

FAMILY LAW NEWSLETTER



AUGUST 2019

CASE REPORT:

Re H (Care and Adoption Assessment of Wider Family) [2019] EWFC 10

The 'Duty' to Assess

How far must the local authority go in order to notify and assess the wider family of a subject child?

A recurring theme in the family courts at the moment is the identification of wider family members as alternative carers at a late stage in proceedings. This can lead to adjournments and therefore delays, causing matters to go out of track and a necessity for 'twin tracking' for the purposes of any proposed adoptions.

However, this raises the following questions:

1. How far must the local authority go to notify wider family members of the existence of the child or children?
2. What is the position when certain family members are not put forward by the parents as potential alternative carers and/or do not wish these family members to be involved?

On 14th February 2019, Mr Justice Cobb handed down a judgment in respect of these issues in the High Court (*Re H (Care and Adoption Assessment of Wider Family) [2019] EWFC 10.*)

Facts

The application concerned a baby boy, aged five months. He was in foster care subject to an interim care order with public law proceedings launched in respect of him as soon as he was born. The proceedings were case-managed to a contested final hearing and the parents underwent a parenting assessment. An application for a placement order had not yet been issued.

The local authority Agency Decision Maker (ADM) wished to know whether there were other family members who may be suitable to care for the boy if the parents were assessed as being unsuitable. The wider maternal family knew of the existence of the child but did not wish to be considered as alternative carers. The father was opposed to the local authority notifying his family of the child's existence.

The local authority sought guidance from the court on whether it should take steps to track down the paternal family and notify them with a view to assessment. The local

authority was in favour of taking such steps and had the support of the guardian due to the draconian and final nature of a plan for adoption.

The local authority's argument was that these circumstances were not the same as when the court permits a parent and adoption agency to make discreet and confidential arrangements for the adoption of a 'relinquished' child (parents deciding close to or following birth for the local authority to make discreet, confidential and swift arrangements for the baby's placement with a permanent substitute family).

Is there a duty to assess?

The parties in *Re H* made an assumption premised on one of the key principles of the Children Act 1989 (as suggested by s.17 and 22C in particular), namely that children are generally best looked after within their own family, save where that outcome is not consistent with their welfare. There are continuous references throughout the Children Act, the Adoption Act and even in the Public Law Outline to considerations of the ability and willingness of other individuals or relatives to care for the child.

A high-quality assessment is one which considers and/or involves the wider family. However, the bottom line is that there is no freestanding duty to assess wider family who are unaware of the existence of the child. Whilst there are strong indicators of the importance of wider family engagement, there is nothing which absolutely requires or places a duty on a local authority to inform, consult, assess or otherwise consider members of the wider family of a child in these circumstances, i.e. where they are unaware of the child's existence, have not been put forward, and are opposed by one or both of the parents.

A care order for a plan for adoption should be a last resort where no other course is possible in the child's best interests. Ideally, a child should be brought up by a member or members of his natural family. However, if family members are identified as potential carers, it is not contemplated that the local authority duty to consider them extends to a duty to uncover every stone or to exhaustively examine the ground before concluding that a particular option is not realistic. The court is only concerned with realistic options.

Key points:

- The local authority has a duty to safeguard and promote the welfare of children (s.27 Children Act 1989) which includes making enquiries into the identification of possible alternative carers in keeping with the best interests of a child. The information from such enquiries can come from the parents or other sources. Early identification can enable the relevant assessments to take place in keeping with a child's timescales.
- There is no absolute duty on either the local authority, the children's guardian or the court to inform or consult wider members of the extended family about the existence of a child or plans for the child's adoption.
- The court and/or the local authority is enabled to exercise its broad judgment on the facts of each individual case, taking into account all of the family circumstances, but attaching primacy to the welfare of the subject child. The

court is only concerned with realistic options for the child (see further *Re BS* [2013] EWCA Civ 1146; *Re R (A Child)* [2014] EWCA Civ 1625).

- Appellate case-law offers clear guidance on the route by a court or adoption agency in reaching a decision to place a child for adoption (when adoption is generally opposed by the parents) but offers no clear steer on whether a local authority is required to notify and/or assess wider family members of a child's existence when they are not proposed by or are opposed by the parents.
- A care order with a plan for adoption against parental wishes should remain a last resort where no other course is possible in the child's interests.
- The local authority or adoption agency is entitled to exercise its broad judgement on the facts of each individual case, taking into account all of the family circumstances, but attaching primacy to the welfare of the child. The wider family should not be ignored simply on the say-so of a parent. Generally, the ability and/or willingness of the wider family to provide the child with a secure environment in which to grow should be carefully scrutinised, and the option itself should be 'fully explored'.

Emma Cross, Barrister

OTHER NEWS:

Devon Chambers welcomes two new members

Pupils Danielle Metters and Holly Rust have accepted offers of tenancy to commence at the end of their pupillage on 1st October 2019. Devon Chambers congratulates them on all their hard work.

THE FAMILY TEAM:

Victoria Hoyle (Head of Family)
Nicholas Bradley
Sally Daulton
Amy Edinborough
Neil Whittle
Emma Cross
Althea Brooks
Danielle Metters
Holly Rust



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