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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 02/09/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

Between:

A HEALTH AND SOCIAL CARE TRUST

Plaintiff

and

BF

and

TM

Defendants

[Inherent jurisdiction; Adoption; Notification of relatives]

Claire MacKenzie (instructed by the Directorate of Legal Services) for the Plaintiff
Jill Lindsay KC with Janice Gilkeson (instructed by McGeady Molloy Solicitors) for the
first Defendant

Andrew Magee KC with Nicola Rountree (instructed by McGeady Molloy Solicitors) for
the second Defendant

Louise Murphy KC with Zara McKay (instructed by the Official Solicitor) on behalf of
the subject child

HUMPHREYS J

This judgment has been anonymised as it involves a child. The ciphers given to the parents and the child are not their initials. Nothing must be published which would identify the child or her parents.

Introduction

[1] The plaintiff Trust seeks the leave of the court, pursuant to Article 173(2) of the Children (Northern Ireland) Order 1995 ("the Children Order") to bring an

application pursuant to the inherent jurisdiction of the High Court in relation to a child, SM.

[2] The child's parents are the defendants, BF and TM. Prior to her birth the parents had approached Social Services with a view to relinquishing the child at birth for adoption. Following the birth, neither parent wished to hold or see the baby and she was placed in foster care upon discharge from hospital. No contact has been sought by either parent since this time.

[3] The Trust has sought to engage with the parents since the birth. Both of them maintain that their respective families have no awareness of the pregnancy or birth and, if they did, it would have a devastating impact on family relationships. They share a fear that family members would seek to coerce them into parenting SM which they do not want to do.

[4] The Trust is conscious of the significant advantages that kinship care can present but is also cognisant of the potential harm that may be caused by disclosure of the existence of the birth to family members. Recognising that these issues may be finely balanced, it has sought the court's intervention.

[5] Essentially, the Trust seeks a ruling from the court as to whether it is appropriate to proceed with the adoption process without any information being given to the wider family or any steps being taken to explore the options of kinship care.

The evidence of the parents

[6] The father has sworn an affidavit outlining that he and the mother made a decision during the pregnancy to relinquish the child for adoption. This was not a decision arrived at lightly. He feels that, since the birth, social workers have attempted to change their minds and do not respect the decision which they mutually arrived at.

[7] The parents also made a decision to limit the people who knew about the pregnancy. TM did tell a person on a confidential basis. He states that any disclosure to his family members would cause anger and a seismic change in relationships. TM is also concerned that any kinship adoption would cause him and the birth mother to continue to be involved with the child, a situation neither of them wish to occur.

[8] The mother, BF, has also sworn an affidavit. She explains that she took medical advice in relation to a termination of the pregnancy but was too far advanced to be eligible for a procedure. Once that was known, the decision was made to proceed towards adoption. She is adamant that this decision was made of her own freewill and in full knowledge of the long term implications.

[9] She states that if her wider family is informed, BF's life "will come crashing down" around her. Her relations would be disapproving and critical of the decision and would ostracise her from family life. The whole issue is one which she regards as her private business and any disclosure is likely to have catastrophic consequences for her life.

[10] BF states that she did inform one older woman, who is not a relative, who treated her with sensitivity and compassion and supported the decision which had been made. BF has no doubt that this individual will respect her confidence.

[11] Each parent puts forward reasons why their other family members would not offer suitable kinship options. It is important to note that there is a child currently in a kinship placement. There is parental concern that any placement of the subject child would place this relationship under considerable and probably intolerable strain.

The social worker report

[12] The court had the benefit of a detailed report prepared by a social worker within the plaintiff Trust. It is acknowledged that both parents remain adamant that any disclosure to family members would cause irrevocable damage to their relationships.

[13] The social worker recognises the sensitive and complex balancing act between the welfare of the child, the Trust's own legal duties and the right to respect for private and family life enjoyed by both parents and the young child. Both BF and TM are adults of full capacity who have made a decision which they have consistently asked be respected. However, on the social worker's analysis, they may not have grasped the long term implications of the decision for all concerned.

[14] The Trust is mindful of exploring all options for SM's future, including kinship care. The benefits of kinship are well known. There is, however, no guarantee that even if these were considered that it would result in a successful placement.

[15] At present, care planning for SM is in limbo. The child is in a short-term foster placement building attachments to carers with whom she cannot stay. Until this issue is resolved, no long term plan can be put in place. There is an urgency to map a clear way forward.

The statutory framework

Inherent jurisdiction

[16] Article 173 of the Children Order provides:

"(2) No application for any exercise of the court's inherent jurisdiction with respect to children may be made

by an authority unless the authority has obtained the leave of the court.

(3) The court may only grant leave if it is satisfied that—

- (a) the result which the authority wishes to achieve could not be achieved through the making of any order of a kind to which paragraph (4) applies; and
- (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

(4) This paragraph applies to any order—

- (a) made otherwise than in the exercise of the court's inherent jurisdiction; and
- (b) which the authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted)."

The Trust's obligations

[17] Article 26 of the Children Order imposes a general duty on the Trust to safeguard and promote the welfare of any looked after child. Insofar as is practicable, the wishes and feelings of children, their parents and any other person considered relevant by the Trust ought to be ascertained.

[18] Article 27 obliges the Trust to provide accommodation for looked after children, including at Article 27(7) a provision for such a child to live with a "relative, friend or other person connected with him ... unless that would not be reasonably practicable or consistent with his welfare."

[19] By Article 29, contact with parents and relative should be maintained "unless it is not reasonably practicable or consistent with his welfare."

Adoption legislation

[20] Article 9 of the Adoption (Northern Ireland) Order 1987 ("the Adoption Order") states:

"In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard

the welfare of the child as the most important consideration and shall –

- (a) have regard to all the circumstances, full consideration being given to –
 - (i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and
 - (ii) the need to safeguard and promote the welfare of the child throughout his childhood; and
 - (iii) the importance of providing the child with a stable and harmonious home; and
- (b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.”

[21] Section 1(4)(f) of the Adoption and Children Act 2002 (“the 2002 Act”), which applies only in England & Wales, states that, when coming to any decision relating to the adoption of a child, the court must have regard to the relationship which the child has with relatives, including:

“the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs.”

[22] An analogue provision appears at section 1(4)(g) of the Adoption and Children Act (Northern Ireland) 2022 which continues to lie on the statute book largely uncommenced.

[23] The Adoption Agencies Regulations 2005, which were made under the 2002 Act, contain an obligation, under regulation 14(1)(c) to ascertain the wishes and feelings of parents and “any other person the agency considers relevant” in relation to the adoption of the child. Equally, under regulation 15, the agency is required to obtain information about the child including the ability and willingness of any relevant person to provide the child with a secure environment or to meet his needs. There are no equivalent specific obligations in the Adoption Agencies Regulations (Northern Ireland) 1989.

[24] Rule 14.21 of the Family Proceedings Rules 2010 (“the 2010 Rules”), which apply only in England & Wales, provides:

“Where no proceedings have started 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.”

[25] The procedure for such an application is found at rule 19(2)(c) of the 2010 Rules. There are no analogous procedures in Northern Ireland.

[26] It is noteworthy that the procedure in the 2010 Rules is limited to the issue of notification to the father. The inherent jurisdiction has been invoked by the English courts in relation to the extension of this approach to other family members.

[27] The leading judgment in this area is that of Peter Jackson LJ in the Court of Appeal of England & Wales in *Re A, B & C (Adoption: Notification of Fathers and Relatives)* [2020] EWCA Civ 41. Three related appeals were heard together and each gave rise to issues around pregnancies and births which were concealed from fathers and other relatives. The learned Lord Justice summarised the dilemma:

“Respect is due to the position of any mother who goes through pregnancy without family support and then chooses to relinquish the child at birth in the belief that it is for the best. Respect is also due to the position of the unsuspecting relatives. Some may have been a fleeting presence in the mother's life, but others may be more significant figures who have been kept in the dark and would be astonished to find that a baby (their child, sibling or grandchild) had been born and adopted without their knowledge, particularly if they were in a position to put themselves forward as carers. Most of all, the notification decision has life-changing implications for the baby. It may influence whether adoption happens at all and, even if it does, a sound adoption has its foundations in the integrity of the process by which it is achieved.” (para [2])

[28] The court in *A, B & C* referenced a decision of Holman J, *Z County Council v R* [2001] 1 FLR 365 which was made prior to the enactment of the 2002 Act and therefore in the context of a legislative environment similar to that which still pertains in Northern Ireland.

[29] The learned judge in that case confirmed that nothing in any of the statutory provisions imposed an absolute duty on the relevant authority or the court to inform or consult extended members of the mother's family. He was satisfied, on the evidence, that it was in the best interests of the child that they were not informed. It

was also held that the interference with the article 8 rights of family members was justified as being necessary and proportionate.

[30] Having reviewed the relevant caselaw, Peter Jackson LJ identified the following factors as being relevant considerations (at para [89]):

“(i) Parental responsibility

In a case involving proposed withholding of information or notification from a father with parental responsibility, compelling reasons would be required.

(ii) Article 8

Where the father or relative has an established or potential family life with the mother or child, strong reasons should be shown before the withholding of notification could be justified.

(iii) The substance of the relationships

Aside from parental responsibility and article 8 rights, the court must assess the nature of the family relationship in question in order to identify the strengths and weaknesses of the arguments which would have been put forward had those individuals had the right to be heard.

(iv) Likelihood of family placement

This is an important welfare issue since it may provide a basis for a care plan not involving adoption. The court should consider whether a family placement is likely to be worth investigating or whether notification would cause significant harm.

(v) The impact on the mother of notification

This will involve a consideration of the physical, psychological and social impact. Excessive weight should not be given to embarrassment or unpleasantness since this would result in the mother’s wishes always prevailing.

- (vi) Cultural and religious factors

There may be particular issues arising in certain religious and cultural contexts.

- (vii) The availability and durability of the confidential information

It will be necessary to consider whether confidentiality will endure.

- (viii) Delay

There may be cases where delay would have particularly damaging consequences for the mother or child.

- (ix) Any other relevant matters."

[31] Ultimately, a decision must be reached which strikes a fair balance between all the competing factors which are present in any given case.

[32] The Court of Appeal's guidance has been followed in a number of first instance decisions including *Re D (Adoption: Notification of Husband and Relatives)* [2026] EWHC 1289 (Fam) and *Re S (A Child)(Relinquished Baby: Notification to the Father)* [2025] EWFC 463. I am satisfied that, despite the somewhat different statutory regime in this jurisdiction, it is entirely appropriate that it be followed in Northern Ireland.

[33] The cases reveal that any application of this nature gives rise to complex and difficult issues. The resolution of these will be highly fact sensitive. Whilst recognising this, Peter Jackson LJ states, at para [85]:

"... there is no automatic hierarchy as between, for example, a putative father and maternal grandparents."

[34] This statement may be thought to be somewhat at odds with the statutory framework which does recognise such a hierarchy in terms of those who hold parental responsibility, parents, and those such as grandparents who require the leave of the court to commence proceedings under the Children Order.

Application to this case

[35] The first question to ask is whether the Trust should have leave to bring this application under the inherent jurisdiction which requires a consideration of the twin tests in Article 173(3):

- (i) Can the result which the Trust wishes to achieve be obtained by making any other application?; and
- (ii) Is there reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child she is likely to suffer significant harm?

[36] There is no statutory route to be found in the Children Order, the Adoption Order or any subordinate legislation for the court to make an order restraining the notification of a birth to family members. There is an avenue in England & Wales in relation to putative fathers, but in this jurisdiction any such outcome can only be achieved by the invocation of the inherent jurisdiction.

[37] In relation to harm, the Trust says that delay is inimical to the wellbeing of any young child such as SM. It is well recognised that the creation and maintenance of relationships in the very early years of a child's life is a highly significant factor in a child's development. There has already been delay in formulating a clear care plan for SM for reasons largely outwith the Trust's control. A decision in relation to this issue will be an important milestone in the care planning. I am satisfied that any additional delay brought about by continuing uncertainty gives rise to reasonable grounds that significant harm could be occasioned to the child. On that basis, the Trust is entitled to invoke the inherent jurisdiction and seek relief from the court.

[38] In relation to the substance of the application, I propose to consider each of Peter Jackson LJ's factors in turn:

- (i) Parental responsibility

This case does not concern notification to a father and this issue does not therefore arise. Both birth parents, who hold parental responsibility, are of one mind.

- (ii) Article 8 rights

None of the members of the wider family circle have any established family life with SM but they do have the potential for such relationships to be established. Each of the parents has a right to a family life and they are clear that family relations would be fractured and destroyed by notification to others. Issues relating to privacy are also in play. The mother, in particular, has a right to preserve her private and confidential medical information.

- (iii) The substance of the relationships

The parents in this case are in a committed and long term relationship which distinguishes this from many of the reported cases. A family member is providing kinship care to another family member. It may be thought that they would have a particular issue to raise, if notified, given this relevant experience.

(iv) Likelihood of a family placement

The birth parents are of the view that this is unlikely albeit the existence of a current kinship placement may give rise to at least an issue worthy of investigation. The Trust has expressed no concerns about the character or abilities of any of the members of the wider family circle. Likewise, however, there is no evidence that any such placement would be likely to successful. The parents clearly assert that family relationships would be fractured if notification occurred, raising doubt as to whether any family placement would be feasible in such a context.

(v) The impact on the mother

In this case, the impact extends to both the mother and the father. They have each expressed their clear and unequivocal view in relation to the harm which would be occasioned by notification.

(vi) Cultural and religious factors

These do not seem to arise.

(vii) The availability and durability of the confidential information

It is evident that two persons were informed about the pregnancy and birth. Any future disclosure from either of these sources could clearly have the same catastrophic effect as is feared at present. Both parents are of the view that the confidence in the information will be maintained.

(viii) The impact of delay

There is a clear need for SM to have a stable and permanent home. There is no evidence that any particularly suitable placement may be lost by reason of delay.

(ix) Any other relevant factors

No other specific factors appear to carry any significant weight.

Conclusion

[39] All parties acknowledge that this is a difficult and sensitive situation. I have, however, concluded that the balance in this case comes down firmly in favour of non-disclosure to the wider family members.

[40] It is appropriate therefore for the Trust to proceed with a confidential adoption without giving any information to the family or looking at the option of family or kinship placement.

[41] I have made this decision on the basis that considerable weight must be given to the wishes and feelings of the two parents in this case who hold parental responsibility. This is not a case of non-disclosure to a putative father but rather to the wider family circle.

[42] The parents have articulated clear and unequivocal views about their child and her future which must be accorded appropriate respect.

[43] The balancing of article 8 rights in this case comes down in favour of the birth parents. The family enjoy no existing relationship with the child and whilst a potential relationship must be considered, this remains an important factor against notification. It would be hugely disadvantageous to the parents if notification were to lead, as they fear, to the fracturing of relationships throughout their family networks.

[44] I also take account of both the article 8 rights and the best interests of SM. Kinship care provides some of the best solutions available in our system to issues surrounding the welfare of children. However, in this case, the best outcome to recognise the interests of all is to proceed with a confidential adoption as a basis for the long term care needs of the young child.

[45] I will hear counsel as to the precise form of the declaration required.