

**RE K (ADOPTION: PERMISSION TO ADVERTISE)
[2007] EWHC 544 Fam**

Family Division

McFarlane J

18 January 2007

Adoption – Advertisement – Court permission – Application before final hearing – Guidelines and principles

The child's mother was addicted to drugs, and the child was born with severe withdrawal symptoms. Following his discharge from hospital the child was placed in foster care. At an interim hearing during the care proceedings, the local authority applied for permission to advertise the child for adoption, on the basis that the local authority's care plan was for adoption, and that the advertisement would be placed if: (i) the permanency panel recommended that adoption was in the child's best interests; and (ii) a decision endorsing adoption followed. The proposed advert was to contain a photograph of the child, together with his first name and other information that might identify him. The mother and grandmother opposed the application on the basis that it was premature. The child's guardian, who favoured a twin-track approach with the preliminary steps for both rehabilitation and adoption being progressed alongside each other, considered that any advert should be anonymous and without a photograph. The justices gave permission for an anonymised adoption advertisement. The local authority appealed the order on the basis that it was 'plainly wrong' to permit only anonymous advertising.

Held – dismissing the local authority's appeal and setting aside the order below –

(1) Within the context of the legislation, there was no strict requirement upon a local authority with parental responsibility to apply to the court for permission to advertise; advertising was simply a step that a local authority was entitled to take in the exercise of its parental responsibility. The prohibition upon adoption advertising contained in s 123 of the Adoption and Children Act 2002 (the 2002 Act), did not apply to adoption agencies, therefore its terms were not relevant to a proposal for advertising made by a local authority adoption agency. The effect of s 97(2) of the Children Act 1989 (the 1989 Act) was to prevent a child being identified in an adoption advertisement while proceedings were pending under the 1989 Act or under the 2002 Act, unless the court had dispensed with the requirements of s 97(2) by making an order which permitted such advertising to take place (at least where the advert contained reference to the fact that the child was subject to pending proceedings) (see paras [9], [10], [11]).

(2) Any application for permission to advertise a child was, therefore, generated not by a provision within the statutory framework for child care law, but by the current adoption practice of the specialist adoption publications. Good professional practice required some authority, based either on parental consent or a court endorsement, for the presentation of a particular child as being available for adoption. Where a child was subject to an interim care order and the local authority social workers wished to progress towards advertising for adoption, in the absence of parental consent, the agreement of the court to such advertising was likely to be required before any specialist adoption publication would accept the child's referral (see paras [21], [22]).

(3) As a matter of principle, it was not open to a local authority to advertise a child as 'available for adoption', or to seek permission to do so, until the authority had reached the stage of being 'satisfied that the child ought to be placed for adoption', which involved not only an adoption recommendation by the panel, but also a decision favouring adoption by the appropriate officer taking into account that recommendation. A court faced with a premature application made prior to the

decision should refuse permission to advertise. The court formulated guidelines as to the circumstances in which a court, prior to a final hearing in care proceedings, may give permission to advertise a child as available for adoption (see paras [34], [35], [36](i)–[36](ii), [37(i)]).

(4) At the time of the oral hearing, this case had not been to the adoption panel and there had consequently been no decision by an approved officer on the question of adoption for the child. The local authority had not, therefore, been in a position to have been satisfied that the child ought to have been placed for adoption. The application for permission to advertise his availability for adoption had, therefore, been premature and should have been dismissed (see para [46]).

Statutory provisions considered

Local Authority Social Services Act 1970, s 7

Children Act 1989, Parts III, IV, ss 1(1)(a), 8, 31, 38, 91(1), 97(2)(4)

Adoption and Children Act 2002, ss 1(1)–(3), 19, 21, 22, 123

Adoption Agencies Regulations 2005, regs 17–19

European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Arts 6, 8

Cases referred to in judgment

D and K (Minors) (Care Plan: Concurrent Planning), Re [2000] 1 WLR 642, [1999] 2 FLR 872, FD

P-B (A Child) (Adoption: Application for Placement Order), Re [2006] EWCA Civ 1016, [2007] 1 FLR 1106, [2006] All ER (D) 64 (Nov), CA

Cliona Papazian for the applicant

Gillon Cameron for the first respondent

Rex Howling for the second respondent

Mary Hughes for the third respondent

Barbara Slomnicka for the child's guardian

Cur adv vult

MCFARLANE J:

[1] This judgment is given in the context of an appeal from the decision of the Brent Family Proceedings Court at an interim hearing during the currency of pending care proceedings. The proceedings relate to K, who was born in February 2006. K's mother has a long standing addiction to drugs and her baby was born with severe withdrawal symptoms. On 10 March 2006 the local authority issued care proceedings and, following his discharge from hospital, K was placed in foster care. The final care proceedings will take place later in 2007 and are likely to be linked with an application for a placement order under s 21 of the Adoption and Children Act 2002 (the 2002 Act), authorising the local authority to place the child for adoption.

[2] On 1 December 2006 the local authority applied to the court for permission to advertise K for adoption. The application states that the reason for applying was that 'the local authority's care plan for K is to adopt, therefore they require leave to advertise him in the adoption publications' [sic].

[3] The statement by the manager of the local authority adoption team in support of the application explained that permission to advertise the child's details was required before the authority could send the child's details out to the West London Consortium (which combines the adoption resources of

seven other local authorities and two voluntary adoption agencies). No counsel at the appeal hearing has argued that the court's permission is required before transmission of details to another adoption agency or consortium of agencies. The statement went on to describe that if in due course the authority's permanency panel recommended that adoption was in K's best interests and that recommendation was followed by a decision endorsing adoption by the agency's decision maker, then the authority would seek to place advertisements concerning K in *Be My Parent, Adoption UK* or other national, local or culturally specific publications which may be deemed to be appropriate for his needs.

[4] At a hearing on 14 December 2006 the local authority application was for K to feature in an advertisement in which a photograph of the baby would be displayed, together with his first name and other information that might potentially identify him. K's mother and grandmother opposed the application on the basis that it was premature. K's father neither opposed nor consented to the application. K's children's guardian, who favoured a twin-track approach to the assessment of rehabilitation and to the progression of the arrangements for adoption, nevertheless considered that any advertisement, at this stage, should be anonymous and without a photograph. The justices favoured the course recommended by the children's guardian, and gave permission for advertising 'in the publications relevant to prospective adopters', provided that it was anonymous.

[5] The local authority seek to appeal the justices' decision on the basis that it was 'plainly wrong' to permit only anonymous advertising.

[6] In the course of submissions made by experienced counsel on behalf of each party, the court was informed that the issue of when and upon what grounds the court should grant permission to advertise for adoption was regularly a source of difficulty in pending care proceedings. I have, therefore, with some reluctance, accepted counsel's invitation to review this issue more widely than is strictly necessary for the determination of this appeal and to offer some guidance as to the approach that courts may take in relation to advertising for adoption in the future. I will consider the detail of this appeal at the conclusion of this judgment in the light of the overall analysis that now follows.

Legal context

[7] During the currency of an interim care order, a local authority has parental responsibility for the child (s 38 of the Children Act 1989 (the 1989 Act)). Parents who had parental responsibility for the child prior to the making of the interim care order will retain parental responsibility, but the local authority is in the driving seat and may determine the extent to which the parent's responsibility can be exercised (s 33(3) of the 1989 Act).

[8] During the currency of an interim care order, there is no jurisdiction for the court to make a specific issue order or prohibited steps order under s 8 of the 1989 Act, which might determine or regulate an issue of parental responsibility between the local authority and the parents (s 91(1) of the 1989 Act). While a decision to arrange for a child to be advertised as being available for adoption is an exercise of parental responsibility, the question of advertising is to some extent controlled by s 97(2) and (4) of the 1989 Act which state:

Section 97(2):

‘No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify—

- (a) any child as being involved in any proceedings before the High Court, a county court or a magistrates’ court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child. ...’

Section 97(4):

‘The court ... may, if satisfied that the welfare of the child requires it, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.’

[9] The effect of s 97(2) of the 1989 Act must, in my view, prevent a child being identified in an adoption advertisement while proceedings are pending under the 1989 Act and/or the 2002 Act unless the court has dispensed with the requirements of s 97(2) by making an order which permits such advertising to take place (at least where the advert contains reference to the fact that he is subject to pending proceedings).

[10] The prohibition upon adoption advertising contained in s 123 of the 2002 Act does not apply to adoption agencies, therefore its terms are not relevant to a proposal for advertising that is made by a local authority adoption agency.

[11] During the currency of an interim care order, there is no jurisdiction for the court to make a specific issue order or prohibited steps order under s 8 of the 1989 Act, which might determine or regulate an issue of parental responsibility between the local authority and the parents (s 91(1) of the 1989 Act). A decision to arrange for a child to be advertised as being available for adoption is an exercise of parental responsibility. Within the context of the legislation, there is no strict requirement upon a local authority to apply to the court for permission to advertise; advertising is simply a step that a local authority is entitled to take in the exercise of its parental responsibility for the child.

Current adoption practice and government advice

[12] *Be My Parent* is a service provided to family placement agencies via the British Association for Adoption and Fostering (BAAF). Whilst *Be My Parent* provides other services, its main function is to publish a monthly UK-wide newspaper which contains ‘children’s profiles’ which normally include a short description of the child and a colour photograph. The profiles are aimed at child placement agencies and all prospective families interested in adoption or permanent fostering.

[13] Whilst there are other specialist publications in the adoption field, the hearing has been conducted on the basis that the approach taken by BAAF is likely to be similar to that of other publishers.

[14] *Be My Parent* publishes a ‘referral booklet’ in which it describes in detail the circumstances in which it will accept a referral of a particular child

for inclusion in its publication. The 2006/2007 referral booklet stresses that it is 'essential that at least one person or body with parental responsibility should consent to publicity; good practice requires that birth parents, where possible, are consulted and kept informed'. This statement would seem to confirm the analysis that I have already offered to the effect that where a local authority has parental responsibility, that status on its own is sufficient to give it authority to place an advertisement.

[15] The *Be My Parent* guidance continues by noting that under the 2002 Act it will not be possible for a local authority to place a child for adoption without the consent of birth parents or a placement order (or, under the transitional provisions, a freeing for adoption order). The guidance is to the effect that:

- (i) To refer a child needing adoption to *Be My Parent* the adoption agency should have either authority to place the child for adoption – either with the consent of the child's birth parent(s), or a placement or freeing order – or the consent of a court.
- (ii) Where the child is subject to a full care order (s 31 of the 1989 Act) a referral for advertising will not be accepted without a placement order (or freeing order) unless consent has also been given by the birth parent(s) and/or the referring agency can provide written confirmation that the court's agreement to publicity has been obtained.
- (iii) Where the child is subject to an interim care order, in care proceedings, and the plan is for adoption, the guidance advises social workers to inform their legal department of the request for publicity. The guidance draws attention to advice issued informally by the Department for Education and Skills (DfES) which suggests that the court's agreement to publicity should be sought.

[16] It is, therefore, necessary to consider the 'informal advice' currently offered by the DfES. The advice is to be found in the 'frequently asked questions' section of the DfES adoption website. Commentary by *Be My Parent* on the government advice states 'the DfES has very recently "relaxed" its advice regarding advertising children for adoption. This follows agencies expressing their concern to BAAF about delays for children. BAAF asked the DfES to consider this temporary variation in their advice and this has been agreed. This relaxation is temporary and will last for 6 months and it will then be reviewed'.

[17] The DfES advice itself is in the form of questions and answers:

'Q: What steps should an adoption agency take before advertising a child for adoption?

A: An adoption agency may advertise a child for adoption where it has authority to place a child for adoption (parental consent, s 19 [of the 2002 Act], or a placement order, s 21).

Where an adoption agency does not have such authority, it may advertise the child for adoption provided the following applies:

- (i) There is a care order in respect of the child which was obtained on the basis of a care plan which set out the plan for adoption;
- (ii) The agency decision maker has endorsed the adoption panel's recommendation that the child should be placed for adoption;
- (iii) The agency has notified the child's parents/guardian in writing of the decision maker's decision and of its intention to advertise the child for adoption;
- (iv) The following are informed of the agency's intention to advertise the child for adoption:
 - (a) The agency's legal advisor;
 - (b) In cases where court proceedings are on going, the child's CAFCASS guardian;
- (v) The advertisement makes clear:
 - (a) That the agency intends to place the child for adoption and has informed the child's parents/guardian of this in writing; and
 - (b) That this is subject to obtaining parental consent or a placement order under adoption legislation.

Some courts may prefer to be made aware of the intention to advertise the child for adoption where there is no authority to place the child for adoption. Legal advisors should be able to provide the agency with a view of the court's likely expectations.'

[18] The process of care planning for children in care proceedings is in part regulated by statutory guidance set out in *Care Plans and Care Proceedings under the Children Act 1989* (LAC (99) 29), a circular issued in 1999 under s 7 of the Local Authority Social Services Act 1970. Whilst the circular has not been updated to make reference to the 2002 Act, it seems that it has not been withdrawn and is still in force.

[19] LAC (99) 29 does not make any express reference to advertising for adoption, but it does give guidance (at para 31) relating to cases where the local authority has ruled out rehabilitation or placement with relatives and has confirmed adoption as the preferred option. Some six steps, numbered (a)–(f), should be achieved prior to the final care hearing. It is not necessary to repeat the detail here. In summary they are all preparatory steps to ensure that all of the necessary paperwork is in place, that the case has been considered by the adoption panel and the key steps and timetable have been identified. It is silent upon the point of whether family finding should have actively commenced pending the final care hearing.

[20] Later, in para 33, LAC(99)29 advises that 'it is not appropriate before the final care hearing for there to have been introductions between the child and the prospective adopters or for the agency to have confirmed the panel's recommendation'. The latter point would now have to be read in the light of 2002 Act and *Re P-B (A Child) (Adoption: Application for Placement Order)*

[2006] EWCA Civ 1016, [2007] 1 FLR 1106 which require the agency to make its decision prior to issuing any application for a placement order under s 21 of the 2002 Act.

Observations on legal context, current practice and government advice

[21] A reading of the *Be My Parent* practice and the government's informal advice indicates the care that is taken to ensure that there is some authority based either on parental consent or a court endorsement for the presentation of a particular child within the pages of *Be My Parent* as being available for adoption. The reason why good practice has developed to ensure that there is sufficient clarity as to the plan for adoption and the child's status is easy to understand and requires no further clarification.

[22] The result is that, where a child is subject to an interim care order and the local authority social workers wish to progress towards advertising for adoption, in the absence of parental consent, the agreement of the court to such advertising is likely to be required before *Be My Parent* or any other similar publication accepts the child's referral. An application for permission to advertise the child is, therefore, generated not by any provision within the statutory framework for childcare law, but by the good practice driven approach of the various specialist publications.

[23] Against the background of the fact that the regulation of adoption advertising is largely a matter of good professional practice rather than law, the court must tread carefully when responding to an invitation to give guidance on this topic. That is even more the case in the present judgment as, because of the way that the appeal was conducted, there has been no opportunity for the court to hear representations from BAAF, the DfES or any other interested body. If the guidance offered in this judgment is ever re-considered in a subsequent case, consideration should be given to the prospect of evidence and/or representations from one or more of the professional agencies involved.

[24] The focus of this judgment is upon how a court should respond to a request from a local authority if it does decide to apply for permission to advertise for adoption under s 97(4) of the 1989 Act during the currency of pending proceedings. During the course of submissions it became clear that two rival principles may be in play: first, the need to avoid delay if the plan for the child is to proceed along the adoption route and secondly, the need to avoid prejudging the question whether the child can be rehabilitated to the family, coupled with the need to preserve the child and family's privacy unless it is proportionate and necessary to do otherwise. I propose to look at the arguments in relation to each of these two matters in turn.

[25] So far as delay is concerned, s 1(3) of the 2002 Act gives both the court and the adoption agency a clear imperative to avoid delay: 'The court or adoption agency must at all times bear in mind that in general, any delay in coming to the decision is likely to prejudice the child's welfare'.

[26] *Be My Parent* sets firm deadlines for the delivery of material for publication which are some 6 or 7 weeks prior to publication date. The same is likely to be true for any similar publication. Thus, it is said, if the local authority have to wait until a placement order is obtained there will be a delay of something like 2 months (depending upon where the deadline falls) between the court order and any prospective adopters seeing an advert in *Be*

My Parent for the first time. It is argued that the advantage of getting the court's permission to advertise prior to the final hearing of a contested care/placement order is that the advert can be placed and may be seen by prospective adopters thus shortening the period between any eventual placement order and an actual placement by a factor of weeks, if not months.

[27] Pulling in the other direction is the argument that the placement of an advertisement prior to either the local authority or the court taking a formal decision to endorse the adoption plan as the only plan for the child is premature. In the present case, for example, assessments are still being undertaken on family members. The court is not in a position to decide whether rehabilitation to the family or adoption is the better plan for this young child. It is, therefore, submitted that it is premature to advertise the child as available for adoption. To do so may well send the wrong message to two important elements within the adoption triangle, namely the family, who may perceive that the court has prejudged the rehabilitation issue, and, secondly, any prospective adopters.

[28] So far as prospective adopters are concerned, the reality is at this stage that the child cannot be said to be available for adoption; an advertisement in *Be My Parent* may, therefore, be misleading unless it is very carefully worded. If it is plainly worded, and explains that the child is not yet available for adoption, again submissions were made to me that such an advert would be largely worthless in terms of generating interest.

[29] In considering how these two apparently conflicting objectives should be balanced, I have been assisted by considering a number of earlier authorities, firstly the well-known decision of Bracewell J in *Re D and K (Minors) (Care Plan: Concurrent Planning)*, [2000] 1 WLR 642, [1999] 2 FLR 872. In that case the local authority had delayed coming to a final decision as between rehabilitation and adoption, only coming down in favour of adoption as the preferred plan some four weeks prior to the hearing, with the result that the court had very little information as to timescales and the availability of prospective adopters.

[30] In the course of her judgment, Bracewell J drew attention to guidance that had previously been issued by the Children Act Advisory Committee (CAAC) in 1994 and the subsequent *Handbook of Best Practice in Children Act Cases* issued by CAAC in 1997. The thrust of the guidance and the judgment was to encourage authorities to break from the mould of 'sequential planning' (with adoption only beginning to be considered after all other available options had been ruled out) in favour of 'twin-track planning' (with the preliminary steps for both rehabilitation and adoption being progressed alongside each other).

[31] 'Twin-track planning' is not to be confused with 'concurrent planning' which is a term applied to specialist agencies and placements which can entertain the options of supported rehabilitation or adoption from the same original foster home; thereby avoiding the need for the child to move to a different placement for adoption if rehabilitation is not in his or her best interests.

[32] *Re D and K* did not expressly refer to advertising for adoption. What is, however, of note is that the guidance encouraging a local authority to move forward with steps towards adoption was predicated upon the case having already been presented to the adoption panel. Once that step had been taken,

and there was a positive recommendation in favour of adoption, Bracewell J clearly anticipated that the task of identifying suitable adopters should proceed so that the court could have detailed information of the adoption option and, if that option was endorsed by the court, the adoption process could proceed without undue delay.

[33] The thrust of *Re D and K* is upon twin-track as opposed to sequential planning so that the final care hearing can be furnished with full information on the adoption plan. Much of what is described by Bracewell J has now been formalised into adoption agency practice and, with the introduction of placement for adoption orders, there is now the potential for the final care order hearing to be linked with consideration of the question of adoption placement and parental consent.

[34] A further, and much more recent, authority that assists in understanding the adoption process is *P-B (A Child) (Adoption: Application for Placement Order)*, *Re* [2006] EWCA Civ 1016, [2007] 1 FLR 1106 in which the Court of Appeal was required to consider the point at which a local authority could be said to be 'satisfied that a child ought to be placed for adoption' (s 22 of the 2002 Act) so as to trigger the duty to apply for a placement order. The court was required to consider whether, when determining if it was satisfied that a child ought to be placed for adoption, a local authority was acting under its general child protection duties under Parts III and IV of the 1989 Act, or acting as an adoption agency under the terms of the 2002 Act and the Adoption Agencies Regulations 2005. The court was in no doubt (per Thorpe LJ at para 19) that it was in its role as an adoption agency that the state of satisfaction had to be considered and that the process could not be achieved until there had been complete compliance with the requirements of the regulations. As a consequence, the child's case must be placed before the local authority's adoption panel for a recommendation on the question of whether the child should be placed for adoption and, thereafter, the appointed officer of the local authority adoption agency must have come to a decision on that same issue having taken account of the panel's recommendation (Regs 18 and 19 of the Adoption Agencies Regulations 2005) (the 2005 Regulations).

[35] It seems to me to be axiomatic that if a local authority places an advertisement advertising that a child is 'available for adoption', the authority must have reached the stage of being 'satisfied that the child ought to be placed for adoption'. In this manner the reasoning adopted by the Court of Appeal in *Re P-B* must equally apply to the decision to advertise for adoption with the result that an application for permission to advertise for adoption can only logically be made after there has been compliance with the 2005 Regulations.

Principles and guidelines

[36] In the light of that short review of the extant authorities it is possible to identify a number of principles which should apply when a court is asked to consider an application to advertise a child for adoption. The principles can be shortly stated:

- (i) Before a child can be advertised by a local authority as being

available for adoption, the local authority must be satisfied that the child ought to be placed for adoption.

- (ii) When advertising a child as available for adoption, the local authority is acting as an adoption agency under the terms of the 2002 Act. A local authority, therefore, cannot be satisfied that a child ought to be placed for adoption, and therefore the subject of an advertisement, until the child's case has been before the local authority's adoption panel and the panel has made a recommendation as to whether the child should be placed for adoption (Reg 18 of the 2005 Regulations) and, thereafter, the appropriate officer of the authority has decided that the child should be placed for adoption (Reg 19 of the 2005 Regulations and *Re P-B*).
- (iii) In determining whether permission should be given to advertise a child for adoption the court is determining a question with respect to the upbringing of the child and one that relates to his adoption and the child's welfare must therefore be the court's paramount consideration (s 1(1)(a) of the 1989 Act; s 1(1) and (2) of the 2002 Act).
- (iv) The court and/or the local authority must at all times bear in mind that, in general, any delay in the process is likely to prejudice the child's welfare (s 1(3) of the 2002 Act).
- (v) Delay is but one, albeit important, factor in the overall decision. There is also a need for the court to be aware of the duty to act fairly, and be seen to do so, with respect to the other parties in the run up to a full hearing. Family members and the child have rights to a fair trial under Art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the Convention) which must be kept in focus.
- (vi) Advertising of this nature, particularly if names and a photograph are used, is an incursion upon the child's (and to some extent the family's) Art 8 Convention right to respect for private life. In order to be justified under the Convention, any such advertising must be necessary and proportionate to the needs of the child.

[37] In the light of those principles it is possible to offer the following guidance on this topic. I repeat that the guidance set out below is given following a hearing at which there was no representation or other contribution from BAAF or any other national body concerned with adoption practice. In the future, as case-law develops, I fully anticipate that these guidelines may have to be revisited or fine-tuned to meet the needs of the individual cases:

- (i) It is not open to a local authority to place an advertisement advertising a particular child as being available for adoption, or to apply to a court for permission to do so, until the authority has obtained the necessary recommendation from its adoption panel and has decided that the child ought to be placed for adoption in compliance with the 2005 Regulations. A court faced with a premature application made prior to the approved officer

deciding in favour of adoption in the light of a recommendation from the adoption panel should refuse permission to advertise.

- (ii) Where an application for permission to advertise is made in a case where the court has yet to hold a final hearing in care proceedings and has yet to endorse the local authority's care plan for adoption, the court is unlikely to give permission to advertise for adoption unless the adoption plan is unopposed or there is some exceptional feature of the case that justifies advertising notwithstanding the fact that the court has yet to form its own view on the merits of any adoption care plan (for example where the mother has died or cannot be traced, or the adoption plan is supported by all parties).
- (iii) In considering such an application the court is likely to bear in mind the fact that a local authority is at liberty to begin a search for potential adopters by looking at its own list of adopters, accessing any local group or consortium list of adopters, and accessing the National Adoption Register without having to advertise and without having to obtain the court's permission. If an application to advertise is made at this comparatively early stage consideration should also be given to what the advertisement will actually say as to the child's status. Prior to the local authority having legal authority to place the child for adoption (either by consent or by a placement order) any advertisement cannot boldly state that the child is available for adoption.
- (iv) Where a final care order has been made and the court has expressly approved the local authority's plan for adoption, but a placement order has not yet been made, it is more likely that the court will look favourably on an application to advertise the child for adoption, without having to look for unusual or exceptional circumstances.
- (v) In any case where the court has yet to approve the adoption plan the court is likely to require sight of the precise words that are to be used in the advertisement to describe the child's status at that time.
- (vi) An application generally 'to publicise' the child as available for adoption is likely to be seen as too widely drawn. Where the local authority wishes to advertise other than in other specialist adoption publications, the court is likely to require clarity as to the identity or type of other publications that are to be approached. Where publication is proposed in the ordinary national or local media, the organs of which are much less likely to apply the strict criteria described by *Be My Parent*, the court should be shown the precise terms of the full advertisement that is proposed.
- (vii) As a matter of common sense, and based upon the submissions made in this case, an advertisement which is anonymous and/or does not contain a photograph of the child, is much less likely to attract a positive response. In most cases the court should consider either granting permission for a full advertisement which identifies the child and carries a photograph, or refusing to give permission at all rather than sanctioning an anonymous advertisement.

The present appeal

[38] It is not necessary for the detailed background of K's case to be recited in this judgment. The position is that the assessment process in preparation for the final care hearing is still in progress with an independent assessment being undertaken into the maternal grandmother's ability to provide a home for K. At the final hearing each of the parents and the grandmother are likely to be putting themselves forward as carers or at least candidates for a substantial amount of contact.

[39] The position before the justices, and before this court, was that K's case had not yet been placed before a meeting of the adoption panel. A panel date had been obtained and K was due to be considered by the adoption panel at a meeting some 5 days following the appeal hearing. Until a very late stage of the appeal hearing, counsel for the local authority was instructed that, as the assessment process had not been completed, the local authority had not yet come to a concluded view on the issue of whether K's best interests would be served by rehabilitation to the family or adoption. Counsel was adamant that the social services were not in a position to rule out rehabilitation at this stage. Counsel expressly rejected the allegation that the local authority had made up its mind on this issue. This position was stated on a number of occasions by counsel and maintained despite the court questioning how it was possible to put the case to the adoption panel before the social services department had itself come to a concluded view on the ultimate plan. Counsel for the father also questioned how the social workers could have prepared the necessary report for the adoption panel under reg 17 of the 2005 Regulations, which requires 'an analysis of the options for the future care of the child which have been considered by the agency and why placement for adoption is considered the preferred option' (reg 17(1)(i)).

[40] In the course of closing submissions at the end of the hearing the local authority's position changed and counsel was instructed that the adoption panel would be told that the local authority considered that adoption was in the best interests of K based on its own assessment of the grandmother and without sight of the independent assessment that was still being prepared. Counsel told me in terms that despite the ongoing assessment, the local authority would want to proceed with adoption for K.

[41] The local authority's change of position was a matter of concern to the court and to some, if not all, of the parties. It will no doubt be the subject of further investigation during the final hearing and is not a matter for this court to be drawn into. The only observation that can be made is that the local authority's earlier position, namely that it was simply going to ask the panel for a decision without putting forward any concluded care plan itself, was contrary both to the 2005 Regulations and to any form of good practice.

[42] The local authority case on the appeal is that the justices were plainly wrong to permit only anonymous advertising, the argument being that anonymous advertising was so unlikely to produce a positive response that it was tantamount to refusing to permit any form of advertising. The justices' decision is criticised because it will delay the home finding process and is said to prevent the local authority from exposing K to prospective adopters at the earliest opportunity.

[43] The appeal is opposed by all of the other parties, whose primary submission is that it is impossible to hold that the justices were plainly wrong.

Miss Slomincka, for the children's guardian, met the argument that there was a need to expose K to prospective adopters at the earliest stage by submitting that the reality of this case is that assessments are still pending and it is too early to say whether K is to be a candidate for adoption or not. The case cannot move on, she submits, until the assessments are complete and it is therefore premature to consider taking active steps to find an adoptive family.

[44] Leaving aside for one moment the analysis and guidance that I have set out in the body of this judgment, and looking simply at the appeal on its internal merits, it is in my view impossible to hold that these justices were plainly wrong in rejecting the application for full identifying advertising at this stage. Their decision, which was supported by short reasons, was in accordance with the recommendation of the children's guardian and sought to be a proportionate response to the need to avoid delay but at the same time act fairly towards the natural family whose case was still being assessed and had not been determined by the court. The decision to refuse full advertising was a decision that was well within the band of reasonable decisions that a bench could have taken in the exercise of their discretion. In short, the appeal against the refusal of full advertising was hopeless and devoid of all merit.

[45] At the conclusion of the oral hearing I announced my decision on the substance of the appeal and stayed the justices' order pending the preparation of this judgment so that the question of whether or not it was premature to permit any form of advertising could be considered.

[46] In the light of the guidelines that I have now put forward, this case (at the time of the oral hearing) had not been to the adoption panel and there had consequently been no decision by an approved officer on the question of adoption for K. The local authority was not, therefore, in a position to be satisfied that K ought to be placed for adoption and the application for permission to advertise his availability for adoption was, therefore, premature and should have been dismissed. I agree with Miss Slomincka that the reality of this case is that the assessment process is still in train and it is simply too early to start actively looking for prospective adopters.

[47] I make no criticism of the magistrates or of the decision that they made on the basis of the material that was before them on the day. Having now had the opportunity to consider this matter in far greater depth, I have concluded that even permission to advertise anonymously cannot be justified at this stage. In consequence, I will set aside the justices' order.

Appeal allowed; justices' order set aside.

Solicitors: *Legal Service London Borough of Brent* for the applicant
Hodders for the first respondent
Aarons for the second respondent
JD Spicer & Co for the third respondent
Goodwins for the child's guardian

PHILIPPA JOHNSON
Law Reporter