



Neutral Citation Number: [2026] EWCA Civ 568

Case No: CA-2026-000571

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT AT NEWCASTLE
Her Honour Judge Hudson
NE108-25

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 May 2026

Before :

LORD JUSTICE PETER JACKSON
LORD JUSTICE WARBY
and
LORD JUSTICE COBB

M (A Child: Adoption: Duty of Disclosure)

Justin Gray (instructed by **Gateshead Metropolitan Borough Council**) for the **Appellant**
Local Authority LA1

The **Respondent Adoptive Mother** did not appear and was not represented

The **Respondent Adoptive Father** did not appear and was not represented

Valerie Sterling (instructed by **Mortons Law**) for the **Respondent Child by his Children’s**
Guardian

Tory Putnam (instructed by **Northumberland County Council**) for the **Interested Party**
Local Authority LA2

Hearing date : 7 May 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 11 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Peter Jackson :

Introduction

1. T, a boy now aged 2, was placed for adoption with a married couple by Gateshead Metropolitan Borough Council (LA1) in May 2025, and on 21 November 2025 an adoption order was made. LA1 now appeals and seeks the setting aside of that order on the basis that the court was misled about the true circumstances of the adopters. The appeal is supported by T's Children's Guardian and by the interested party, Northumberland County Council (LA2), which has held an interim care order for T since March 2026. It is not opposed by the adoptive father (AF). The adoptive mother (AM) has chosen not to participate. T's birth parents are not parties to the appeal; efforts, unsuccessful in the case of the birth father, were made to notify them of it, and neither has participated.
2. At the end of the hearing, we allowed the appeal and set aside the adoption order. T's future will now be decided by the Family Court.

Background

3. T has never lived with his birth parents. When he was born in April 2024, care proceedings were issued by LA1 as a result of his mother's difficulties with substance and alcohol misuse, and he was placed in foster care. The birth parents played a minimal part in the proceedings and they did not attend the final hearing in October 2024, when a care order and a placement order were made.
4. AM and AF live in the area of LA2. They had been a couple since 2017 and were married in 2023. They were approved as prospective adoptive parents in August 2024 and were matched with T in April 2025. He was placed with them in May 2025 and in July 2025, they applied for an adoption order.
5. The Annex A report in T's case was completed in August 2025 by his social worker in LA1 and by the adoptive parents' social worker. The authors supported the application. They considered that the couple had a "strong and stable relationship that has deepened through the years", and their referees commented on how they supported and complemented each other, and on their loyalty. AM was noted to have had some difficulties with her physical and mental health, but the reporters were satisfied that any risks were being addressed by AM herself with the support of those around her. T was receiving a high standard of care, and had settled in well in his new family, who were said to love him unconditionally.
6. The birth parents played no part in the adoption proceedings, which came before Her Honour Judge Hudson for final hearing on 21 November 2025. The hearing took place online, with the only recorded attendance being by T's social worker, the prospective adopters' social worker being on leave. The judge was satisfied that all reasonable attempts had been made to notify the birth parents of the hearing. T's social worker told the court that he was thriving and that the adopters were besotted with him. The judge found that adoption remained the only plan that could meet T's welfare interests throughout his life and she made the adoption order.

7. On 9 January 2026, a visit was hosted by the judge at court to celebrate T’s adoption. In attendance were T with his adoptive parents, who presented as a couple, together with the adoptive paternal grandparents and T’s former social worker.

Events leading to this appeal

8. On 21 January 2026, T’s former social worker received information that the adopters had separated and that AM was in a relationship with a male prisoner at a prison where she worked. Investigations followed over the course of the following weeks, during which the following picture emerged:
- AF had moved out of the home in mid-October 2025 to live with his parents.
 - On the day the adoption order was made, the council tax office was informed that AF had moved out of the family home.
 - The prisoner was in custody for a drug-related offence. His offending history included battery, possession of weapons, and drug offences. He had also been accused of sexual offending in respect of a child, but no further action had been taken.
 - He had given AM’s address as the address to which he was to be released, his release date being 3 March 2026.
 - He had since October 2025 referred to T as his “stepson”.
 - AM had taken T to visit the prisoner in late November 2025, and again on 13 February 2026.
 - AM had initially denied any relationship with the prisoner, but on the following day she admitted it.
 - She had further initially denied that T had had any contact with AM.
 - AM had been caring for the prisoner’s XL bully dog.
 - AF began divorce proceedings in February 2026.
9. On 2 March 2026, while these matters were being investigated, LA2 issued care proceedings in the Family Court and an interim care order was granted. T was removed from AM and placed with AF’s parents, where AF himself now also lives. At a case management hearing before HHJ Hudson on 23 March 2026, the proceedings were timetabled through to hearings in July and August 2026, and LA1 was permitted to intervene in them.
10. At the appeal hearing we were informed that AM is thought to be living at her usual address. She has told LA2 that she does not want to have any further involvement with T. The prisoner has been returned to custody for breach of his parole licence conditions, having been arrested for threatening behaviour and criminal damage at AM’s home on the weekend before the hearing. His current release date is at the end of June 2026.

The appeal

11. On 12 March 2026, LA1 filed its Appellant's Notice. On 31 March 2026, King LJ granted permission to appeal. Directions have been given to preserve the confidentiality of the adoptive placement, to appoint the Children's Guardian in the care proceedings to represent T on the appeal, to provide for notice of the appeal to be given to the birth parents, to permit the filing of fresh evidence by LA1, to excuse the participation of AF, and to permit LA2 to intervene in the appeal as an interested party.
12. As stated above, the birth mother has been served with notice of the appeal, but the birth father has not been located. Neither of them has engaged with these proceedings.
13. The fresh evidence filed by LA1 consists of statements filed in the care proceedings by T's current social worker in LA2, by his previous social worker in LA1, and by AF. LA2 has filed a further statement by another social worker.
14. There are four grounds of appeal:
 1. The failure of the adoptive parents to disclose any of the following information to the judge determining whether to make an adoption order amounts to a serious irregularity in the proceedings:
 - a. the relationship between them having come to an end, contrary to the written evidence before the Court;
 - b. the adoptive mother's relationship with a serving prisoner;
 - c. her intention or at least aspiration that the prisoner might come to live with her and the child.
 2. The decision to make an adoption order was founded on a materially mistaken factual basis, which fundamentally undermined the welfare analysis required by Adoption and Children Act 2002 (ACA 2002) section 1, in particular as to:
 - a. the realistic options for the child;
 - b. the likely permanence of the placement;
 - c. the capacity of the adopters to provide safe and stable care;
 - d. the risk profile of individuals within the household and likely to care or come into contact with the child.
 3. The Court's discretion to make an adoption order was exercised on an incomplete and inaccurate evidential foundation, to the extent that it could not rationally have concluded that making an adoption order was in the child's best interests had it been aware of the true circumstances.
 4. The decision to make an adoption order based on a flawed welfare evaluation was unfair to the child, given the nature and consequences of the order.

15. On behalf of LA1, Mr Justin Gray submitted that, whatever the state of the adoptive parents' relationship, they were under a duty to the court to be frank about it. The undisclosed information was obviously material to the welfare decision under ACA 2002. Whether there has been fraud, misrepresentation or omission does not matter for the purposes of the appeal. The consequence was that court was induced to grant an adoption order based on a fundamental factual error about the home in which T had been placed. That was a serious procedural error leading to injustice to T in respect of his welfare and his legal status.
16. These submissions were supported by LA2 and by T's Children's Guardian.

Analysis

17. No legal order affecting the individual is more consequential than the adoption of a young child, which brings both a change of life and a change of legal identity. Adoption can bring huge benefits to children in need of a stable and loving upbringing, and it calls for exceptional commitment, and often self-sacrifice, from adopters.
18. ACA 2002 section 1 provides that whenever a court or adoption agency is coming to a decision relating to the adoption of a child, its paramount consideration must be the child's welfare throughout his life. Among the matters to which the court or the agency must have regard are the child's particular needs, any harm which they are at risk of suffering, and their relationship with any prospective adopter, including the likelihood of any such relationship continuing and the value to the child of it doing so.
19. Rule 14.11 of the Family Procedure Rules 2010 (FPR 2010) requires the adoption agency or local authority to file a confidential report on the suitability of an applicant to adopt a child. The matters to be covered in the report are specified in Annex A of PD14C. Included among these (at Section C, Part 1) are:

“(h) Where adopters wish to adopt as a couple, the status of the relationship and an assessment of the stability and permanence of their relationship.”

and

“(m) Assessment of ability and suitability to bring up the child throughout his childhood.”

An assessment of the stability and durability of the prospective adopters' relationship is therefore a fundamental component of the adoption decision.

20. For completeness, we were referred to section 45 ACA 2002, entitled “Suitability of adopters”, which provides a power to make Regulations under section 9 as to the matters to be taken into account by an adoption agency in determining, or making any report in respect of, the suitability of any persons to adopt a child. Sub-section 45(2) provides that:

“In particular, the regulations may make provision for the purpose of securing that, in determining the suitability of a couple to adopt a child, proper regard is had to the need for stability and permanence in their relationship.”

This power has been exercised in Wales by the Adoption Agencies (Wales) (Amendment) (No. 2) Regulations 2020, but not in England.

21. The scheme of the ACA 2002 separates the question of whether a child should be adopted in principle from the process of making an adoption order in favour of a particular adoptive couple or single adopter. Birth parents are fully heard at the time when a placement order is under consideration and the question of dispensation with their consent to adoption is addressed at that stage. Once an adoption application is issued, the birth parents are given notice of the adoption hearing and they may attend it, but they are not given a copy of the Annex A report and, unless the court has given them permission in the limited circumstances permitted by ACA 2002 section 47(5), they will not be permitted to oppose the making of the adoption order.
22. As for the prospective adopters, FPR 14.16 (6)-(8) provide that:
 - “(6) Subject to paragraphs (7) and (8), the court cannot make an order unless the applicant and the child personally attend the final hearing.
 - (7) The court may direct that the applicant or the child need not attend the final hearing.
 - (8) In a case of adoption by a couple under section 50 of the 2002 Act, the court may make an adoption order after personal attendance of one only of the applicants if there are special circumstances.”
23. It is common for a direction to be given under sub-rule (7) to reduce the risk of birth parents coming into contact with the adoptive parents and child at court. In the present case such a direction was made.
24. The consequence of this practice and the statutory framework within which it sits is that oral evidence is not taken at the adoption hearing. The court will depend upon the information contained in the Annex A report, and on any updating information given to it at the hearing.
25. Adoption proceedings are therefore a very particular form of procedure in which the court is performing an essentially supervisory role. Its ability to make the right order for the child depends heavily upon the good faith and efficient cooperation of its informants, including social workers, referees and, above all, prospective adopters. Most prospective adopters will have come through a rigorous process of assessment and training and can be in no doubt about the gravity of the commitment that they are undertaking, and its importance to the child. In all these circumstances, each prospective adopter is under a clear duty to the court to make full and frank disclosure about their circumstances at every stage of the process up to the making of the adoption order. That duty will be breached if the court is misled by a prospective adopter’s words, deeds or silence.
26. The existence of such a general duty in care proceedings and adoption proceedings has been described as “a proposition which is self-evident to anybody with any secure grasp of the fundamentals”: *Re B, R & C (Children)* [2002] EWCA Civ 1825; [2003] Fam. Law 305, per Thorpe LJ at [34]. Earlier, he said this:

“25. Equally, it was or should have been obvious beyond discussion that... there is upon parties to public law Children Act proceedings a general duty of full and frank disclosure. The proposition is so obvious as to scarcely require authority. Not only is that plain from a clear line of cases, both in relation to Children Act proceedings and also in relation to adoption proceedings, but also there is a Practice Direction in being, as the local authority have emphasised in their written submissions.

...

27.. The Practice Direction, to which I have referred, is to be found at [1995] 1 FLR 456 . The Practice Direction was issued by Sir Stephen Brown, President, on 31 January 1995. It is necessary only to record paragraph 4:

“It is a duty owed to the court both by the parties and by their legal representatives to give full and frank disclosure in ancillary relief applications and also in all matters in respect of children.””

For the reasons given above, and because of the momentous effect of an adoption order, the duty is of critical importance in adoption proceedings.

27. A failure to be frank with other parties or the court has led to successful out-of-time appeals to this court in several reported instances, including:

- *In re F (R) (An Infant)* [1970] 1 QB 385: inaccurate representation by prospective adopters that the birth mother could not be found.
- *Re M (Minors) (Adoption)* [1991] 1 FLR 458: a father’s consent to a step-parent adoption was vitiated by mistake when given in ignorance of the mother’s terminal illness.
- *Re K (Adoption and Wardship)* [1997] 2 FLR 221: the failure to give proper notice to child’s extended family or state-appointed guardian was a fundamental breach of natural justice.

28. A more recent example is found in *Re J (A Child) (Adoption: Non-party Appeal)* [2018] EWFC 8; [2018] 4 WLR 38. Step-parent adopters had concealed the birth father’s identity and whereabouts and an unopposed adoption order was made by magistrates. Three years later, when the father became aware, he appealed out of time to the High Court. Cobb J allowed the appeal and set aside the adoption order, describing it at [18] as having been predicated on incomplete and essentially false information. He continued:

“23. It is plain from all that I have said that each one of the three Grounds of Appeal presented by F, as set out at [22] above, are unchallengeable. The professionals were unable to conduct their statutory enquiries, and the magistrates were materially misled about J’s background history, his paternity, and F’s interest in J. The court was thus rendered unable, by virtue of M and SF’s misconduct, to

reach a completely informed or reliable view about the appropriateness of the adoption in J's best interests. The outcome of the hearing was in my view clearly "unjust" because of the "serious... irregularity" which I have described above (rule 30.12(3)(b) FPR 2010). Rightly, the rules compel me in the circumstances to allow the appeal. Having regard to the views of the parties, and of J himself (who, as it happens, has recently told a social worker that he wishes to be "unadopted"), I propose to set aside the adoption order."

29. In further remarks that may resonate in this case, he continued:

"30. ... Applicants for adoption can be assumed to act responsibly and with integrity. But of course, there are those, as here, who do not. Professionals can only work with the information they receive, and if parties are determined to pull the wool over professional eyes, and encourage others (friends and/or family members) to do the same, only through conscientious detective work on the part of the social worker will the deceit ever be likely to be unearthed.

...

33. Proceeding only on partial information had the effect of materially undermining the integrity of the order by which SF became J's legal father. The Respondents recognise this and rightly do not raise any obstacle to the outcome contended for by F. I am driven inexorably to the conclusion that the adoption order was wrongly made.

34. As I made clear at the hearing of this application and appeal, I view the conduct of M and SF as disgraceful. They deliberately set out to undermine the solemnity and gravity of the adoption process, with its extraordinary life-long implications for all concerned, and they manipulated the outcome by their multiple deceptions. More significantly they knowingly concealed from the court F's actual or at least potential *Article 8* rights to family life with his son, and indeed proper involvement or participation in a legal process by which his son would become, in law, the son of another. They should be, as I believe they are, utterly ashamed of their behaviour."

30. In their different ways, these cases involved misrepresentations made by prospective adopters to or about members of the birth family, and ultimately misrepresentations to the court. In the present case the adoptive parents withheld crucial information about the state of their own relationships from T's adoption agency (LA1), from their own adoption agency, and from the court. The degree of responsibility that each adoptive parent and the members of their wider families may bear for this state of affairs will no doubt become more apparent in the ongoing care proceedings, and it would not be right for us to say more about that. What is entirely clear, and sufficient for the orders that we must make, is that the misinformation about the state of the adult relationships within T's new family fundamentally undermined the court's decision. The judge would certainly not have made an adoption order to joint applicants on 21 November 2025 if she had had doubts about the stability of their relationship or if she had had any hint of AM's relationship with the prisoner. Had the true facts been known, she would

either have dismissed the adoption application (if it was pursued) or would at least have caused further inquiries to be made.

31. As the grounds of appeal show, the situation that has arisen can be analysed in a number of ways. On appeal to this court, an appeal will be allowed where the decision of the lower court was (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court: CPR 52.21(3). In my view, both of these conditions are met in this case. The fresh evidence that has been admitted on appeal shows that:

(1) On the basis of the true facts that existed at the time of the hearing, an adoption order was the wrong order;

and that

(2) The failure by the prospective adopters to make full and frank disclosure of their circumstances amounted to a serious irregularity in the proceedings that rendered them unjust (not a commonplace procedural irregularity but an ‘other irregularity’ of a kind envisaged by the rule).

The consequence of each of these errors was that the court acted on a fundamentally mistaken basis. There was of course no fault on the part of the judge: on the basis of the information before her, every judge in the Family Court would have made an adoption order, while on the basis of the true facts, no judge could have done so.

32. As we are not aware of the nature and extent of the prospective adopters’ misrepresentations in the present case, or of the steps that were taken by professionals in the run-up to the hearing, I would not wish to suggest that the process that was followed was inadequate or that further steps would have revealed further information. However, this case underlines the need for social workers and the court to ensure that the information provided to the court at the final hearing is fully up to date, particularly in cases where the Annex A report is completed some time before the hearing and when the prospective adopters’ attendance at court has been excused.

33. For these reasons, I joined in the decision to allow the appeal, set aside the adoption order and dismiss the adoption application. T accordingly ceases to be a member of his adoptive family and reverts to being a member of his birth family. Further, as a result of the setting aside of the adoption order, AM and AF no longer have parental responsibility for T, and the care and placement orders in favour of LA1 revive: *Re W (A Child)* [2010] EWCA Civ 1535; [2011] 1 FLR 2153 at [12]. The placement order gives LA1 parental responsibility as an adoption agency, with the power to determine the extent to which the exercise of parental responsibility by T’s birth parents is to be restricted: ACA 2002 s. 25(2) and (4). A further effect of the placement order is to render the care order as being of no effect while the placement order is in force: ACA 2002 s. 29(1).

34. However, an interim care order, arising from T’s current circumstances, is now independently in effect. That order gives LA2 parental responsibility, and the power to determine the extent to which the birth parents may meet their parental responsibility to him: Children Act 1989 s. 33(3).

35. A situation in which two local authorities have come to possess parental responsibility for a child at the same time is most unusual, but mercifully this is an unusual case. Moreover, the local authorities have readily come to a detailed agreement that will appear as a Schedule to our order. It provides for a transitional period of some five weeks until a further hearing of the care proceedings in the Family Court, with inquiries having been made by LA1 in the meantime. During this time, LA1 will exercise parental responsibility for T, with LA2 being authorised pursuant to Children Act 1989 section 2(9) to exercise parental responsibility, limited to safeguarding and placement supervision.
36. The local authorities and those advising them are very much to be commended on reaching this agreement. I hope that it is a step on a path that finally leads to an enduring outcome for this little boy.

Lord Justice Warby :

37. I agree.

Lord Justice Cobb :

38. I also agree.
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