

Informing wider family members as to the existence of a concealed child in public children proceedings (Re A and Others)

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Family analysis: Three conjoined appeals were heard on the issue of whether fathers or other family members should be notified in concealed pregnancy cases where plans for the child's future are to be made and adoption is a realistic option for the court. The Court of Appeal gave guidance on the principles that govern decisions by both local authorities as adoption agencies and the courts as to whether a putative father or relative should be informed of the existence of a child and proceedings. Tahmina Rahman, barrister at Four Brick Court Chambers, who represented the local authority in relation to 'Case B', considers the case.

Re A and others (adoption: notification of fathers and relatives) [\[2020\] EWCA Civ 41](#), [\[2020\] All ER \(D\) 136 \(Jan\)](#)

What are the practical implications of this case?

This case is now a key authority in cases where the existence of a child is concealed from family, and adoption (and potentially foster care) is a realistic option.

The Court of Appeal considered what the duties of local authorities to notify and/or assess fathers and relatives are. It has made it clear there is no statutory obligation on a local authority to make enquiries in every case and that the issue of notification is a matter of discretionary judgement on the facts of each case.

However, the Court of Appeal also set out guiding principles and practical steps that should be followed by decision-makers—namely local authorities as agency decision-makers and the courts—in such circumstances.

What was the background?

The issue before the Court of Appeal was whether, irrespective of the mother being the only person whose formal consent is required for adoption (as was the situation in two of the conjoined appeal cases), the father and/or other relatives should be notified of the birth and the proceedings relating to the child.

Case A concerned a young student who wanted her child A's birth to be kept secret from the father and family. She agreed to A's adoption. The trial judge decided there was no obligation to inform the family. The guardian appealed. The appeal was allowed.

Case B-B's mother argued there was a risk of abuse from her family and from the putative father. She was also scared of her family's reaction to her having a child out of wedlock and with someone of a different race and cultural heritage. B's mother wanted to care for B, but the local authority had significant concerns. The mother appealed a decision by the trial judge to inform her relatives of B's existence. The appeal was dismissed.

Case C concerned a baby (C) who was relinquished at birth. C's parents were married and had other children. C's mother said C was conceived as a result of rape. The mother appealed a decision by the court to notify the father and wider family. The appeal was dismissed.

The Court of Appeal considered the statutory material that underlines the importance of engaging the wider family in the adoption process. It looked at whether the concepts of the 'no delay' principle, the paramountcy principle and welfare checklists apply when local authorities consider whether to notify fathers or family members of a child's birth or proceedings.

The court also reviewed European case law in the context of Articles 6 and 8 of the European Convention on Human Rights and undertook a comprehensive review of domestic case law.

What did the court decide?

The Court of Appeal surmised that in domestic law, a consistent approach is taken by the family courts by identifying arguments for and against disclosure to putative fathers and relatives. The court summarised the authorities on withholding information in confidential adoption reports and on notifying fathers and relatives, both where disclosure was directed and cases where disclosure was withheld.

The Court of Appeal concluded that there is a body of authority, both at first instance and on appeal, that affirms that local authorities and courts have a discretion as to whether fathers and families are informed (para [59]). The discretion requires the identification and balancing of all relevant factors. Case law makes it clear that a mother's right to confidentiality is not absolute, and the presence/absence of family life is important but not decisive, but where it exists there needs to be strong countervailing factors to justify withholding information as to the child's birth and proceedings.

Although ultimately each case is determined on its particular facts, in most cases disclosure will be appropriate and absence of notification will be the exception. The welfare of the child is important, but there is no suggestion the paramountcy principle applies to the exercise of discretion as to notifying family members.

In summary:

- the core principles (welfare paramountcy, welfare checklist and prejudicial effect of delay) do not directly to a decision about notifying a father or relative about a child's existence or proceedings (para [83])—the principles are 'central' to the notification decision but are not directly engaged (para [84])
- consistency applies—there is no difference in how the law applies to decision-makers whether the courts or social workers, and similarly there is no hierarchy between relatives, eg father and grandparents (para [85]) and the approach will depend on the facts of the case
- a decision should be made at a 'very early stage' as to whether an application to the court should be made to determine whether family should be informed and consulted and in some cases the local authority can make the decision whether to proceed on the basis of mother's consent but in other 'less clear-cut' cases the an application should be issued—an application in relation to a putative father should be made under Part 19 of the Family Procedure Rules 2010 unless there are issues of significant harm which make it necessary to apply for care and placement orders and the Court of Appeal suggested an equivalent application under the inherent jurisdiction can be made where a local authority has doubts about notification to a close relative (para [86])
- at para [88] there is practical guidance for applications
- at para [89] there is, for the first time despite the considerable case-law, a helpful summary of principles governing decisions (by local authorities as adoption agencies or court) as to whether a putative father or relative should be informed of a child/proceedings

This is now a key authority on concealed pregnancies and the duty of disclosure.

Notably counsel for all the parties in the conjoined appeals contributed to a protocol for local authorities as referred to in para [87] of the judgment which should hopefully be approved for wider circulation in due course.

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