

## Re M (A Child) (2017) Court of Appeal (Civil Division) 28/11/17

The Court of Appeal decision in **Re M (A Child) (2017)** has confirmed that for the purpose of conducting an assessment under the Adoption and Children Act 2002 s.42(7), a local authority is not confined to the period after the adoption application has been made; it can include periods before the application. The decision emphasises that section 42(7) should not be construed in narrow terms but it should be given a wider, purposeful interpretation.

### Facts

The case concerned X who had entered the UK in 2015 when aged 15 and had claimed asylum. They had been identified by the respondent local authority as a young person in need of care and support, and was placed with the appellants for an extended period who in essence became his foster carers. X and the appellants formed a mutual attachment.

In May 2017, X was convicted of conspiracy to commit a serious criminal offence and sentenced to seven years' imprisonment. X was detained in a young offender institution and the appellants remained in regular contact, visiting regularly and communicating by telephone up to four times a day.

The appellants decided to apply to adopt X.

### Relevant statutory considerations

The appellants did not qualify for the right to apply for adoption automatically under s. 42 (4) or (5) as the appellants were not local authority foster carers nor had X had his home with the appellants for a period of not less than three years. The appellants therefore sought permission to apply under the Adoption and Children Act 2002, s. 42(6) which allows an application for adoption with leave from the Court where there is no automatic right provided for.

Section 42 (7) states *'an adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both of them together in the home environment have been given-*

- (a) where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency,
- (b) in any other case, to the local authority within whose area the home is.'

#### First Instance Decision

The Judge at first instance followed the approach in *A (A Child) (Adoption) Re* [2007] EWCA Civ 1383 and considered whether the application had a real prospect of success. The respondent local authority submitted it did not as the requirements of s. 42(7) could not be met. The local authority submitted that they could not provide a report on X's integration into the family, having seen the family group in the home environment because he was currently imprisoned. The local authority submitted that s. 42(7) did require the child to be living with the prospective adopters as the other information would have been recorded for a different purpose to an adoption assessment.

The appellants, supported by the guardian submitted that *SL (Adoption: Home in Jurisdiction), Re* [2004] EWHC 1283 (Fam) and *A LBC v Department for Children, Schools and Families* [2008] EWHC 1722 (Fam) expressly endorsed in *A LBC v Department for Children, Schools and Families* [2009] EWCA Civ 41 made clear that a local authority's observations for the purpose of a s. 42(7) assessment were not confined to the period of the placement with the family. They submitted that it was for a judge to determine whether a local authority had had sufficient opportunity to see the young person and prospective adopters in the home environment; that included taking account of all the information on file such as the information recorded before adoption was considered when the young person had been living with the family, together with more recent evidence of family integration.

The judge found that adoption had no prospect of success and refused leave to apply. He found that the Act expected the child to be in the home environment during the adoption application and because X was not living in the home environment, s. 42(7) could not be satisfied.

#### Court of Appeal

The appeal was held, the judge's refusal of the grant of leave under s. 42(6) was set aside and the matter was remitted for consideration on the merits.

There may be cases where it would be wholly impossible for the court to be furnished with a report in accordance with the s. 42(7) obligation but the instant case was not one of them. It was clear from the authorities that the period to be covered could include a period at home before the placement or adoption application. The purpose of the report was to evaluate how the young person had integrated with the prospective adopters. Whilst the social workers' focus in gathering the information had not been for the purpose of a s. 42(7) report, there were over 12 months of records containing information which might be held to be sufficient in relation to the opportunity to have seen X in the home environment. Additionally, that information would be supplemented by an up to date assessment of the current circumstances. Ultimately, the fact that X was currently imprisoned did not make it impossible for the appellants to apply for adoption.

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After graduating from the Durham University, Naomi was employed as a Fee Earner at Keoghs where she ran a caseload of Noise Induced Hearing Loss claims and assisted in the preparation and litigation of other industrial disease claims.

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