

**NEUTRAL CITATION No: [2019] EWFC 13**

**IN THE FAMILY COURT**

**Before His Honour Judge Clifford Bellamy  
sitting as a Deputy High Court Judge**

**Re P (Notice of care proceedings to father without parental responsibility)  
(Judgment handed down on 11 March 2019)**

**Anthony Finch, counsel for the local authority  
Christopher Gabb, solicitor for the mother  
Kerry Cockayne, counsel for the child**

This judgment was delivered in private. The judge has given leave for it to be reported on the strict understanding that (irrespective of what is contained in the judgment) in any report no person other than the advocates or the solicitors instructing them and any other persons identified by name in the judgment itself may be identified by name or location and that in

particular the anonymity of the mother, the child, the adult members of their family and their location (including the location of the court) must be strictly preserved.

**Judge Bellamy:**

1. In 2018 a local authority obtained a final care order in respect of a teenage girl, Z. In its threshold document the local authority alleged that Z was ‘at high risk of sexual harm as she has previously been groomed and sexually exploited’. Z’s parents accepted that the threshold criteria set by s.31(2) of the Children Act 1989 were met. The local authority sought a final care order based on a care plan of long-term foster care. Z’s parents accepted that that plan was both proportionate and in Z’s best welfare interests. A final care order was made.
2. At the time of those proceedings Z was pregnant. Z’s baby, P, was born in December 2018. The local authority promptly issued care proceedings and obtained an interim care order. The local authority’s interim care plan was that upon discharge from hospital P should be placed with Z in her foster placement. That plan was implemented.
3. This case relates to issues of child sexual exploitation. P’s father is believed to be T. T is more than 10 years older than Z. He is believed to be part of a group of predatory men who have groomed and sexually exploited a number of teenage girls of whom Z is one. He has been prosecuted for offences relating to his sexual relationship with Z and is presently serving a custodial sentence.
4. It is not known what information, if any, T has concerning Z’s pregnancy and P’s birth. He has never had contact with P, either direct or indirect. It is believed that he is not aware of these care proceedings. He does not have parental responsibility for P.
5. The local authority wishes to be relieved of its responsibility to comply with the provisions of Family Procedure Rules 2010 (FPR) Practice Direction (PD)12 §3.1 which provides that, ‘every person whom the applicant believes to be a parent without parental responsibility for the child’ is ‘entitled to receive a copy of Form C6A (Notice of Proceedings/Hearings/Directions Appointment to Non-Parties’.
6. I heard the local authority’s application on 18<sup>th</sup> February. I allowed the application and indicated that I would give my reasons later. I now set out my reasons.

The law

7. In May 2017 I gave judgment in *Re CD (Notice of care proceedings to father without parental responsibility)* [2017] EWFC 34, [2017] 4 WLR 110 (*‘Re CD’*). That case raised

similar issues of law to those raised in this case though it related to facts which were materially different. In that case, in addition to hearing submissions from advocates on behalf of all parties I also had the benefit of submissions by an advocate to the court provided by the Attorney General. My decision was not appealed. So far as I am aware it has not been the subject of criticism in any subsequent case or any academic criticism. In those circumstances I propose to proceed on the basis that the law is as set out in that case.

### Family life – the law

8. Article 8 of the European Convention on Human Rights and Fundamental Freedoms (‘the Convention’) is headed, ‘*Right to respect for family and private life*’. It provides that:
  - (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
  - (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’
9. The first issue to be determined in this case, as in *Re CD*, is whether there is any relationship between T and P which can properly be described as amounting to ‘family life’.
10. In *Re CD* my analysis of the law on this issue is to be found at §§22 – 29 of my judgment. After analysing the relevant authorities, I concluded that,
  - ‘29. In summary, when considering whether ‘family life’ exists, the following points emerge from the authorities:
    - (a) the determination of whether family life exists is essentially a question of fact;
    - (b) family life is not confined solely to marriage-based relationships; however,
    - (c) mere biological kinship is not of itself sufficient to constitute family life;
    - (d) cohabitation, though not a pre-requisite, is an important factor to be taken into account when considering the existence or otherwise of family life; however,
    - (e) other factors may also serve to demonstrate that a relationship has sufficient constancy to create de facto family life;

(f) there must be evidence of a close personal relationship, a demonstrable interest in and commitment to the child.

Is there a relationships of family life between T and P?

11. The local authority became involved in the life of Z's family in 2009. By 2016 the local authority had become concerned that Z was at risk of child sexual exploitation. Those concerns persisted. Following a referral from the police a strategy meeting was held. The strategy meeting concluded that Z was at particular risk from T. Z's parents were aware of the relationship between Z and T. It is known that on occasion they allowed T to visit their home and to stay overnight. Z's parents ought to have understood that T's relationship with Z was an inappropriate and abusive relationship and taken steps to protect Z. They did not do so.
12. The concerns continued to increase. As a result, the police exercised their powers of protection under s.46 of the Children Act 1989. Z was placed in foster care. When interviewed by the police Z disclosed that she was pregnant and that her mother was aware that she was pregnant.
13. The local authority immediately began care proceedings in respect of Z and obtained an interim care order. Soon after Z was placed in foster care a scan confirmed that she was pregnant. On the basis of the evidence available the local authority believes that T is P's biological father. He does not have parental responsibility.
14. Since her removal into foster care Z has had no contact with T. It is unclear whether T was aware of Z's pregnancy. If he did become aware of the pregnancy and of P's birth he has taken no step to assert that he is P's father. He did not seek any information about the progress of the pregnancy. He was not present at the birth. He has had no contact with P nor has he seen P. He has not even seen a photograph of P. He is believed to be completely unaware of these proceedings. If, contrary to that belief, he is aware of these proceedings he has made no contact with the local authority and has not made an application for party status. At no time has T played any part in P's life and care. His relationship with P is no more than that of a naked blood tie.
15. Applying the principles identified at §29 of my judgment in *Re CD*, I have no hesitation in finding that there does not now exist, and never has existed, any family life between T and P.

The right to a fair trial

16. Article 6 of the European Convention on Human Rights and Fundamental Freedoms is headed '*Right to a fair trial*' and states, so far as is relevant, that:

'(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...'

17. In *Re CD*, I noted that,

'35. ...in *Re M (Notification of Step-parent Adoption)* [2014] EWHC 1128 (Fam) Theis J held that if a father does not have any Article 8 rights then Article 6 is not engaged.'

In this case I have come to the clear conclusion that T does not have any Article 8 rights. It follows, therefore, that Article 6 is not engaged.

#### The requirement to serve Form C6A

18. It is appropriate to repeat the points that I made in my judgment in *Re CD* concerning the requirement to serve Form C6A . I said:

'43. FPR 2010 PD12C paragraph 3.1 provides that, so far as concerns an application for a care or supervision order under s.31 of the Children Act 1989, 'every person whom the applicant believes to be a parent without parental responsibility for the child' is 'entitled to receive a copy of Form C6A (Notice of Proceedings/Hearings/Directions Appointment to Non-Parties).'

44. The right to receive a copy of Form C6A is not limited to those who are able to establish that they are entitled to the protection of Article 8. The right to receive a copy of Form C6A exists for the benefit of every father whom a local authority 'believes to be a parent without parental responsibility for the child' irrespective of whether or not that parent has de facto family ties. The difference between a father who is able to establish de facto family ties and a father who is not able to do so is that the former is entitled to the protection of Article 8 and Article 6 whereas the latter is not. The practical consequence of that distinction, in my judgment, is that the threshold for determining that it is not appropriate for such a father to receive Form C6A is lower for a parent who does not have the protection of Article 8 and Article 6 than it is for a parent who has that protection.

45. Although the threshold for determining that a parent should not be served with a copy of Form C6A is lower for those parents who do not have Article 8 and Article 6 rights than it is for those who do, the decision that such a parent should not be served with Form C6A still needs to be justified on the facts and not in an arbitrary manner. Risk and welfare will be important factors in considering whether to give permission to a local authority not to serve a birth father with Form C6A'.

#### Child sexual exploitation

19. Child sexual exploitation is an issue of national concern. It is a serious ongoing problem. Where child sexual exploitation leads to the victim becoming pregnant, difficult issues are raised concerning the rights (if any) of the biological father and the role (if any) which

the biological father should play in the child's life. These difficult issues fall to be determined by the Family Court, applying the statutory principles set out in section 1 of the Children Act 1989 and the judicial guidance that has been given since that Act came into force as to how those principles should be interpreted and applied. In so far as it is not inconsistent with the principles set out in the Children Act, that guidance is likely to reflect both the results of current academic research from a number of relevant disciplines and, in so far as they can be reliably discerned, the changing views of society.

20. As for the general problem of child sexual exploitation I note that in November 2014, Ofsted published an inspection report under the title, *The sexual exploitation of children: it couldn't happen here, could it?* The Executive summary to that report sets out the context in which that inspection was undertaken:

‘Professor Alexis Jay’s report into the sexual exploitation of children in Rotherham was a wake-up call for every professional working in the field of child protection. The catalogue of abuse and abject failings across agencies has understandably prompted a great deal of soul-searching by those charged with keeping young people safe and by the wider public.

While those who have worked in children’s services for many years will testify that child sexual exploitation is far from a new phenomenon, what has changed is the level of professional and public awareness generated by a series of high profile investigations and criminal trials. Cases in Rotherham, Rochdale, Derby, Oxford and other towns and cities have uncovered not only the previously hidden scale of the problem but also a particular pattern of abuse involving predominantly White British girls as victims and gangs of predominantly Asian heritage men as perpetrators.

As Professor Jay made clear, faced with this type of offending pattern, senior leaders must show political and moral courage. They must never allow misguided fears about offending cultural sensitivities to get in the way of confronting child sexual exploitation wherever it occurs. However, child sexual exploitation takes on many forms. It is not just confined to particular ethnic groups or parts of the country. It is inherently dangerous for any child protection agency to assume that they need not worry about this type of child abuse because the stereotypical offender or victim profile does not match their own local demographics. As others have pointed out, the sexual exploitation of children can take place anywhere.

Ofsted therefore set out at the start of this autumn to build up a clearer picture of how well local authorities and their partners are carrying out their duty to prevent child sexual exploitation in their area, to offer protection to its victims and to pursue and prosecute its abusers.’

21. The very next month Keehan J gave judgment in *Birmingham City Council v Riaz and others* [2014] EWHC 4247 (Fam). [2014] All ER (D) 207. He said this:

‘3. The worrying and widespread prevalence of CSE is referred to in a number of recent reports including the Independent Inquiry into CSE in Rotherham 1997-2013, the Report of the Parliamentary Inquiry into the Effectiveness of Legislation for Tackling CSE and Trafficking within the UK, Barnado's 2014, the Office of the

Children's Commissioner's Inquiry into CSE in Gangs and Groups Final Report, November 2013, the House of Commons Home Affairs Select Committee in Child Sexual Exploitation and the Response to Localised Grooming Second Report published on 10 June 2013 and the report of Ann Coffey MP "Child sexual exploitation in Greater Manchester" from October 2014...

152. The sexual exploitation of young females by much older men attracts very considerable and widespread public interest. The extent of such activities around the country is only now emerging. I am satisfied that there are exceedingly powerful arguments in favour of the public knowing the details of cases of child sexual exploitation...'

22. The Ofsted report and the judgment of Keehan J were both published more than four years ago. As I have already noted, child sexual exploitation remains a serious problem and an issue of national concern. During this hearing my attention has been drawn to a recent article in The Guardian newspaper, published on 28<sup>th</sup> November 2018. The headline read 'MPs call for change of law on rapist fathers after Rotherham case'. The article reported that,

'A "perverse law" that allows rapists the chance to apply to play a role in the life of children conceived through rape must be changed, campaigners and MPs have said...

The Labour MP Louise Haigh...said: "Convicted rapists should have no parental rights. We're campaigning for a change to the Children Act to stop the courts being used to re-traumatise victims and remove the rights of men who've fathered children through rape." However, the Ministry of Justice (MoJ) said local authorities could apply to courts to request permission not to notify parents without parental responsibility about care proceedings...An MoJ spokesman said the right of councils not to tell a parent about care proceedings had been established in case law. Last year a family case known as "CD (Notice of care proceedings to father without parental responsibility) [2017] EWFC 34" found that a local authority was right not to tell a father that his child was subject to care proceedings. The father in that case had a history of domestic violence and had spent most of the child's life in prison.'

23. Against that background what, then, should be the approach of the local authority and the court to the requirements of FPR 2010 PD12C §3.1 in any case involving child sexual exploitation? In such cases, is there a requirement, or at least an expectation, that the local authority should apply to the court for permission not to serve Form C6A on the person believed to be the birth father? Or, to put that another way, is it open to a local authority unilaterally to take the decision to serve Form C6A on a person believed to be the father of a baby born as a result of child sexual exploitation where that person does not have parental responsibility and is believed to be unaware of the care proceedings?
24. It is for the court to decide whether the requirements of FPR 2010 PD12C §3.1 should be disapplied in any particular case. It can only make that decision if the local authority

brings the matter before the court by issuing an application for the requirements of FPR 2010 PD12C §3.1 to be disapplied.

25. In my judgment, on a proper reading of the requirements of FPR 2010 PD12C §3.1, it is open to a local authority, without reference to the court, to serve Form C6A on a person believed to be the father of a baby born as a result of child sexual exploitation without reference to the court. The court has no power to impose a requirement that in every case relating to a child born as a result of child sexual exploitation a local authority must apply to disapply the requirement to send a copy of Form C6A to a person believed to be the father of the child. Whether there should be such a requirement is an issue for the Family Procedure Rule Committee and not for the court.
26. However, in my judgment it is open to the court to state clearly that as a matter of good practice there is an expectation that in every care case relating to a child born as a result of child sexual exploitation the relevant local authority should apply to the court for the requirement to send Form C6A to the person believed to be the father of the child to be disapplied. Such an expectation would make it clear that in every such case the decision whether or not Form C6A should be sent to the putative father is a decision of such importance that it should normally be taken by the court and not by the local authority. In my judgment there is such an expectation.

### Conclusion

27. In the circumstances of this case I am satisfied that, for the purposes of Article 8, T has never had de facto family life with P. Article 6 is not engaged. I am satisfied that it would be contrary to P's welfare interests for T to be given notice of these care proceedings. I therefore allow the local authority's application for the requirement to serve Form C6A upon him to be disapplied.