensure that the information shared is necessary for the purpose it is being shared
* Keep a record of the decision and what has been shared.
* The GDPR and Data Protection Act 2018 do not prevent, or limit, the sharing of information for the purposes of keeping children and young people safe.
* Relevant personal information can be shared lawfully if it is to keep a child or individual at risk safe from neglect or physical, emotional or mental harm, or if it is protecting their physical, mental, or emotional well-being.

1. **Conclusion**
   1. A decision can be made to approach family members where parents object, but this should be based on a firm footing and consider all the relevant circumstances and possible difficulties.
   2. Where decisions are made, parents should be given the opportunity to approach family members themselves in the first instance.
   3. The basis for decisions should be carefully recorded on the child’s file.