

# High Court severely criticises local authority's 'breath taking incompetence' and failures to disclose in care proceedings (Local Authority v CD)

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**Local Government analysis: Mr Justice Newton was scathing in his criticism of the failures of a local authority that led to a boy, J, being left in foster care for at least nine months longer than necessary. The High Court judge found that although J's mother had been acquitted of the murder of J's half-sister H, the local authority had a 'wholly negative biased view' of the mother that was clearly conveyed to J. Vital information was not disclosed to the court by the local authority, including the foster carer's unwillingness to care for J long-term. Newton J said it was 'inexplicable' that crucial information was kept from the court. The judge determined that this was a case where there had been 'breath taking incompetence (with or without bad faith)' by the local authority, which resulted in greatly prolonged proceedings and a boy remaining separated from his family for many months. Written by Tahmina Rahman, barrister at 1GC Family Law.**

*Local authority v CD & others (Rev 1)* [\[2020\] EWHC 3298 \(Fam\)](#)

## What are the practical implications of this case?

This case is a stark clarion call to local authorities about the need to ensure a fair and objective approach in proceedings and maintaining transparency that includes full and frank disclosure. This is all the more important in the context where a child remains in foster care pending a final hearing.

In this case, the court highlighted the 'deliberate and misconceived decision making' of the local authority and their failure to make timely disclosures to the court which 'at best...demonstrates a total lack of judgment or professionalism'. The court was clear that the prejudiced approach in this case led to the child remaining in a damaging placement for at least nine months too long. Disclosure of key facts was too late.

This case highlights the need for careful supervision of social workers—in this case, the court had not heard evidence on the level or quality of supervision, but determined the social work management of the case was unacceptable. Whether this case leads to an increase in human rights claims for damages, with arguments that flawed decision-making led to delays in children returning to family from foster care, remains to be seen.

## What was the background?

These were the fourth set of proceedings relating to the child J. In June 2018, J's half-sister H was found dead in her cradle. She was later found to have extensive injuries. A criminal trial followed after J's mother CD and H's father E (who was not J's father) were charged with H's murder. E was convicted and sentenced to life imprisonment; CD was acquitted.

The acquittal was 'an aspect with which the Local Authority evidently struggled'. The local authority and J's foster carers held very strong views about the mother, particularly that she knew the detail or some detail of E's violent past and the foster carers considered the mother 'had got away with it'. The social worker also knew the foster carers did not want to care for J long-term but did not disclose this to the parties or court until much later. This was part of a pattern where important

information was not disclosed by the local authority; the court said the social worker's case management had been 'at best passive' and there had been an 'almost complete lack of openness in particular with the court'. The result was that J remained in foster care in a 'thoroughly corrosive environment' for at least nine months longer than necessary.

### What did the court decide?

The remit of the hearing was to consider the role of the local authority in this difficult and serious case. The court heard evidence from the social worker and also the assistant director of children's services, but chose not to publish the name of the social worker, as the court indicated it understood the enormous pressures placed on social services.

However, the criticism of the local authority was expressed in trenchant terms. The court decided that this was a case where the local authority had a very clear mindset as to the culpability of the mother and that lay at the root of very serious failures that occurred in this case. The failings included misleading the parties, court and J in an 'inexplicable and ultimately dishonest stance'. The court determined the social worker's management of J's case 'has spectacularly fallen well below the standard that is acceptable.'

The court ultimately found that the 'breath taking incompetence' led to a great delay in the proceedings and that J should have been returned to his family at least nine months before.

### Case details:

- Court: Family Division, High Court of Justice
- Judge: Mr Justice Newton
- Date of judgment: 3 December 2020

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