New Court News

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New Court Blog

newcourtchambers.com/blog

The New Court Blog is regularly updated with the latest family law and COP news. To visit our blog go to newcourtchambers.com/blog

New Court News: Issue 13

As we welcome our readers to this 13th Issue of our newsletter it is important to acknowledge the loss of significant individuals who have impacted on our profession.

Adding briefly to what has been made clear about Nick Crichton, he was a key architect of the Family Court structure and humanistic approach. His development and support of Wells Street and the subsequent introduction of FDAC is significantly as a result of his vision, commitment and unwavering belief that change could happen, for the better. His influence extends well beyond the four walls of his courtroom. He was simply a 'tour de force'.

Paul Randolf was a member of New Court for over 10 years before moving Chambers when we specialised as a Family Law set of Chambers. He was hugely committed and gave back significantly through his pupillage supervision. It is his passion for mediation that Paul should be rightly praised for as we now see it as an essential legal skill, integral to our professional life.

Devon Evan's loss will have come as a blow to family, friends and colleagues and a reminder that as we relentlessly march on through our working lives, it is the likes of Devon who make our working lives so much easier. His willingness to help and his smile eased our working days.

As we ease into Summer, it is important to pause to reflect on how our wellbeing is fundamental to our daily lives. We will do well to properly commit to ensure we spend valuable time ensuring our health is prioritised.

A big thank-you to Rob, Wing and Niamh as the contributors to this edition and Jemimah, our new editor.

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New Court News

by Jemimah Hendrick

Chambers and Partners 2019 and Legal 500

Chambers is thrilled to be once again recognised as a leading set for family law in the 2019 edition of Chambers & Partners.
As well as a chambers ranking; 4 members of chambers have also been individually ranked:
Giles Bain (family: children)
Christopher Poole (family: children)
Sally Jackson (family: children and matrimonial finance)
Philippa Jenkins (family: children)
In addition, Giles and Christopher have also been ranked in the 2019 edition of Legal 500.

Book Published

Sabrina Polak has contributed to the 3rd edition of 'Child Case Management Practice' which was published by Family Law Lexis Nexis.
It is described as *'A handbook for the busy practitioner and judge, designed to provide core skeleton arguments for the most common – and some less common- children applications'* – Law Society Gazette.

London Legal Walk 2019

New Court Chambers will once again be taking part in the London Legal Walk on 17 June 2019. This is a very worthwhile cause especially in the current climate of cuts to legal funding which often affects those that most need it. The New Court team would be very grateful for any donations and these can be made at:

https://uk.virginmoneygiving.com/NewCourtChambers19

Welcome to Sam Prout and Meredith Major

Chambers is pleased that Sam Prout has accepted an offer of tenancy following his completion of pupillage in October 2018. Sam was called to the Bar in 2016 and accepts instructions in all of Chambers' core practice areas. We know Sam is going to be an invaluable addition to Chambers and look forward to following his bright career.

Chambers is also delighted that Meredith Major has become a tenant following her successful completion of pupillage in January 2019. Meredith was called in 2015 and also accepts instructions in all of Chambers' core areas. Meredith has shown dedication and commitment to her career at the bar so far and Chambers looks forward to watching her success.

New Pupils

Chambers offers a warm welcome to Kezia Kernighan and Niamh Daly who joined us as new pupils in October 2018. They have been on their feet since April 2019 and accept instructions on all of Chambers' practice areas.

Births

Congratulations to Stephanie Hine, Julia Feely, Robert Wilkinson and Sabrina Pollack who have all increased the membership of chambers wider family by becoming parents. We wish them all luck and happiness on this exciting adventure – and not too many sleepless nights!

News continued …..

Marathons for HASTE

Chambers offers its hearty congratulations to Sam Wallace on completing the London Marathon on 22 April 2018. Sam raised a fantastic £3158 for Haste - a charity which helps provide education in Africa including building schools, one of which now bears the 'Wallace' name. Not to stop there, Sam is running the Berlin marathon in September 2019 again for HASTE – we wish him every luck in this; he had best get training! Please keep an eye out for Sam's sponsorship page so that we can help him beat his last total!

More information can be found about this worthwhile charity at https://hastecharity.org.uk/

Nisa- Nashim, Sister's in Law Launch

On the 15th November 2018, sisters in Law, an occupational group of Nisa-Nashim, was launched by Raisa Saley and Elissa Da Costa-Waldman, the co-chairs of the group, assisted by Saiqa Choudhury and Sabrina Polak. We are very grateful to our Heads of Chambers at New Court, Chris Poole and Giles Bain, for allowing chambers to sponsor this event and to our clerks who helped enormously with its administration.

Saiqa Choudhury, kicked off the CPD part of the evening discussing the recent case of ***Akhter v Khan*** in which the court appeared, unusually at first blush, to validate a religious marriage. It was an interesting and informative presentation and afterwards we mixed and mingled over refreshments.

Watch this space for our programme of events for 2019 and if you want to sign up to receive information about them please email either rsaley@newcourtchambers.com or edwaldman@newcourtchambers.com.

Deprivation of Liberty - When is Valid Consent No Consent?

By Robert Wilkinson

Over the last 12 to 18 months there has been a drastic increase in applications by Local Authorities for Deprivation of Liberty orders (DOLs) as the supply of Secure Accommodation Units, authorised by the Secretary of State, has become more and more throttled. The Department for Education, as of 31 March 2018, reported 255 secure accommodation places in England and Wales, and for those who practice in the area of public law children, that number will sound alarmingly low given the frequency with which the court is asked to consider some form of secure order.

The complex issues which arise in DOLs applications came up for consideration in the Court of Appeal recently when the case of *Re T* [2018] EWCA Civ 2136 was heard.

The appeal followed decisions by Mostyn J on 23 January 2018 and 22 March 2018, where he had been asked to make an order depriving a 10 year old of her liberty outside of the statutory scheme for secure accommodation under the Children Act 1989, s 25. The judge made the order sought on both occasions and the focus of the appeal was on whether the court could make a DOL order in circumstances where the young person was said to validly consent to the proposed regime. Whilst this was the initial focus of the appeal, the Court of Appeal expressed concerns that there were wider issues in respect of applications for DOL orders which required consideration and so invitations were extended to CAFCASS Cymru, the Welsh Government and the Association of Lawyers for Children (ALC) so that they could assist the court.

But first, the legal framework…

Under s25 CA 1989 a Local Authority which is looking after a child may not place that child in accommodation for the purpose of restricting their liberty ("secure accommodation") unless that child has a history of absconding and is likely to abscond from any other description of accommodation, and if he/she absconds they are likely to suffer significant harm, or that if he/she is kept in any other description of accommodation he/she is likely to injure himself/herself or others. If the court is satisfied that the criteria are met then the court can authorise the Local Authority to place the child in such a placement and specify the maximum period for the placement.

To be considered secure accommodation the placement must have been authorised by the Secretary of State (The Children (Secure Accommodation) Regulations 1991, Reg 3).

When there is no such 'authorised' placement Local Authorities are increasingly turning to the inherent jurisdiction of the High Court to circumvent the lack of placements and authorise the deprivation of a young person's liberty in placements which haven't been authorised by the Secretary of State.

When considering such applications the starting point is Article 5 of the ECHR which states that nobody shall be deprived of their liberty save in certain circumstances, the most relevant of which in the context of public law children proceedings is the detention of a minor by lawful order for the purpose of educational supervision (Art 5(1)(d)).

The issue that is most grappled with before the courts is the first limb and whether the circumstances of the placement amounts to 'confinement in a particular restricted place for a not negligible length of time'

The case of *Cheshire West and Chester City Council v P* [2014] UKSC 19 is the 'go to' case for the test which must be applied when considering applications for DOL orders.

Baroness Hale set out the essential character of deprivation of liberty at paragraph 37:

> *"The second question, therefore, is what is the essential character of a deprivation of liberty? It is common ground that three components can be derived from Storck, paras 74 and 89, confirmed in Stanev v Bulgaria [2002] 55 EHRR 596 paras 117 and 120, as follows:*
>
> *The objective component of confinement in a particular restricted place for a not negligible length of time;*
>
> *The subjective component of lack of valid consent;*
>
> *The attribution of responsibility to the state."*

The latter two of this 3-part test are usually uncontroversial. Those representing local authorities will rarely find the young person agreeing to the deprivation of liberty and it doesn't take long to find that it is the Local Authority who is the one responsible! The issue that is most grappled with before the courts is the first limb and whether the circumstances of the placement amounts to 'confinement in a particular restricted place for a not negligible length of time'.

However, it was the second limb, that of 'valid consent', which was the focus in *Re T.*

As a prelude, it is worth first considering *Local Authority v D* [2016] EWHC 3473 (Fam) which involved a 15-year-old boy, C, who was the subject of a DOL application under the court's inherent jurisdiction. The Local Authority had already obtained a full care order for C who was placed in a residential unit. It was the circumstances of the placement which the Local Authority considered amounted to a deprivation of C's liberty under Art 5. Although the court found C to be *Gillick* competent to consent to the placement, the question was whether that consent was 'valid'.

Keehan J concluded that C had sufficient understanding of the information relevant to the decision to give valid consent to the continuation of the restrictive regime and was, therefore, capable in law of consenting to his confinement in the unit. In addition, the judge found that although the use of the inherent jurisdiction to restrict C's liberty was compliant with Art 5 there was in fact no need for the court to exercise its inherent jurisdiction given the valid consent of C.

Now, back to *Re T* and its particular circumstances.

Mostyn J made it clear at the outset of his first, ex tempore, judgment on 23 January 2018 that when exercising its powers under the inherent jurisdiction, the court should *"conform as much as possible with the prescriptions within section 25 and its subsidiary regulations. Were the court to devise an alternative scheme that deviated significantly from the terms of section 25 (or its Welsh equivalent) there would, as I have said, be a danger of criticism of judicial activism in conflict with a Parliamentary directive."*

> *'Whether a lack of valid consent is a pre-requisite to the exercise of the inherent jurisdiction authorising restriction of the liberty of a young person?'*

It followed that when considering the issue of valid consent under the DOL application, Mostyn J further considered whether such a requirement was a feature of the equivalent application for a Secure Accommodation Order under s.25 CA 1989 – namely whether, to make such an order under s.25 there has to be a lack of valid consent? In other words – if the young person agrees with the Local Authority's application for a Secure Accommodation Order, can the order in fact be validly made?

Having concluded that a lack of consent cannot be *"an acceptable construction of the provision"* (i.e. under s.25) because otherwise the young person's consent would perversely prevent the order being made, Mostyn J asked whether there needs to be a lack of valid consent in a 'mirrored' DOL application. He was, ultimately, persuaded that the numerous ECtHR authorities on the point demanded strict compliance with the 'valid consent' test.

On ultimately deciding that there was no such valid consent, Mostyn J said:

"The consent in question must be an authentic consent, and it must be an enduring consent. This means that the court will have to make a judgment as to whether the consent is going to endure in the short to medium term, or whether it is a merely evanescent consent. If the court is satisfied by the history that the consent in question is merely evanescent and is not likely to endure, then, in my judgment, that is not relevant consent for the purposes for which I am concerned. This is, to my mind, to state the obvious. So the court can only make the order in question if it is satisfied that there is a lack of valid consent in the way that I have described it: authentic, and likely to endure."

When the Local Authority returned to court just two months later following a breakdown of the placement, again seeking the court's approval for a further DOL, this time in a new placement where it was said the young person had settled, Mostyn J had no hesitation in finding that the consent given was even less authentic and enduring than the first time given the circumstances which led to the breakdown of the first placement. Consequently the second DOL was granted – and both the first and second were appealed by the child herself.

Although by the conclusion of the appeal the point had been conceded on behalf of the appellant child, the President provided some brief reasons in respect of the fundamental question – whether a lack of valid consent is a pre-requisite to the exercise of the inherent jurisdiction authorising restriction of the liberty of a young person?

His conclusion was that it was not a jurisdictional requirement either for making a statutory Secure Accommodation Order or for the High Court exercising its inherent jurisdiction for four reasons:

1. The consent, or otherwise, of the young person is not a relevant factor in the statutory scheme;
2. There is no domestic authority to the effect that it is necessary to find an absence of valid consent before the court may authorise a local authority to restrict the liberty of a young person;
3. To hold otherwise would be to confuse the distinct temporal perspectives of Art 5 and an application for authorisation;
4. It would also mistake the purpose of an order under the inherent jurisdiction authorising the placement of a child in the equivalent of secure accommodation.

In drawing these reasons together, the President concluded (para 81):

"…once it is seen that the court's power under s 25 / s 119 is not dependent upon any question of consent, the difficulties that arose in this case, as it was presented to the judge and, initially, to this court, disappear. The fact that any consent may or may not be 'valid' or 'enduring' on the day the order is sought, or at any subsequent point, or that a 'valid' consent is later withdrawn, is irrelevant to the scope of the court's powers, whether they are exercised under statute or under the inherent jurisdiction of the High Court. The existence or absence of consent may be relevant to whether the circumstances will or will not amount to a deprivation of liberty under Art 5. But that assessment is independent of the decision that the court must make when faced with an application for an order authorising placement in secure accommodation, registered or otherwise.

This approach, where the question of whether or not an Art 5 deprivation of liberty occurs depends upon the facts on the ground at a particular time and is not necessarily required by, or created by, the court order but by the act of those caring for the child under the court's authorisation, accords with the ECtHR jurisprudence summarised at paragraph 23 and onwards above.

Further, the need for there to be an absence of valid consent before the Storck criteria are established, does not mean that the presence of an apparently valid consent prevents the circumstances from amounting to a deprivation of liberty (see De Wilde, Ooms and Versyp, Storck para 75 and Buzadji). In terms of domestic authority, paragraphs 23 to 31 of MM and PJ could not be more clear – "where conditions amounting to a deprivation of liberty are compulsorily imposed by law, the agreement of an individual cannot prevent that compulsory confinement from constituting a deprivation of liberty". In like manner, it is to be recalled that the court in De Wilde stated:

"Finally and above all, the right to liberty is too important in a "democratic society" within the meaning of the Convention for a person to lose the benefit of the protection of the Convention for the single reason that he gives himself up to be taken into detention. Detention might violate Article 5 even although the person concerned might have agreed to it."

The President came full circle at the conclusion of the judgment by expressing concern for the sheer volume of cases now before the court involving the placement of young people in accommodation which is secure but not approved by the Secretary of State. He rightly describes the situation as "fundamentally unsatisfactory". This is especially so given that the court (and very often the Local Authority seeking the order) is not able to inspect the accommodation and must simply rely on the placement's literature (if any is provided at all).

With ever increasing strains on the public purse, it seems unlikely that there will be a relaxing of the demand for authorised Secure Accommodation Units and so DOL applications are likely to become an increasingly prominent part of the Family Court's work. And with the pending Supreme Court decision in the appeal from *Secretary of State for Justice v MM and Welsh Ministers v PJ* [2017] EWCA Civ 194 [*'MM and PJ'*] on the issue of Art 5 and consent, albeit in a mental health context, there may be more developments yet to come.

STOP WHAT YOU ARE DOING. NOW.

Put down your phone, tablet, or move away from your computer, whatever device you're reading this on. Go for a walk, have your lunch, make a hot drink, talk to a colleague or friend, and then come back.

Really.

Mental health awareness is being increasingly promoted in the media these days; by the Duke and Duchess of Cambridge and the Duke of Sussex, Prince Harry, in Heads Together and World Mental Health Day which took place on 10 October 2018 being only two examples.

However, we must not ignore our own mental health and well-being, particularly as professionals working in a field that often involves intellectually challenging, emotionally and physically demanding cases and sensitive issues, sometimes under great time pressure. Performance and results are key to our livelihood and self-esteem and can be at the cost of our own personal lives and relationships with family and friends close to us.

One in four people suffer from a mental health problem in the UK each year. As found by the Adult Psychiatry Morbidity Survey (2014), 1 in 6 people in the past week experienced a common mental health problem. Anxiety and depression are the most common problems, with around 1 in 10 people affected at any one time.

In 2015, the Bar Council led research on Wellbeing at the Bar. Some of the findings were as follows:

- 1 in 3 three found it difficult to control and stop worrying
- 59% are very self-critical most or all of the time
- 1 in 6 tend to feel down or in low spirits most or all of the time
- 1 in 6 worry about their health most or all of the time
- 54% enjoy refreshing good quality sleep only some of the time
- 64% are not able to take breaks most or all of the time
- 47% report work pressure as 8 or above (out of 10)
- 62% are unable to integrate work and outside of work most or all of the time

Positive findings included the strong sense of purpose, a sense of belonging, challenge and variety as well as a sense of professional standing.

We've all experienced stress and pressure and we may find that is a healthy stimulant but too much can have an adverse impact on our performance and health. An important question is how do we ensure that we achieve and maintain Wellbeing?

Five drivers of personal well-being have been identified:

Connect - Human beings are social creatures and we instinctively know that we need good quality relationships to lead a fulfilled life. Make time to spend with your friends and family.

The Mental Health Foundation found that 42% of us have felt depressed as a result of loneliness. Oxytocin, the hormone responsible for affiliation, protects us from cardiac ill-health. This hormone is released when we have a physical presence with people we care about. A sense of connectedness through social media and apps is positive, but does not make up for actually spending time with people.

Be active – The risk of depression is lowered by 30%. Cognitive decline is also reduced by up to 30%. Exercise has a powerful impact on the increased production of endorphins (those 'feel good' hormones) and a reduction in cortisol levels (the 'stress' hormone). Studies demonstrate that physical activity also benefits concentration and focus. Memory and mood are boosted by being more active, as is productivity. These are all hugely important skills for your successful career. However, remember that working out intensely may have a negative impact on an already stressed body and mind. If you are experiencing symptoms of extreme fatigue, a hard bout of physical activity will put the body under too much strain. At times like these, choose gentle stretching or walking instead and respect the repair and recovery that your body requires.

Take notice - Evidence in the last 40 years has demonstrated the value in becoming more aware, moment to moment. When we are able to live more in the present we start to train our brains to reduce rumination and worrying about future states. This leads to increased positive mental states, self-regulated behaviour and boosts self-knowledge and awareness. There are an increasing number of mindfulness courses and apps available that can fit into your daily routine.

You may also find that you are in a negative frame of mind which stops you being productive. Pause and reframe your thinking positively, break tasks down into smaller parts and methodically work your way through. Know that you can do it and have done in the past. Give yourself a break, metaphorically and literally.

Learn - Being curious and continually learning throughout life have also been shown to drive personal wellbeing measures, including life satisfaction scores, optimism and efficacy. Learn a new skill or take up a hobby. Learning has many benefits including raising self-esteem, confidence and building a sense of purpose.

Positive psychology (*the scientific study of what makes us flourish and thrive*) demonstrates that being curious broadens our minds to more possibility in life. This has a direct correlation on our ability to cultivate more positive emotion.

Give – Instinctively, it feels good to give to others. We now know that reciprocity also drives long term self-reported wellbeing. Research has shown that carrying out one simple act of kindness per week over a six-week period increased wellbeing in participants when compared to a group that committed no acts of kindness.

If you ignored the first paragraphs of this article, take a break now. I wasn't joking. You won't regret it and you will find yourself more productive when you come back.

Find out more about wellness for law at http://www.wellnessforlawuk.org/ and https://www.wellbeingatthebar.org.uk

Keep a look out for the Wellness for Law Forum in 2019.

By Wing Yan Chan

Relinquished babies – when to notify fathers and extended family members

By Niamh Daly, Pupil

"Relinquished baby" is the term given to a child whose parent/s place them for adoption either pre-birth or at the time of birth. While it is recognised that this is an immensely difficult decision, it is legally straightforward where all the family agree and engage with the process. Issues arise for local authorities where a mother pursues the route of adoption without wanting extended family members, *including* the father, to have knowledge of the existence of the child or her intention to give the child up.

'As a starting point, any decision about a child – including whether they are to be placed for adoption – can only be made by someone who holds parental responsibility over that child'

As a starting point, any decision about a child - including whether they are to be placed for adoption - can only be made by someone who holds parental responsibility (PR) over that child**.** While any mother automatically holds PR for her child from birth, fathers will only have PR if they are i) married to the mother, ii) on the birth certificate or iii) they apply for a declaration of parentage. Further, the Adoption and Children Act 2002 does not itself formally require the consent of extended family members or the child's father where he does not have PR. Therefore, as a starting point, a mother is entitled to demand that her decision to give her child for adoption be kept secret.

There are however distinctions made between the statutory duties of the local authority when they know who the father is and when they do not. If the father is *not* known to the local authority the normal approach is that they remain under no obligation to take steps to locate or notify the father unless this is in the best interests of the child. In contrast, if the father *is* known to the local authority, there is a duty for them to provide the father with counselling and information[1] unless this is not in the best interests of the child. In both cases the local authority are put in a position of possible conflict between the mother's rights, the rights of extended family members, in particular the father, and the welfare of the child.

The pre-emptive application procedure

At the start of the relinquishment process, if the local authority has any doubt as to whether a father or any other family member/s should be notified, court proceedings will usually not have been issued. However, **FPR 14.2** plugs this gap, specifying that *"an adoption agency or local authority may ask the High Court for directions on the need to give a father without parental responsibility notice of the intention to place a child for adoption".* This procedure invokes **Part 19 FPR** which enables an application to be made without naming a respondent **[19.4 FPR, para 2.2 FPR PD19A].** It is this procedure that should usually be used by a local authority seeking a direction from the court in these circumstances, although it may not always be appropriate[1].

Duties of the local authority.

Guidance as to the courts' expectations of local authorities when considering such applications has previously been given by Cobb J at para [32] of ***Re RA* (Baby relinquished for adoption – Case Management) [2016] EWFC 25.** A maternal grandmother, who lived in Latvia, expressed her wish to care for her grandchild who had been relinquished at birth. The Latvian authorities requested that there be an initial assessment of the grandmother which the Guardian supported.

Ordering an assessment of the maternal grandmother his Lordship provided:

"*Adoption of any kind still represents a significant interference with family life, and can only be ordered by the court if it is necessary and proportionate. While it may not be necessary in a relinquished baby case to perform the profound investigations which would ordinarily be expected before a conclusion could confidently be reached that "nothing else [but adoption] will do", it seems to me that a "high degree of justification" is nonetheless required before a court can determine whether a child should be adopted*"

(see **Lord Wilson in *Re B (Care Proceedings: Appeal)* [2013] 2 FLR 1075** at para [34])". From this, local authorities should be mindful that, while full assessments may not be required, analysis of extended family members cannot be ruled out simply because parent/s do not support a family placement.

When does the need for further analysis arise?

His Lordship went on to explain that the duty to conduct further assessment arises where placement options are realistic, endorsing Baker J's view in ***Re JL & AO (Babies Relinquished for Adoption) [2016] EWHC 440 (Fam)*** [50] and [56]:

*[paragraph 56] "In all adoption cases – non-consensual and consensual – the local authority is under an obligation to carry out a thorough analysis of the **realistic** options for the child, as highlighted in Re B-S. Indeed, a thorough analysis of all the **realistic** options should surely be carried out in all cases where a local authority is making plans for a child's future." (emphasis by underlining added).*

*[paragraph 50] "In some cases, an analysis of the circumstances will lead the local authority to conclude that it is unnecessary to inform the natural family, but in other cases the authority will decide that it must consult the extended family in order to carry out the necessary evaluation of the **realistic** options. Each case turns on its own facts, but the child's welfare will always be the paramount consideration" (emphasis by underlining added).*

This was followed in ***Re (1) M (2) N (Twins: Relinquished Babies: Parentage) [2017] EWFC 31.*** Two twins had been relinquished at birth. The adoption was supported by the father. Neither parent wanted contact with the children. The mother opposed the extended family being put forward as alternative carers and the court ruled that there was no need for assessment as there were no realistic options. The only potential carers were on the mother's side: Firstly the maternal grandparents were determined as being beyond an age to be able to care for twin children and; secondly, the maternal aunt who already had her own children.

What factors will impact the court's decision?

Earlier this year, collaborating previous guidance Cobb J clarified what he called the 'cardinal principles' that the court must consider when an application not to notify family members is

made by a local authority under FPR Part 19. In ***Re A* (Relinquished baby: Risk of Domestic Abuse) [2018] EWHC 1981 (Fam)** a mother had placed her child for adoption but was adamant that she did not want the father nor any of the extended family to be informed of his birth. The local authority sought a declaration under Part 19 that it be lawful to arrange the adoption without informing the father and/or other family members.

At para [19] his Lordship set out that:

(i) Each case is fact sensitive;
(ii) The outcome contended for (that the family are not informed) is exceptional;
(iii) The paramount consideration is the child's welfare (s.1 ACA 2002);
(iv) The court must have regard to the s.1(4) welfare checklist;
(v) The court must have regard to the wishes and feelings of the child's relatives (s.1(4)(f)(iii) Adoption and Children Act 2002;
(vi) The mother's wishes carry significant weight but must be critically examined and are not decisive;
(vii) Art 8 rights are engaged, but the degree of interference is likely to be less than where the parent/child relationship is severed against the will of the parents.;
(viii) Adoption of any kind still represents a significant interference with family life and can only be ordered if it is necessary/ and proportionate;
(ix) A high level of justification is required with a thorough analysis of the options, but a sufficient analysis can be performed even though the natural family are unaware of the process.

In order to weigh up all of the relevant considerations in determining a relinquished baby case it may be possible (it may in some cases be necessary) and/or proportionate to perform the analysis without full assessment of third parties, or even their knowledge of the existence of the baby. The court will consider the available information in relation to the individual child and make a judgment about whether, and if so what, further information is needed".

Conclusion:

For local authorities these cases give guidelines as to how to approach relinquished baby cases, namely that the following questions should be asked: What does the mother want? What is the background of the family? What effect would notifying the father have on the child and on the mother? Are there any other realistic family placement options? If there are, is it in the child's interest to explore them?

In light of the above case law, an update of the Department of Education Guidance would also be welcomed to ensure all are clear of their obligations in these sensitive cases.

For practitioners the cases show that the confidentiality of adoption cannot be guaranteed for parent/s and that despite a holistic analysis of the factors outlined above, it is the child's welfare which, as always, must be the paramount consideration. In light of this, one issue which arises is the importance of identity for the child. Even if the father/extended family is not to be notified of the adoption process, it seems only good practice that as much information as possible regarding the putative father and extended family should be included in the child's life story work for the future benefit of the child.

Newsletter Team

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