

Judgment approved by the Court for handing down.

Re R & S (Twins: Relinquishment: Notification)

Neutral Citation Number: [2023] EWHC 1971 (Fam)

No: FD23P00180

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 31 July 2023

**IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002**  
**AND IN THE MATTER OF THE SENIOR COURTS ACT 1981**  
**AND IN THE MATTER OF R AND S (CHILDREN)**

**Before:**

**MR DAVID REES KC**

**(Sitting as a Deputy Judge of the High Court)**

**(In Private)**

**B E T W E E N :**

**A LOCAL AUTHORITY**

**Applicant**

**and**

**PQ**

**and**

**R and S**

**(Through their children’s guardian Kayleigh Jennings)**

**Respondents**

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**Thomas Clarke** (instructed by the Local Authority) for the **Applicant**

**The First Respondent** appeared in person

**Alison Moore** (instructed by Dawson Cornwell LLP) for the **Second and Third Respondents**

Hearing date: 24 July 2023

**APPROVED JUDGMENT**

Judgment approved by the Court for handing down.

Re R & S (Twins: Relinquishment: Notification)

I direct that no official shorthand note shall be taken of this Judgment and that copies of this judgment as handed down may be treated as authentic.

**This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

**Mr David Rees KC:**

**1 INTRODUCTION**

1. This is an application brought under the inherent jurisdiction of the High Court by a local authority for a direction that it is under no obligation to notify members of the maternal and paternal families of twin boys who were born in late 2022 and are now around 9 months old of a proposed adoption or to assess them as prospective carers for the children.
2. At the conclusion of the hearing on 28 July I indicated that I would grant the application and would set out my reasons for doing so in a reserved written judgment. I now do so.
3. The application was originally brought under FPR Part 19 as an application for permission to dispense with notification of the proposed adoption on the father as well as the wider maternal and paternal families. However, for the reasons that I relate below, the application in relation to the father has not been pursued and instead the application has been recast as one under the inherent jurisdiction for permission not to inform any of the children’s maternal and paternal relatives about the birth or to assess them as prospective carers.

**Background**

4. The mother is in her early twenties and lives in England with her parents and two siblings, an elder brother and younger sister. They are a Muslim family of Pakistani heritage. Both parents and other members of the maternal family are active members of their local mosque community.
5. I am told by the mother that she met the father through a dating app and they began a relationship. She was not aware that she was pregnant until quite late in the pregnancy. When she told the father that she was pregnant he initially appeared happy about the news. However, he ended the relationship around the time of the birth, something which left the mother feeling “gutted”. The mother has reported to the local authority social worker that the father had told her that if she wanted to keep the children, she would be a single parent, or she could give them up for adoption. The father is not named on the children’s birth certificate and does not have parental responsibility.
6. A referral was made to the local authority shortly before the children were born, and a couple of days after the birth the mother signed an agreement for the children to be accommodated by the local authority under section 20 of the Children Act 1989. Following their discharge from hospital they were immediately placed in a placement with Muslim foster parents where they have remained ever since, and I understand them to be settled and thriving. The mother has had contact with the children once since they have been in foster care. I understand that the foster parents have recently indicated to the local authority that they would like to be considered as potential adopters.
7. In her initial discussions with the local authority social worker the mother shared that she did not feel able to bring up the children as a single parent, and wished for them to be adopted as if her family found out that she had given birth out of wedlock they would be “broken”. She explained

that the family were not aware that she had been pregnant and that she told them that her hospital admission for the children's birth was in fact for a minor operation.

8. I understand that the local authority social worker has asked the mother on multiple occasions to inform her family of the children's birth in order to give Children's Services an opportunity to explore whether the children could be cared for within the family network. However, the mother has remained consistent in her view and adamant that they should not be informed.
9. The local authority has also sought to explore with the mother whether she is at risk of honour-based violence from her family. This was a particular concern as during her pregnancy the mother had sustained an injury. The mother has been clear throughout that she does not consider that she is at risk of violence from her family and that the injury that she had sustained was an accidental one. Having read the accounts of her conversations with the local authority social worker and the children's guardian and having heard oral evidence from the mother myself I accept that the mother is not at risk of physical violence should the existence of the children become known to her family.
10. There has been no direct contact between either the local authority social worker or the children's guardian and the father. The mother has provided them with a mobile telephone number for the father and the voicemail message attached to that number is in the father's name. Texts have been sent and voice messages have been left, however no response has been received to any of these.
11. The application was initially issued in January of this year as a Part 19 application. Unfortunately, and notwithstanding the guidance of Peter Jackson LJ in *Re A and Others* [2020] EWCA Civ 41; [2020] Fam 325, that in cases such as this the court should be alert to the need for urgency, the matter was not placed before a judge until 28 April when the application came before me in the urgent applications list. On that occasion the mother was abroad but attended by video-link. It was clear from the local authority's evidence that the father was aware of the children's birth, so the application was focussed on the application to dispense with notification of the wider maternal and paternal families. I gave directions for the joinder of the children as parties; the appointment of a children's guardian and the filing of evidence by the mother explaining the reasons why she did not wish the wider maternal and paternal families to be notified of the children's birth and potential adoption. With a view to ensuring judicial continuity and obtaining a prompt listing for the final hearing I reserved the matter to myself with the permission of the FDLJ.
12. The matter was originally listed for a final hearing on 6 June. However, in the interim there were some procedural issues to overcome to enable the children's guardian to obtain legal aid and because the application to dispense with notification on the wider family members ought to have been brought under the inherent jurisdiction (see *Re A* per Peter Jackson LJ at [86]). Additionally, by the hearing on 6 June the mother had not obtained access to a solicitor and had not filed a witness statement. Accordingly, at the request of all parties I adjourned matters until 28 July 2023. I requested that the local authority assist the mother in finding a solicitor (which they have subsequently sought to do), and extended the time for the filing of evidence by the mother and the guardian's analysis.

13. On both 28 April and 6 June I also gave directions for attempts to be made to inform the father about the next hearing and on 6 June I also made a disclosure order directed at the Department of Work and Pensions to provide the father's address. No response has been received to that order.
14. The mother met with the children's guardian on 22 June and was able to discuss the application with her. On that occasion she also signed the relevant forms under sections 19 and 20 of the Adoption and Children Act 2002 consenting to the children being placed for adoption and providing her consent to the making of a future adoption order.
15. The account that was given by the mother to the guardian is consistent with the one that she gave to the local authority. She does not feel able to manage as a single parent and wishes the children to be adopted. Whilst she does not fear any physical risk from revealing the birth of the children to her family, she has great concern over the emotional harm that it would cause her and her family. Within their community and traditions, the birth of children outside marriage is culturally unacceptable and she is worried about their response. She considers that if the fact that she had given birth outside marriage became known it would bring shame upon both her and her wider family from their community and she is fearful that it could leave both her and her family ostracised within the community.
16. The matter was listed before me for final hearing on 28 July 2023. The mother was due to file her evidence by 5 July 2023, but she had not done so. Although the local authority had (as requested by me) assisted her in finding a solicitor she told me that the firm she had contacted had not got back to her.
17. Shortly before the guardian's analysis was due to be filed with the court the mother sent the guardian a text message asking if it would be possible to arrange a further contact session with the children and asking also if she could bring her sister to that session. This raised a number of issues including how the sister had come to find out about the existence of the children and whether the sister should be considered by the local authority as a possible carer for them. As a result of this unexpected and late development the guardian's analysis was not finalised or filed with the court until the morning of the hearing. In that analysis, she explained that she had originally taken the view that given the risks of emotional harm to the mother that would be posed by disclosure, there should be no disclosure of the existence of the children to maternal or paternal families. On balance this remained her view, notwithstanding the indication that the maternal aunt was aware of the children, although the guardian recommended that the possibility of contact between the aunt and the children should be explored.
18. The mother had also told the guardian that she had suffered an injury and as a result she would not be able to attend court for the final hearing listed for 28 July. As a result, in the absence of the mother or a witness statement from her the parties had anticipated asking me for a short final adjournment of the case. However, that ultimately proved unnecessary. The parties were able to make contact with the mother on the morning of the final hearing and she agreed to attend the hearing and give oral evidence by telephone. I agreed to this course of action as it seemed to me the best way of ensuring that the case was dealt with expeditiously and fairly.
19. The mother therefore attended by telephone and the case proceeded with her giving sworn oral evidence. She was asked questions by both advocates, Mr Clarke for the local authority and Ms

Moore for the children's guardian. I also asked a number of questions directly of the mother myself. The account that the mother provided in her oral evidence to the court continued to be consistent with that which had been provided to the local authority social worker and the children's guardian in the past.

20. In her evidence the mother made clear that she did not want any of her family to be made aware of the birth of the children as, within their community, having a child outside marriage was not something which was supposed to be done either religiously or culturally. She explained that both of her parents, who are in their fifties, have heart conditions and she was concerned by the effect that the revelation of the children's birth would have upon them. She told me that her parents and other family members are part of their local mosque community, and she explained that disclosure would bring shame upon her family. Her parents had not been aware of the pregnancy or of her relationship with the father. I asked a question about how her parents might feel if they subsequently found out about the existence of the children, but she was adamant that they would not wish to care for them and if they became aware of the children, her relationship with her parents would suffer and they would drift apart from her.
21. The mother also gave evidence that both she and her brother were now getting married later this year (the local authority and the guardian were previously aware that the mother had been meeting potential husbands but were not aware that a marriage had been arranged). The mother told me that her fiancé was unaware of the existence of the children and that were he to find out then their planned marriage would be likely to be broken off. She considered that her brother would be in a similar position and that if the existence of the children were to be disclosed, that would bring shame to their family and his wedding could be broken off too. She was also adamant that his brother and his fiancée would not be willing to care for the children.
22. The mother also clarified that she had only confided the existence of the children to a single, trusted, friend who had attended the hospital with her at the children's birth. Her sister (who the mother confirmed is herself still a child and therefore clearly not someone who could be considered as a possible adopter) had overheard a discussion between the mother and this friend about the children. However, the mother had told the sister that it was her friend who was the parent of the children and not her. Thus, although the sister had expressed an interest in visiting the children, she remained unaware that the mother was in fact their parent. It was also put to the mother that she had previously told the local authority social worker that she had mentioned the existence of the children to a potential suitor with whom she had been matched. However, she denied this.

### **The Law**

23. Counsel were both agreed that the approach that should be taken by the court to such applications was set out carefully by the Court of Appeal in *Re A & Others* [2020] EWCA Civ 41; [2020] Fam 325. There Peter Jackson LJ held at [89]:

“The principles governing decisions (by local authorities as adoption agencies or by the court) as to whether a putative father or a relative should be informed of the existence of a child who might be adopted can be summarised in this way.

(1) The law allows for “fast-track adoption” with the consent of all those with parental responsibility, so in some cases the mother alone. Where she opposes notification being

given to the child's father or relatives her right to respect for her private life is engaged and can only be infringed where it is necessary to do so to protect the interests of others.

(2) The profound importance of the adoption decision for the child and potentially for other family members is clearly capable of supplying a justification for overriding the mother's request. Whether it does so will depend upon the individual circumstances of the case.

(3) The decision should be prioritised, and the process characterised by urgency and thoroughness.

(4) The decision-makers first task is to establish the facts as clearly as possible, mindful of the often limited and one-sided nature of the information available. The confidential relinquishment of a child for adoption is an unusual event and the reasons for it must be respectfully scrutinised so that the interests of others are protected. In fairness to those other individuals, the account that is given by the person seeking confidentiality cannot be taken at face value. All information that can be discovered without compromising confidentiality should therefore be gathered and a first-hand account from the person seeking confidentiality will normally be sought. The investigation should enable broad conclusions to be drawn about the relative weight to be given to the factors that must inform the decision.

(5) Once the facts have been investigated the task is to strike a fair balance between the various interests involved. The welfare of the child is an important factor but it is not the paramount consideration.

(6) There is no single test for distinguishing between cases in which notification should and should not be given but the case law shows that these factors will be relevant when reaching a decision:

(i) Parental responsibility. The fact that a father has parental responsibility by marriage or otherwise entitles him to give or withhold consent to adoption and gives him automatic party status in any proceedings that might lead to adoption. Compelling reasons are therefore required before the withholding of notification can be justified.

(ii) Article 8 rights. Whether the father, married or unmarried, or the relative have an established or potential family life with the mother or the child, the right to a fair hearing is engaged and strong reasons are required before the withholding of notification can be justified.

(iii) The substance of the relationships. Aside from the presence or absence of parental responsibility and of family life rights, an assessment must be made of the substance of the relationship between the parents, the circumstances of the conception, and the significance of relatives. The purpose is to ensure that those who are necessarily silent are given a notional voice so as to identify the possible strengths and weaknesses of any argument that they might make. Put another way, with what degree of objective justification might such a person complain if they later discovered they had been excluded from the decision? The answer will differ as between a father with whom the mother has had a fleeting encounter and one with whom she has had a substantial relationship, and as between members of the extended family who are close to the parents and those who are more distant.

(iv) The likelihood of a family placement being a realistic alternative to adoption. This is of particular importance to the child's lifelong welfare as it may determine whether or not adoption is necessary. An objective view, going beyond the say-so of the person seeking confidentiality, should be taken about whether a family member may or may not be a potential carer. Where a family placement is unlikely to be worth investigating or where

notification may cause significant harm to those notified, this factor will speak in favour of maintaining confidentiality; anything less than that and it will point the other way.

(v) The physical, psychological or social impact on the mother or on others of notification being given. Where this would be severe, for example because of fear arising from rape or violence, or because of possible consequences such as ostracism or family breakdown, or because of significant mental health vulnerability, these must weigh heavily in the balancing exercise. On the other hand, excessive weight should not be given to short term difficulties and to less serious situations involving embarrassment or social unpleasantness, otherwise the mothers wish would always prevail at the expense of other interests.

(vi) Cultural and religious factors. The conception and concealed pregnancy may give rise to particular difficulties in some cultural and religious contexts. These may enhance the risks of notification, but they may also mean that the possibility of maintaining the birth tie through a family placement is of particular importance for the child.

(vii) The availability and durability of the confidential information. Notification can only take place if there is someone to notify. In cases where a mother declines to identify a father she may face persuasion, if that is thought appropriate, but she cannot be coerced. In some cases the available information may mean that the father is identifiable, and maternal relatives may also be identifiable. The extent to which identifying information is pursued is a matter of judgement. Conversely, there will be cases where it is necessary to consider whether any confidentiality is likely to endure. In the modern world secrets are increasingly difficult to keep and the consequences, particularly for the child and any prospective adopters, of the child's existence being concealed but becoming known to family members later on, sometimes as a result of disclosure by the person seeking confidentiality, should be borne in mind.

(viii) The impact of delay. A decision to apply to court and thereafter any decision to notify will inevitably postpone to some extent the time when the child's permanent placement can be confirmed. In most cases, the importance of the issues means that the delay cannot be a predominant factor. There may however be circumstances where delay would have particularly damaging consequences for the mother or for the child; for example, it would undoubtedly need to be taken into account if it would lead to the withdrawal of the child's established carers or to the loss of an especially suitable adoptive placement.

(ix) Any other relevant matters. The list of relevant factors is not closed. Mothers may have many reasons for wishing to maintain confidentiality and there may be a wide range of implications for the child, the father and for other relatives. All relevant matters must be considered.

(7) It has rightly been said that the maintenance of confidentiality is exceptional, and highly exceptional where a father has parental responsibility or where there is family life under article 8. However exceptionality is not in itself a test or a short cut; rather it is a reflection of the fact that the profound significance of adoption for the child and considerations of fairness to others means that the balance will often fall in favour of notification. But the decision on whether confidentiality should be maintained can only be made by striking a fair balance between the factors that are present in the individual case."

24. I have borne this guidance carefully in mind in considering my approach to this case.



**Discussion**

25. All parties are agreed that I should permit the local authority not to notify the maternal and paternal relatives of the children's existence or prospective adoption. Indeed, the mother's oral evidence strengthened the guardian's view that notification should be dispensed with in this case. However, although the parties are themselves agreed, the decision is still one that I must take for myself having regard to the principles outlined above and all of the evidence that I have received.
26. I have therefore carefully considered the evidence in this case and in doing so have borne in mind that the mother is the source of almost all of that evidence. Moreover, I was particularly concerned prior to the final hearing that all of the evidence from the mother was indirect in form (relayed through the local authority social worker and / or the children's guardian) and that no witness statement from the mother had been filed. I am grateful that she was willing to attend by telephone to give oral evidence as it has given me a much better understanding of the depth of her concerns as well as enabling some minor factual inconsistencies and other puzzling points to be ironed out and clarified. I accept the evidence that the mother has given to me, both directly and through her reported conversations with the local authority social worker and the guardian and I consider her to be a truthful witness. The account that she has given is plausible and internally consistent and I note that she has been consistent since the children's birth as to her reasons why she does not wish the wider maternal and paternal families to be notified. Whilst I consider that it would have been possible for the mother to take advantage of the legal advice that the local authority had signposted for her had she wished to do so, I have no doubt that it has been difficult for her to engage with this court process and I take into account the evident stress that the concealment of her pregnancy and the birth of the children from the rest of her family has caused. In any event her telephone attendance at the final hearing meant that I was able to hear directly from her. Although she was not legally represented the local authority's and the guardian's final positions align with hers and I am satisfied that their counsel have made all the points that could properly have been taken on her behalf.
27. I turn then to consider the specific factors identified by Peter Jackson LJ in *Re A* at paragraph [89(6)].
28. First, parental responsibility. This is not a case where the father has parental responsibility. In any event, the local authority does not seek to dispense with notification of the father. He is aware of the children's birth and attempts have been made to notify him of this application. I am entirely satisfied from the evidence that I have read and heard that the father has voluntarily decided that he wishes to play no part either in the children's lives or in these proceedings.
29. Second, article 8 rights. Although article 8 rights of both the maternal and paternal family members may be engaged, none of the paternal family have any established family life with the mother or children. The maternal family have an established family life with the mother (indeed she continues to live in her parental home). However, I consider that such rights as exist in this regard are outweighed by the other matters I discuss below, in particular the potential impact of any disclosure on the mother and cultural and religious factors.
30. Third, the substance of the relationships. Although the relationship between the parents was more than the "fleeting encounter" mentioned by Peter Jackson LJ it was a relatively short relationship ended by the father on the birth of the children. Nothing is known about the paternal

family, and there is no suggestion that they have ever been close to the mother. The maternal family is obviously a close one and I explored with the mother in her evidence what her parents' reaction might be if they were to find out at a later date that they had been excluded from such a decision. She was adamant that they would simply consider the birth of the children to be a source of shame. I have had specific regard (as Peter Jackson LJ indicated that I must) to the need to identify the possible strengths and weaknesses of any arguments that those who are necessarily silent might make. Here it seems to me that the main argument that they could make, were they able to do so, is that I have heard only the mother's account of their likely reactions. I recognise that this point has force and (as I have already indicated) I have therefore considered carefully whether I can rely upon the mother's evidence and have concluded that I can.

31. Fourth, the likelihood of a family placement being a realistic alternative to adoption. This was explored during the mother's oral evidence both in relation to the mother's parents and her brother and his fiancée. The mother was clear that neither of these couples would wish to take on care of the children. Moreover, her evidence that the revelation of the children's existence would be likely to cause harm to her parents; to her, through the damage it would do to her relationship with her parents and to the potential collapse of her forthcoming marriage; and to her brother's engagement too points towards a family placement not being a realistic alternative to adoption in this case. The clarification provided as to her sister's age means that she can be ruled out as a potential carer.
32. The fifth and sixth points have carried particular weight with me in this case and I will deal with them together as I consider them to be effectively two sides of the same coin. They are: the physical, psychological or social impact on the mother or on others of notification being given; and cultural and religious factors. This is a Muslim family of good standing in their community and active participants at their mosque. I therefore accept the mother's evidence that the birth of children outside marriage would be contrary to what is expected by her family's religious and cultural background. Thus whilst I accept the mother's statement that she would not be at risk of physical violence should the existence of the children become known to her family, it is quite clear from her evidence that the wider social impact upon her, upon her parents and on her brother would be profound. I am satisfied on the evidence before me that this is a case where, if the existence of the children were to become known, there is a real risk of ostracism both of the mother within the family unit and of the family within the wider community. Moreover, I accept the mother's evidence that the disclosure of the existence of the children would be likely to lead to the calling-off of not only her forthcoming marriage, but that of her brother as well. I have no medical evidence about the mother's parents, and I accordingly give little weight to the mother's concerns about any health consequences that the effect that the shock of a disclosure might have upon them. However, leaving that factor aside, I am fully satisfied that because of their religious and cultural heritage, disclosure of the existence of the children would have a serious and negative effect on the lives of the mother and the maternal family generally. This is a case where the consequences of disclosure are likely to go far beyond the possibility of embarrassment or social unpleasantness referred to by Peter Jackson LJ in *Re A*.
33. The seventh point is the availability and durability of the confidential information. I have borne in mind the possibility of the family becoming aware of the existence of these children at some point in the future. It seems improbable, given the steps that the father has taken to cut off all contact with the mother that there is any real prospect of the paternal family becoming aware of

matters. The only way that the maternal family are likely to become aware of the existence of the children is if the mother herself tells them. I cannot wholly discount the possibility that she may do so either intentionally or by accident. She has successfully withheld the knowledge of both her pregnancy and the birth from her parents and wider family and I consider that there is a likelihood that she will continue to do so, not least because the consequences of doing otherwise are likely to be profound. Nonetheless, the fact that her sister has overheard a telephone call between the mother and her friend about the children (albeit that she remains unaware that the mother is the parent) shows the difficulty of the task that the mother has ahead, and I have no doubt that it will be a significant challenge for her. The risk of accidental disclosure to the maternal family is in my view also a reason to withhold disclosure from the paternal family (notwithstanding the lack of evidence about their likely reaction to the news). The more people outside the maternal family that become aware of the children and their birth, the greater the risk that the maternal family will also find out and that the consequences identified above will arise. If the paternal family (and not the maternal family) were to be informed about the children and asked to consider a family placement, there is a real risk that the confidentiality in the information could not be maintained.

34. The final point, and again one that has carried weight in my judgment is delay. There has been considerable delay in this case. Although it cannot be laid at any one source, the reality is that it has taken six months from this application being issued to reach a final hearing. That is too long, and I must reiterate the importance of applications such as these being identified by the court at an early stage as requiring urgency. Whilst I recognise, as Peter Jackson LJ identified in *Re A*, that in most cases delay should not be a predominant factor, the length of the delay that has occurred in this case would point towards dispensing with notification unless there were other significant factors pointing in the opposite direction. I do not consider such factors to exist here.
35. Taking all of these factors into account I am satisfied that the local authority has established that this is a case where I can properly make the declaration sought and dispense with any need to notify the maternal or paternal families or explore further a family placement. I will therefore make the declaration sought.