Written evidence from CoramBAAF (ACU0116)

Submitted by Dr John Simmonds, Director of Policy, Research and Development, and Alexandra Conroy Harris, Legal Consultant

Key questions from the Joint Committee:

- Was the right to family life of unmarried mothers and their children, as we understand it now, respected at the time?
- How the experience of being adopted, or having a child who was adopted between 1949 and 1976 impacted on the family life of the unmarried mother, child and others?
- How social practices at the time contributed to unmarried women not being able to keep their babies and what, if any, other reasons contributed to women feeling compelled to have their babies adopted?
- What, if any, information and support were provided to expectant mothers to help them make decisions or to enable them to keep their baby?
- The role played by legal consent of the parents in any adoption, how consent was given, what effect it had on children whose parents did not consent, and how the standards of consent have changed since the 1950s?
- How the lack of recognition of the impact of adoption practices between 1949 and 1976 has affected those whose child was adopted or who were adopted as a child during this time?

Adoption raises a complex set of issues that combines the need that every child has for a family life that is life-enhancing and life-preserving. Adoption has evolved as a possible solution where the child's parents or birth family are not in a position to provide the care that the child or young person needs. The deeply embedded belief across the human species that children are to be cared for by their birth family, often with strong links to their local community, is generational across most societies and has been fundamental in enabling the survival of the species. The detail of this becomes rooted in a set of beliefs that can be expressed through the agreed values and actions of each society as set out in law and linked to religious or moral beliefs. In Western societies these developments focussed on the specific issues that required adults to formally acknowledge and legitimise their personal relationship through marriage and in turn allowed a sexual relationship to be formed which was expected to result in the conception and birth of children. Religious beliefs were a powerful part of this legitimisation and marriage linked the legality of both marriage and children to religious beliefs.

Over generations, children were only 'legitimate' if they were born into 'lawful wedlock' where this was defined as 'descent from a man who was the husband of the mother at the time of the birth or at the time of conception'. There was thus a water-tight connection between the legitimacy of a child and the validity of the marriage of the child's parents. Where the marriage was void or where it had been avoided by the decree of a competent court, the child was illegitimate.[1] This single definition was not modified in law until the Matrimonial Causes Act 1937 and, over the following years, a series of legal modifications which normalised childhood whatever the circumstances in which the child was conceived. However, it must be noted that religious and cultural beliefs about these matters are variable

[1] Dredge vs. Dredge (1947) 1 All E.R. 29

and do not necessarily reflect developments in the modernisation agenda of the last 75 years in the UK. There have been significant changes and adaptations that reflect the evolution of societal beliefs – typically expressed in the development of a rights framework that prioritises the right to choose and that of entitlement.

The consequences of a child being born 'out of wedlock' and hence illegitimate was typically expressed using the term 'a bastard child' – a powerfully offensive and condemning expression of the child but also commonly being used to express one person's views of another person's character or actions. This became particularly prominent as a judgmental expression in the 20th century but much less so more recently. The powerful forces that focussed on maintaining social order in all its variations cannot be underestimated for their impact particularly on those who were subject to or 'victims' of these forces and in this case, mothers and children. At the same time, it is important to note the evolution of societal views that have moved towards a more humanitarian, equal and fair perspective that acknowledges basic human rights, individual choice and respect for others. That is not to ignore the serious issues that continue to confront individuals across the world, whether gender, sexuality, ethnicity, culture, religion, language or other forms of individual or group identity.

Early developments in adoption and its place in society

Adoption has had a long and varied history, but typically is linked to societies having to resolve problems created by natural disasters, wars and general instability in the structure and resolution of environmental and societal challenges. Children often carried the burden of these issues when their families and communities suffered their direct specific impact. The State had a very limited role in addressing these issues, although Parliament from the Tudor period did legislate through enacting various versions of the Poor Law. This came to lay responsibility for addressing these matters on the local Parish in establishing Workhouses and resourcing them through a local tax. Children could be placed in those Workhouses or 'rescued' by other families and communities if they had the resources, stability and determination to do so. There was the possibility of Poor Law Guardians acquiring the rights and powers of the parents over a child – an informal adoption arrangement. The provision of State welfare, health services and resources continued to be politically contested and very limited, and in the UK did not fully become a significant part of Government policy until the late 1940s.

The beginning of adoption as a lawful process

The UK was faced with significant challenges in the disruption of family stability and membership resulting from two major issues in the early years of the 1900s. The first were the consequences of the First World War when many families lost their husbands/fathers as a result of the war. This was then amplified by four waves of the Spanish Flu[2] pandemic of 1918 that resulted from the H1N1 Influenza A virus. One third of the world's population were infected with an estimated 17–50 million people dying as a result. The impact of these issues on family life varied – for example:

- For some families, the inheritance of family title and estate became a significant issue because in law it was inherited through the male/husband.

2 A political definition rather than an accurate definition of its origin.

- The long-standing legal and social issues of 'illegitimate' babies that were not resolvable in law.
- 'Baby-farming' – a significant factor in addressing infertility and other matters (Arnot, 1994; Homrighaus, 2001).

It should also be noted that:

- Effective forms of contraception were not available.
- Abortion was not allowed in law (unless pregnancy posed a serious risk to the mother) and was commonly referred to as 'back-street abortion[3] – a high risk intervention.
- There were no effective medical solutions to the problem of infertility.

Overall, these amounted to a series of complex social issues about the fundamentals of family status and continuity embedded in both law and societal belief systems that were significantly judgemental, condemning and high risk. These issues were set out in a subsequent Parliamentary debate (date?) when an Adoption Bill was finally laid. In the debate, Mr Palin MP stated:

"While it has been necessary for boards of guardians and councils to establish schools and homes for orphan children, our experience, extending over quite a number of years, has proved to us that institution life is not a good thing. I feel and I believe my views are shared very largely by all Members of the House – that the English character has been built up on home life. God knows, some of the homes are not worthy of the name; but, nevertheless, there is a spirit even in the meanest tenement that has developed the British character, which has made the British nation what it is. I find, too, that institution life tends very largely to a return to institution, life, either in the form of prison, workhouse, or homes of that description. It saps the independence of character. It tends to make men, at any rate, with less moral fibre than we associate with the average Britisher. To a person who has been brought up in an institution — even a good institution — prison has not the same horror that it has to the average man or woman, and we complete the vicious circle very often, as magistrates well know, with people who have been brought up to appreciate institution life. Therefore, I welcome the Bill, because I think it will assist us to enable orphan children to be brought back into the normal life of the nation, and to become normal citizens."

While this speech marks a particular perspective on the nature of society 100 years ago, a recognisable part of what was said was the acknowledgement of the huge significance of 'family life' in enabling a child to develop and grow to their full potential and the benefits to society of them doing so. Adoption – the legalisation of the child's status in a non-biological family was evolving to become one proposed solution. Leading up to the Parliamentary debate, a number of campaigns had focussed on the inadequacy of current solutions and the urgent need for more child focussed alternatives. These campaigns resulted in the Government establishing a Committee chaired by Alfred Hopkinson in 1920 which after hearing substantial evidence, published a report in1921. The report set out a clear case for the

3 https://care.org.uk/cause/abortion/examining-the-arguments-what-about-backstreet-abortions

Government to urgently put in place a legislative framework to establish adoption as a fully legal order. A number of private members bills were introduced, with a range of definitions of adoption, its legal status and due process but along with continuing objections from different Government departments and Parliament itself, a Bill was not passed into law. However, the election of a new coalition Government saw further attempts to resolve the issues and as a result a second Committee chaired by a judge Mr Justice Tomlin was established in 1924. This resulted in two reports being published in 1925 that set out the clear argument for establishing a legal framework for adoption and recommending a draft Bill. The Bill was placed before Parliament and key issues were identified by Mr James Galbraith MP.

"Clause 14 states that upon an application in the prescribed manner made by a person who is desirous of adopting an unmarried infant, the Court may make an order authorising the applicant to adopt that infant."

This was followed in the debate:

"I think I am right in saying that this Clause is the keynote of the whole Measure, because it makes adoption possible, provided and provided only, that the Court, after a judicial determination of the question, after hearing all the facts, and after considering whether the matter is for the welfare of the infant, comes to the conclusion that the adoption ought to be sanctioned."

This continues:

"Every honourable member will agree that, having regard to the importance of this question, having regard to the very serious effect of severing the tie between the mother and the child, it is only right that adoption should not be legalised until there has been a judicial determination, and after the whole of the facts have been ascertained."

One of the key issues in determining these matters is the significance of the 'informed consent' of the birth parents. This is set out in S2(3) –

'An Adoption Order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or is liable to contribute to the support of the infant.'

The power of the court to dispense with consent is set out in the following paragraph:

'Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is capable of giving such consent or, being a person being liable to contribute to the support of the infant, either has been consistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in the circumstances of the case, be dispensed with.'

---

4 The Adoption of Children Act 1926 in its approved version for England and Wales is accessible at: https://www.legislation.gov.uk/ukpga/1926/29/pdfs/ukpga_19260029_en.pdf

Clause 3 of the Bill was also identified as core in setting out the priority of those whose consent is given or dispensed with fully understand the significance of the making of an Adoption Order. This was reinforced in the following comment:

'Clause 3 is an important Clause and deals with the matters as regards which the Courts must be satisfied before it makes an Order. In the first place, it provides that every person whose consent is necessary under this Act, and whose consent is not for sufficient reasons dispensed with, must understand the full effect of the Adoption Order, and, in particular, in the case of any parent, must understand that the Adoption Order is going to be a permanent order. That, I think, is of grave importance.'

This issue is also addressed in Clause 9 which requires:

'For the purpose of any application under this Act the Court shall appoint some person or body to act as Guardian Ad Litem of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the Court.'

This is supported by the statement – *"Clause 9, which everyone, I think, will agree is a perfectly proper provision, prevents any payment of any sort or kind being made either to the person who is adopting a child in connection with the adoption."*

The last issue to be noted for the purpose of this submission, is the issue of 'secrecy' when it comes to the identity and circumstances of the child's birth and birth family and those of the adopter/s and the proposals to address this in law.

This was set out as:

"We mean that the actual parties to the transaction should be unknown to each other and that the identity of the natural parent should not be disclosed to the adopters, and vice versa. That is a point on which I think most adoption societies have up to now attached considerable importance, for two reasons, because of possible interference by the natural parent, and also because of the definite advantage to the child itself. One has to remember that over 75 per cent. of the children adopted are illegitimate and it has been thought that if you are giving them a start in life, as it were, it is better to veil from them the facts of their origin."

These issues were identified in the form and detail of the child's birth certificate. However, a significant problem was identified:

"The child's right of succession to the property of the natural parent on intestacy. Therefore, I am inclined to wonder how we can carry out that provision to safeguard the right of the child to succeed on intestacy to the property if its natural parent, if we are destroying all traces of the child's origin, and identity."

The matter of inheritance was partially resolved in S5(2) of the Act. What was not acknowledged in this set of issues is the child's need to know about their origins or their birth parents' need to know about their child. Adoption was designed to severe the connection even if there was a legal route to resolving matters of inheritance.

The debate also raised further issues of the importance of safeguarding the child. Mr Palin MP continues:

"I feel that we have got to be very careful in looking to safeguards, in the first place to prevent the exploitation of children. People do not always adopt children because they love children, and the older a child becomes before adoption takes place, the greater care someone has got to take to see that these children are not adopted in order to become slaves, because members of boards of guardians who have had any experience well know that very great care has had to be taken in the past, and a very strict oversight kept in regard to children adopted, in order to prevent their being exploited in this way. Particularly is this the case with girls. We very often meet with mean people going to boards of guardians or orphan societies to get girls of 10 or 11 years of age and make them into domestic drudges."

The Act was passed in 1926 but was not accompanied by any regulations or guidance. The courts were main instigators in ensuring that adoption was compliant as set out in law.

The Act proved to be significant with just under 3,000 children being adopted in 1927 rising to 5,000, mostly by married couples, in 1936. Three organisations played a significant part in this – the National Child Adoption Association (NCAA); the National Adoption Society (NAS); and the National Council for the Unmarried Mother and her Child (NCUMC) – an organisation that focussed on enabling birth mothers to continue to care for their children, but as adoption developed, to support them when this was an option they were exploring. There continued to be concerns expressed about the thoroughness in understanding the status and motivation of prospective adopters and in turn the degree to which the 'lawful consent' of the birth mother had been fully explored – with the engagement and exploration of the Guardian Ad Litem.

As the delivery of the Act evolved, evidence suggested that significant issues continued to be present such as 'baby-farming' and the sale and advertising of children. As a result, a Departmental Committee on Adoption Agencies[5] was established in 1936 with Florence Horsbrugh MP as chair. The remit of the Committee was to explore both the impact and issues resulting from the 1926 Act as well as those adoptions which did not fall within the scope of the Act. The report set out recommendations in the Adoption of Children (Regulation) Act 1939. The Act strengthened the issues of due process from the birth parent perspective to ensure consent was fully informed. Adoption could only be addressed by a fully registered adoption agency or local authority. The Act set out the factors that must be complied by an adoption agency in order for it to become registered. The Act also made the advertising of children for adoption or adoption for financial reward, other than by a local authority, illegal. However, the Act did not come into force until 1943 because of the beginning of the Second World War.

The Second World War created a similar set of issues as those of the First World War – an increase in the number of 'illegitimate children', children whose parents had died as a result of air raids, children from European countries who had arrived in the UK without their parents – particularly those from Jewish communities. Many of the issues that were intended to be resolved by the 1939 Act had escalated over that time. Although the Home Office

5 Report of the Departmental Committee on Adoption Societies and Agencies, Cmd 5499, 1937

objected to the full implementation of the Act, it was implemented in June 1943 with a significant amount of activity following to ensure that this resulted in the registration of adoption agencies and their operation and other key matters.

The Adoption of Children Act 1949[6]

It is important to note that despite the significant challenges of the Second World War, the number of adoptions continued to rise to 21,000 by 1946. A further range of issues were identified that needed resolution and these resulted in a new Act in 1949. The Act included the following:

1) A child did not need to be a British subject in order to be adopted.
2) A child who was adopted but not a British citizen acquired citizenship if the adopter was a British citizen.
3) An adopted child has the right to inherit the property of their adopted parents as would any 'born to' child.
4) The 'informed consent' of the birth mother could be given with or without any conditions placed on the religious upbringing of the child without knowing the identity of the applicant for the Order.
5) Consent may be given in writing without attending the proceedings as long as the adoption applicant is named.
6) The above matters did not apply to the mother unless the child is at least six weeks old on the date of the execution of the document and that the Justice of the Peace duly notes this to be the case.
7) An Adoption Order cannot be made unless the child has been living with the adoption applicant/s for three months before the Order is made.

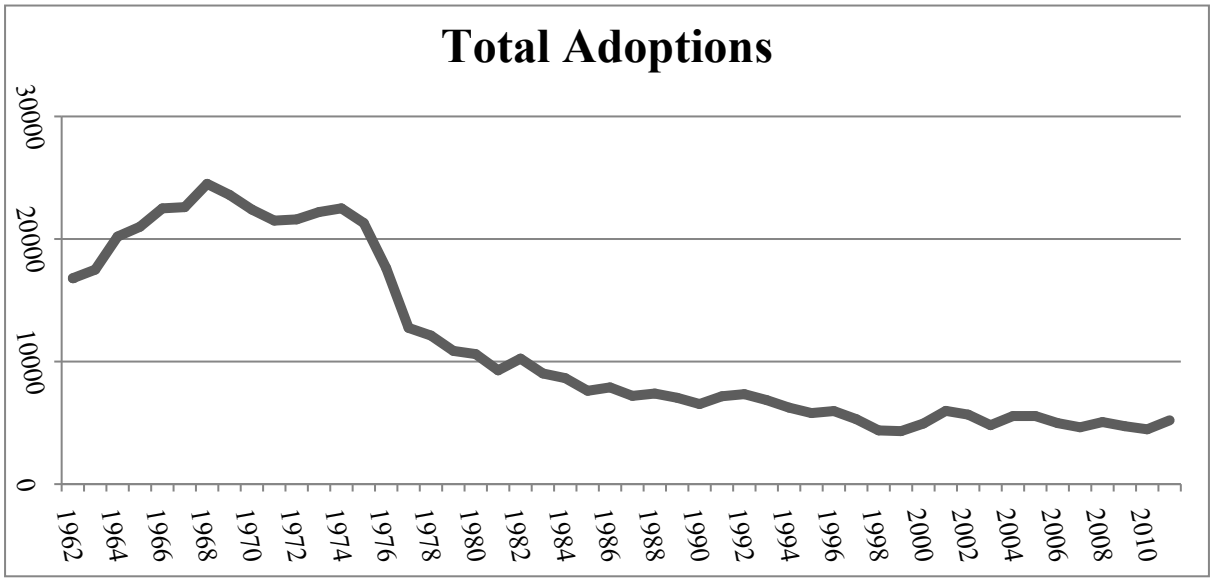
Each one of these issues can be seen as ensuring that the child and their rights, safety and needs are addressed in establishing a family life for them that is as close to a child being born to their married parents. What it does not acknowledge is the child's right to know why they were adopted, who they were born to and what their history and heritage is. The making of an Adoption Order legally severs the child from their past and re-constructs a 'new life' from the point at which the Order is made. And fundamentally, while there is the possibility of the parent discussing their wish to keep their infant and seeking advice from their own family or others, pregnancy outside of marriage or at a young age was broadly unacceptable and judged as a mark of 'poor character'. It was also and largely unsupportable when it came to the provision of individualised State services such as housing and finance.

A further Committee was established under the chair of Hurst which reported in 1954[7]. The numbers of children adopted had reached about 14,000 in that year. There were also more adults wanting to adopt than children available for adoption. There was significant

6 https://www.legislation.gov.uk/ukpga/Geo6/12-13-14/98/enacted
7 Report of the Departmental Committee on the Adoption of Children, Cmd 9248, 1954

recognition that a critical question needed to be both acknowledged and addressed in ensuring that no child was 'put up for adoption' when the parent/s wanted to care for their child but required the provision of adequate levels of support to enable them to do so. There continued to be important questions raised about the suitability of those applying to adopt – the extent to which there was exploration of the adopters' motivation, circumstances and relevant history by the local authority or adoption agency. There was also acknowledgement of the child's need to know that they were adopted and risks and issues that might arise if this was not shared with the child. Other concerns were raised about the need for training for those professionals who worked in adoption, whether in local authorities or adoption agencies, and their awareness of the challenges in a child being adopted and their role in recognising the specific and individual challenges faced by the applicants and supporting them in exploring this. It is important to note that the report did acknowledge the significant advantages that resulted for the greater majority of children placed for adoption over time – amounting to approximately one million children. The report's recommendations resulted in the Adoption Act 1958[8].

The last Committee which falls within the remit of the current Inquiry is the Houghton Committee in 1972[9]. The numbers of children adopted had reached a peak of 26,399 in 1968 as is set out below:



Part of this is explained by significant changes in society including the availability of effective contraception, legalised abortion and the availability of family support services and particularly the eligibility of support for single parents for those services. A significant policy question was raised by the Houghton Committee about children who cannot be brought up by their own parents where it was stated that, "*society must offer a satisfactory alternative plan for the care and future development of such children."* And where this is so, it was also stated that this must take into account the likelihood of there being *'a strong bond with the wider natural family which should not be severed'* (para. 16).

8 http://www.educationengland.org.uk/documents/acts/1958-children-act.html
9 Report of the Departmental Committee of the Adoption of Children, Cmd 5107, 1972

The recommendations of the Houghton Committee resulted in the Children Act 1975 which placed a duty on all local authorities to establish and maintain an adoption service that focussed on the needs of children who were to be, or had been adopted, the parents and guardians of such children and adults who may adopt or have adopted a child. This included the acknowledgment of the appropriate contribution of registered adoption agencies (Section 1(1). The Act also set out the 'facilities' that must be made available to those involved in adoption including 'board and lodgings' for pregnant women and mothers and children, arrangements for the assessment of children and prospective adopters and the placement of those children. (Section 1 (2). The co-ordination of all services available in the local authority was also identified as ensuring that there was no '*duplication, omission or avoidable delay'* Section 1 (3). Section 3 of the Act set out a further overriding duty to promote and safeguard the welfare of child:

'In reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as this is practicable, ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.'

The Act was intended to build on the experiences of those who delivered adoption and other services with a core recognition that adoption needed to be fully integrated within the duties and responsibilities of every local authority with a number of key 'best practice' factors explicitly set out in the detail of sections of the Act. Overall, the Act continued to emphasise the priority of the system in safeguarding and promoting the welfare of the child throughout their childhood including taking into account the wishes and feelings of the child.

Despite the significance of the Act in its entirety and the all-party support, significant sections were not implemented and this was subject to a question in the House of Commons in 1980 by Andrew Bennett, MP. A range of issues were identified that contributed to non-implementation including changes in the Government, changes in the Secretary of State and the absence of a budget that would enable service innovation and development. The 'turmoil' resulting from the absence of the full implementation of the Act was identified with a plea to establish an urgent timetable for implementation.

In reply, George Young, Parliamentary Under-Secretary for the Department of Health and Social Security noted the developments that had resulted from the sections of the Act that had been implemented, identified committees that were exploring budgetary and other matters with a concluding statement that the expectation was that the matters would be resolved by the Autumn of 1980.

The subsequent issues resulting from the Act are not within the scope of the Committee, but it may be noted that the direction of adoption became significantly different:

- The numbers of children adopted continued to fall until the implementation of the Adoption and Children Act 2002.
- Those children who were adopted moved in the direction of those children who had experienced significant maltreatment and those with complex health issues or significant disabilities.

- Many, if not the greater majority of adoptions, resulted from the court dispensing with the parent's consent and agreement to their child being adopted.

The role and contribution of the Guardian Ad Litem

The Adoption Act in 1926 set out a requirement in Clause 9 that a Guardian Ad Litem (GAL) be appointed with '*the duty of safeguarding the interests of the infant before the court.'* What is considered to be a fundamental role in the adoption process evolved over time and in 1978 a practice guide was published by the Association of British Adoption and Fostering Agencies (Leeding A., 1978). Many of the Parliamentary Committees had raised concerns about the effectiveness of the role when this resulted from the appointment of an individual rather than an employee of an established and legitimate organisation as is the case with CAFCASS now. It is imperative that the person appointed has the skills, knowledge, expertise and competence to fully explore the issues that led to parent/s wanting their child to be adopted in order to ensure that the implications of giving their 'informed consent' was understood for them and their child, both now and into the future. The multiple lessons learnt about the role of the GAL as adoption legislation, policy and practice developed are set out in the published guidance.

The role of the GAL is noted in Leeding's Guidance as combining both judicial and case work functions. As such, the two functions are named as 'potentially' and 'actually' being in conflict. Firstly, acting as an officer of the court and reporting on all the relevant matters as required by the court. At the same time the GAL is also a social worker who should be using their casework skills to 'help those involved in what is, inevitably, an emotional and stressful situation.' (page 5). The evolution of adoption law, policy and practice in addressing both the duties of the courts as well as adoption services in their responsibilities towards the child, the birth parent/s and the adoptive applicants are complex when they are influenced by the context of the beliefs and values from the society in which it operated. The practice guidance acknowledges the significant human components in what is one of the most fundamental life-changing issues faced by the child or the adults. There cannot be any simple 'yes – this is what I want to do' without recognising the likely personal turmoil in reaching that decision – the 'age' of the couple, their life plan or the absence of practical resources or their relationships with members of their family. This must include the pressure the mother or father may be under to make a decision that suits the beliefs or attitudes of others when it comes to a pregnancy that is unplanned.

The reality of the GAL's duty 'in ascertaining that the agreement of each parent or guardian is freely and unconditionally given, and, with full understanding of what is involved' (page 24) means coming to explore and understand the detail of these issues from the perspective of each individual, dependant, of course, on what the individual feels safe and confident enough to be open about. In addition, the duties involve 'testing the statements made in the application, information about the child's baptism, immunisation, rights to property and insurance for funeral benefits. In addition, details of the child's history may be provided. (page 25). The guidance also acknowledges the complexity of the child's parentage and the importance and significance of ensuring confidentiality – 'a letter sent to natural father at home when he is a married man living with his wife and children', or 'a teenage birth mother who has not informed her parents about her pregnancy.' There are potentially multiple issues that may be distressing to talk about or reveal and, for those involved, discussing this with a professional stranger cannot have been easy. The guidance works through a wide range of

issues in order to enhance the role and contribution of the GAL in supporting the birth parents to make the right decision for them in their circumstances. As such it highlights the challenges of adoption given the specific circumstances of every individual person involved. As much as these are discussed and debated in the Reports of the Departmental Committees and then Parliamentary Debates, in the end we are talking about the lives, circumstances and future of individuals in the most challenging of circumstances.

A rights perspective

Alongside the core issues of the law, justice and the courts, there is the fundamental issue in the ways in which societies develop an infrastructure that respects an individual's right to choose and express those choices where they feel confident that they will be listened to and respected for who they are and what they are trying to resolve. When it comes to a man and woman where there is an unplanned pregnancy, it must be for them to make the fundamental decision as to their plan for both themselves and the child. This may include asking others for help – family members, their friends or community, but it may also mean hiding the pregnancy for fear of any blame or condemnation that may result. The issues may be difficult to resolve and there may be a range of views about the possible solutions including profound disagreement about those solutions. The challenge in this is the need for an acknowledgment that the rights of any individual to choose the life they lead and the choices they make may often not be seen to be acceptable from the point of others whatever form this may take – disagreement, disapproval, discrimination, oppression and condemnation. The law can address this through establishing and delivering the right to a just and fair hearing in the courts. The State can address this through the services it provides to ensure that every individual has equal access to key resources such as health and education and access to other services on the basis of their specific eligibility. The years following the end of the Second World War marked a huge turning point in establishing an international human rights agenda that addressed these fundamental human rights. This began with the 1948 Universal Declaration of Human Rights and the 1950 European Convention on Human Rights and then the Human Rights Act 1998. Article 8 of the ECHR is particularly significant in setting out that:

1) *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2) *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'*

However, throughout the period of the remit of the Committee, the link between adoption legislation and human rights is not explicit. In principle, it may be linked to both the rights of the child when it comes to their private and family life and the rights of the parents when it comes to the giving of their informed consent to adoption. In one sense, the fundamentals of the right to give informed, lawful consent as set out from the 1926 Act onwards might be considered to be a rights-based framework. However, the context of society at that time powerfully indicates that the beliefs and values of society were deeply embedded in marriage, lawful wedlock and the legitimacy of children. The concept of a child having any rights at all is relatively new. The late 19th century saw the development of legal rights to education and protection from harm, but the idea that a child had any individual rights was not

contemplated. A child was effectively the property of their father, and one of the drivers of the complete severance of the legal relationship between parent and child in the 1926 Act was the concern that a parent might surrender a child to adopters to be cared for and educated, but reclaim the child once they had reached the age of economic productivity.

The basic view of a child as being a 'chattel of their father' did not fit easily with adoption, which primarily concerns mothers, and rarely involved a father. Although the 20th century saw the acceptance of a mother's parental rights to their children, this was not initially backed up with State support to enable mothers to enforce those rights. A mother having the right not to consent to her child's placement for adoption has little practical value if she has no access to childcare or financial support to allow her to care for the child herself.

Our view is that over the period of investigation by the Committee, adoption law, policy and practice evolved from an informal arrangement where a child was born out of lawful wedlock, termed 'illegitimate' and then carried the burden of moral condemnation and was subject to a number of possible actions – being sold in a market of supply and demand or being used to resolve infertility or other family problems. The consequences for the parents and mothers in particular on an individual basis could be harsh, life-changing and unresolved for the rest of their lives. Women were probably more subject to these issues than men given the position of women in society – no vote in elections, limited education opportunities, limited employment opportunities and many other issues. When it came to adoption, there were multiple attempts to create a lawful system based on the fundamentals of informed consent. But the Order still severed the relationship between the child and their birth parents accompanied by both required secrecy and no sense that some form of information or link between the mother and child may be important and helpful. The subsequent lawful access to those records by the adopted person when they reach their majority was significant. The possibility of the exchange of limited information between the adoptive family and the birth parents via intermediary letter-box arrangements created further opportunities. In some instances, direct forms of contact between the child and their birth parents or other family members provided other opportunities for relational links to be established, but they cannot resolve the fact that placing a child for adoption is a fundamental life changing experience for all involved in the context of a powerful set of circumstances. The benefits that result from adoption may be designed to fall on the side of the child when it comes to their needs, safety and welfare, but we cannot ignore the uncomfortable, disturbing and unbearable thoughts and feelings that may accompany adoption. For many, this will create a profound sense of injustice. Historically, many of the societal and individual experiences are appalling to hear and the concerns they raise are significant. Many of these have changed and evolved as the law, policy and practice have moved in the direction of an equality and rights perspective that reflects the fundamental needs of society and individuals within that society to be open, honest, sensitive and supportive.

- Arnot, M. L. (1994). Infant death, child care and the state: the baby-farming scandal and the first infant life protection legislation of 1872. *Continuity and Change, 9*(2), 271-311.
- Homrighaus, R. E. (2001). Wolves in women's clothing: Baby-farming and the British medical journal, 1860-1872. *Journal of Family History, 26*(3), 350-372.
- Leeding A. (1978). *The Guardain ad litem and adoption*. London: ABAFA.

CoramBAAF is a membership organisation for the child placement sector in England. We have strong links with Scotland, Wales and Northern Ireland. We provide a wide range of services to adoption agencies and adoption practitioners covering social work, health, legal and research. We were originally the British Association for Adoption and Fostering (BAAF) established in 1980. This resulted from the combination of two existing organisations – the Association of British Adoption and Fostering Agencies and the Adoption Resource Exchange. In 2015, we were incorporated as an organisation into the Coram group of charities under the name CoramBAAF. We were active as BAAF in establishing links to adoption agencies for children who had adoption as their plan and approved adopters and have also provided limited adoption support services.

We hold a significant repository of materials concerning adoption covering 1949–1976. This includes a published Journal Child Adoption. Part of our archives are stored in the library of the London School of Economics. Other materials are available in our library on site at the Coram Campus.

13/01/2022