

Episode 30 | Access to records: what you need to know transcript

Welcome to CoramBAAF Conversations, a podcast series dedicated to adoption, fostering and kinship care. We ask children, social care professionals, and experts by experience to join us to share with us and you, our listeners, their experiences, reflections and knowledge. I hope you enjoy.

Hello, my name is Augusta Itua and I'm one of two legal consultants at CoramBAAF. I also recently completed a Church of fellowship looking at access to children social care files. This podcast episode is being recorded as part of CoramBAAF's Members' Week yearly event for CoramBAAF members. The focus of the week is listening to the child, and each day we'll be exploring different team relating to diverse experiences and challenges faced by children and young people. Across adoption, foster care and kinship care with more information, visit corambath.org.uk. Today, I'm delighted to be talking with my colleague and job partner, Alexandra Conroy- Harris. Alexandra, would you like to introduce yourself?

I'm Alexander Conroy-Harris. I am a barrister and part-time legal consultant with CoramBAAF, job sharing with Augusta, and my background is predominantly in local authority legal work focusing on adoption and fostering. And I've been part of that CoramBAAF for the past 15 years.

Thank you, Alexandra. Accessing records is an increasingly significant topic of discussion. Adopted and care experienced individuals often face challenges like redacted information and complex procedures to accessing their record peers. Now organisations such as the Care Leavers Association, the access to Records campaign Group and UCL's Mirror Project have been advocating for policy. And practise reform, offering practical guidance and support. More recently, the Archives and Records Association produced a good practise guidance for record keepers and care professionals on the records of adopted people and care experienced people. This document recommends a new and consistent approach to preservation and assess provision for records. There are several. Other initiatives that aim to improve consistency in approaches, professional knowledge and understanding and promote better recording practises when it comes to how children are written about, with greater consideration for the lifelong and stigmatising effect of deficit narrative. As well as producing a good practise guide on access to information for adult care livers, which was recently updated in 2022, Oran Bath has recently developed a training course with social work professionals supporting care, experienced young people and adults seeking to access their children's social care files. Despite these development significant. Areas remain for those wishing to ask the records today with my job partner Alexandra, we'll be able to explore some of these issues and some of these recording team. Firstly, I'll start by asking you, Alexandra, what are the typical steps involved in accessing personal records? Could you briefly explain the different regime that exists?

That different regimes exist is one of the the major problems for people trying to access records because there is no unified scheme which allows somebody whose family has been who have been separated from the family by state action to get hold of the records they they need. And it very much depends on whether somebody was. In care in foster care, residential care. Subject to care proceedings, whether they were actually subject to care proceedings. So there'll be a court file as well, whether they were adopted pre 2005 or post 2005. Different regimes exist for that and people have just been involved with local authorities working with their families who weren't actually taken to care. So they they all have different processes, different. Statutory regimes, which dictate what they're entitled to and what local authorities may and may not disclose. So starting from the most structured and easiest to understand. Think if somebody's been adopted, there is a statutory rights to information and that right. Started from the 1975 Children Act, which was incorporated into the 1976 Adoption Act, the just the basic right to access your original birth certificate and that understanding that adopted people need to need to know their roots, want to be able to access information about themselves has grown so. Then and there has been a developing understanding of the application of discretion to disclose adoption records for people who adopted before 2005. So their right to access records is subject to the discretion of the agency and the adoption agency local authority. Have the power to disclose information. Where they think it's consistent with their duties as a, as an adoption agency, and that has been preserved by the adoption Regulations, Adoption Agency Regulations, 1983, the access to information part of that has been preserved. So that's one application for adopted people. The second regime for adopted people is under the adoption. In late 2002. And that's applies only to adoption orders, which were made after 30th of December 2005. So it's only now really that people affected by that structure has come into adulthood and have started wanting to access their information under that regime. And that is a difficulty, I think, because people just didn't put it into practise at the time when it was introduced and they're having to pick it up now because it hasn't become part of. Peoples day-to-day working lives, so there are issues about understanding what can be disclosed, what must be disclosed. And what needs other people's consent before it can be disclosed and that the 2002 Act also introduces the power to for somebody to challenge decisions by the local authority, by application to the IRM if they're refusing to disclose information identifying information that they want, or if somebody is trying to prevent the disclosure of information about them on the file. And then possibly I think the most complex and hardest to deal with. Is children who were in foster care or subject to care proceedings and their files don't have a dedicated, tailored regime and local authorities are faced with having to consider disclosing information under exactly the same regime as they would do if somebody's asking for their Council tax records so. They have to look at the Data Protection Act and the GDPR, and that can be quite difficult for local authorities to to apply. To children's records where a lot of the information will be about the actions of other people around them and and the extent to which

they should redact that information where it is actually the children's information. But concerns other people and other people's right to privacy. So that's the most difficult one to to balance I think.

Absolutely. And having heard about these three different regime, would you also say that there is a somewhat 4th regime where information is being assessed through the Court? Notes.

Yes, that is a a source of information. The courts obviously hold their the information. Any information that's being filed as part of care proceedings or adoption act proceedings and we haven't actually seen many children accessing their care information through the courts. Well, I think technically, as all 1989 Acts Children Act care proceedings. Would have had the child as a party, so technically a child should be entitled to the entire file in the same way as any other party. I don't know if people have tried doing that or if that's been challenged. We haven't seen any challenges to to that, but I know the courts are quite reluctant to become involved in that sort of disclosure because they're simply not set up for it. That they have no support, they have no experience in dealing with people coming back who don't have an agency or social workers behind them to mitigate the sometimes traumatic effects of having a whole lot of information served on them at once.

That was very comprehensive and just hearing you speak, I could pick up support and expertise. Are there any common challenges or barriers that both groups adopted and care experienced people face when it comes to assessing their?

Chords.

I think you're looking at support. Yes, there are. There are lots of challenges as we've. So many others services in this area, there are simply not enough resources. We don't have enough social workers with the expertise to provide the the support that people need as they're coming to look at their records. I think the separation of adoption, the adoption agencies into RA's away from local authorities makes it harder for people to find out where their adoption record. Those are whether you know they expect them to be held by the agency. Many older, private or voluntary agencies have ceased to exist, and their records have moved into local authorities. Some local authorities then moved their records into the regional adoption agencies, so finding the records is the first first hurdle. And then getting access to them with support is the second access to information Pre 2005. Apart from adopted people being able to access their files files directly, if anybody else is trying to access information or they're trying to facilitate contact with anybody from across the adoption barrier, then you need to go to an intermediary.

Oh.

Service. Intermediary services are not services which? Local authorities have to provide, so they tend to be provided by independent agencies. Who and there is a cost. There's a cost attached to them, which is a significant barrier for many people coming back to try and find out information and contact relatives across adoption pre 2005 and for care experienced people. Again you you've got the expertise that was built up in local authorities. In allowing access for adopted people translated and that you, you often have the same social workers doing just access to care records. But that expertise has moved out into regional adoption agency. Things and we've heard some rather disturbing stories of people trying to come back and get their information and just being sent to the data Protection officer who treats them like any other data protection request. And they get either way too much information. Detailed information and without any support at all, or they get huge quantities of paperwork with big black marks throughout all of them, and that's why we we've we have the good practise guys.

And.

And to try and support local authorities in providing an appropriate service. And really that does mean support and it does mean keeping the redactions to as little as possible. And treating all the information in the files wherever possible as that child's information and only redacting as appropriate. Uhm. But that can be very difficult for the social workers, especially where you've got more than one child trying to keep the information down to the. The person who's coming for the information and not take out, not not provide them with lots of personal information about siblings which siblings might want not might not want shared. And. Building a relationship with the young person that allows you to say that they are getting the appropriate information in a supportive way. So many people who've been involved with the care system for a lot of their lives just don't have that level of trust to to be able to rely on a social worker handing over the information. Appropriately, they they want it themselves. They don't realise until they get it just how difficult it is to process a difficult family background followed by life in foster care. In one go without support.

Thank you. And as as I think you covered this already briefly earlier, however, when thinking specifically about support, what different support systems are there in place to help those who are accessing this information process? What they may receive and what they may be exposed to as a result of. This.

And again, you've got different regimes depending on on where you go. So people adopted after 2005, they have a right to the child permanence report, unredacted, and that should, you know, that will have an awful lot of information in it. But they get because they were right to it there. Is. No obligation to support somebody accessing that. Some some people just get sent that through the post when they request it. Pre 2005 there is the possibility of going through an intermediary service which will provide support and explanation of the records as you're

receiving that. That can be very important when looking at older records and understanding the language and how things work. At the time of the adoption. If somebody is a care leaver system entitled to leaving care support, then they may be able to get support that way in accessing care records, but sometimes people don't want the records while they're still entitled, leaving care support one of the one of the triggers for accessing for accessing information is often. When somebody has their own children and they they can see how they act with their children, they want to know how they were treated at that stage and why they think that way about about children, about their own children. And so that can be much later in somebody's 30s. And later so at that point, they no longer have any support available. So they would have to rely on, well, a doctor, a doctor. People can rely on adoption support services, but care leaders don't necessarily have have that have access to that sort of expertise and they have to rely on voluntary organisations.

Thank you. And I think this really emphasised and shows the different legal rights that adopted and care experienced. People have and to me also calls for it provides an even stronger justification why you may want a unified regime that also covers the needs of people who are still in the care system, those who are exiting the care system and those who are accessing. Their records at a much later point in life and sometime in their very elderly age. So ideally you would want a system that is able to accommodate all these different needs at different stages. Thinking about someone who is looking to us as the record. What advice would you? Give them both to care experience or adopted person.

It depends on how much information somebody has, and an adopted person could have absolutely no information about. Which agency dealt with the case? How long they were in care for that sort of thing. And so the the first thing is accessing the birth certificate for an adopted person, and that's that starts sort of gives you the the starting point for being able to trace which courts dealt with your adoption. The courts will be able to tell you which agency dealt with their adoption, so there's there's several steps to go through before you even find. Where the agency is and where your records might be. The. Adoption search and reunion Web page has quite a lot of information about how to deal with that from Doctor an adopted person, and can also help in identifying where records are kept. It has some details of agencies be closed down and where to find. Records. So that would be the starting point. If they're doing themselves. Going to an intermediary agency is. An obvious starting point, but unfortunately there aren't. There aren't that many of those. They are. There are some quite long waiting lists for access to those, and also that there's a cost attached. So going finding the agency or the local authority that dealt with the adoption is the the best way to do it and you start, you start with the birth certificate or children who left care. Hopefully they will know. Local authority dealt with their case, but that's not always. That's not always so you might.

Then.

Have to. Approach several. Or. Because if people are moved around, if they're fostered in a different area from the one that was placed, you wouldn't necessarily know. Which local authority was responsible for your? Your mission to care. So yeah, it's really having to approach the authorities. You think were you were responsible for your. Your case to start with and seeing if they can respond, but there isn't a there isn't a central register where somebody can find out if they were in care, who was the responsible authority, or where the where the papers are kept. And that's something which is in the long term being considered. I think it's something which needs. It needs a central register, both for court records, local authority records and adoption records, because expecting people to have to just write to lots of different agencies or lots of different local authorities to try and discover where their papers are is it's not an acceptable start to a search. But unfortunately that really is what you need to do. And again. If you don't know where your records are being kept, then I would suggest looking at one of these or like the Care Leavers Association just to help you support. How how you go about finding? Finding where those records are.

Absolutely. Thank you. And actually leads me to my next question along with the Central Register. What changes or improvement would you like to see in this area?

I would like to. Consistency. I think it's very unfair that people have a different level of act. Just to records, firstly depending on what their status was and for adoption whether they were adopted before or after 2005 and also we find I think the practise is can be very variable for care leavers as well As for adopted people because there is this level of of having to apply discretion about the level of redaction. Of records and I think people get very different services. Depending on which authorities or agencies they they approach. So a A consistent 1 unified structure for allowing people to access their records and for local authorities, agencies applying their discretion and and redacting records if necessary before providing them I think would be. Would be fairer for for everybody rather than these, this piece meal approach that's that's been taken as as we go along, I think it needs to be brought together because if people don't people end up really. Buying, especially those people, there's there's some very it's a bit of a Wild West out there if you get on the Internet, there are agencies who calling themselves agencies are calling for support work and people who who offer to help you find information or help you find relatives which are not always able to do so in the best interest of the person. Seeking the information so having a reliable, consistent service that provides the same service to everybody and. Provides an an appropriate service to everybody. Would be something which I I really think needs to be considered and and looked at.

Perhaps also in the context of a unified regime and a central register and a central way to assess support, so there is one potential independent body that you can approach that then triggers all of this. If we were in Wonderland, of course.

That's a lovely. And the closer we can get to that, the better. But again, it's different parts of the system are making steps towards that. I know the courts are looking at trying to get information about where their records are being held because courts are being closed down and records are being moved to to different areas and different courts. And I know internally they're looking at how they can find, you know, just just trace their records where where they will have gone so that there's one place which holds that information. Obviously we're we're putting like guidance giving things like guidance tries to help with consistency. There is a project to try and get agencies and the adoption search from Union website was had a lot of information about closed down agency and where where records were moved to work on that was halted for a bit. For a few years. But that's now back up and running, and there's some other agencies which which try and keep that information together. But it's you're starting from a fragmented system trying to address the problem within their system. So if you could have a some sort of umbrella organisation, that would be ideal. But again, you're talking about resources, everything in this field, you end up talking about resources. And and where they're focused.

Indefinitely. What I've learned so far is also how important is to have a multilayered approach so. So whilst trying to seek this change at a higher level, there is definitely more that can be done from a day-to-day perspective when it comes to reduction in 3rd party information and things as such, however, dying itself is not going to be sufficient. To. To solve the problem, so to say, and to bring a consistent approach, but we need to all keep trying to do different things and moving towards a direction. And definitely there's been also a lot of research that has been done in this area looking at participatory record keeping. In the ownership of the information, especially when it comes to children's social care files, in trying to bring a more equitable way of balancing the rights of organisation and those of who the records belong to. But also, especially when it comes to the Data Protection Act and the GDPR and Children Social Care files, I think guidance tailored and clear guidance from the IC O would be very welcome in the interim, whilst we all dream about a unified regime and also perhaps. This could be a topic for review for the local mission. I would be very interested to hear your thoughts on. That.

Yes, I think. Follows the Information Commissioner office is concerned they, and we all went through a lot of training when the GDPR was introduced, and I think there's there's an element to which people working in local authorities were were were scared they they would. They were given a lot of information about how important it was to protect information and that doesn't fit very well with trying to give out information to. Care experienced people, so I think

the needs. Be something concrete that that balances that to allow a more sensible approach, because you see some of the files that are disclosed and they are just pages and pages of black and that's got to be soul destroying for somebody who wants to know what happened to it and just see pages of information they're not allowed access to. And I think. Most of the time when you go to the information. Commissioner, office. They're they're quite. Keen on fighting back against this idea that everything is closing down, they they're they're not trying to restrict it. They're trying to restrict access to information where it's appropriate, but I think there is a feeling that they do.

Clear.

So that they when you get guidance from the ICC, it's usually quite in favour of people having as much information as is as is appropriate and that's often wider than than people working in local authorities think so if yes, if they were able to produce some guidelines. Specifically aimed at care experienced people that would be really helpful.

Yeah, in the absence of that, where you risk is the people. Interpret, interpret legal provisions and data protection laws in a more restrictive manner than perhaps the Information Commission office would would be in to interpret it.

Yeah, I think they do. And the Law Commission, yes, if they if they had space to to consider. Unifying regimes and and dealing with data protection in one place, though there there's there's a small acknowledgment that things are different in that the Data Protection Act and the GDPR have a specific exclusion, so all access to records access to adoption records that doesn't fall within the. The DPA regime. But often again, that's used to just. It's just the subject access provision. Which are closed off because there's an alternative regime under the the adoption acts. Yes, looking at all situations in which. People who've been through the care system and where another can get access to their records and. Unifying it it it would be something that. I think your Commission is probably the only people who could do that, think it's something we have certainly baffled, suggest suggested in the past that hasn't made it into their project list yet, but I think we will. We will be looking to submit another suggestion in the next round. To to consider it.

Absolutely. And in the interim, would you because at the moment data protection laws exclude adoption records? That would a third regime specifically applying to children's social care files that sit along. They exist in two in relation to adoption record. Just create more confusion. Or would that be already progress from where we are at now in lieu of the unified regime?

I think would be an opportunity to take the best aspects of each. So the guidance on how to apply discretion would be useful to apply to every situation a statutory obligation to apply discretion rather than just following the interpretation of the Data Protection Act would be

would be helpful. Just so you've got similarities as much as possible. Across the across the different structures so that people get the same level of information. And ideally as much information as possible. Whichever background they come from. When they try to access the information and obviously some of that looking at different regimes across across the world, how other jurisdictions address access to information? And taking the positives from from other areas I'm sure would would help in trying to to get the best of practise from anywhere, anywhere you see it and and applying it to to everybody consistently.

Also, because there is still a cohort of children, young people who would have entered both the adoption system and the care system, and a a situation, a solution that still has different regime, we'll still see them having to apply to different agencies and different bodies to be able to. Obtain a unified and coherent narrative about their time. Time in care or their pathway to adoption.

Yes, it would be quite. For somebody to have had care proceedings so they would have court files containing a lot of information about them in their background, they will have care files once they're admitted to care, and then they'll have adoption files and the idea that there is different information, possibly in each one, that they need to be brought together. And then then people need to. Have be able to have access to all of. Those without having to approach each one and cross reference information across the different levels of information and documentation that they get from each individual strand it it makes no sense. So something that would would support. That being done in in one one place. One access resume and the same information given out from each I think will make an enormous difference to people. Who just want to see what happened to and and to be able to follow that through without having to cross reference documents and try and work out which. Which name from one set of documents applies to which blacked out bit in another set? It's it's unhelpful. It increases people's stress. And the feeling that they're not being told everything if you get something that's being redacted or referred to in one place and. Not in another. It doesn't build trust, it doesn't give anybody confidence that they're being told. The truth about what happened to them and the whole truth about what happened to them.

Absolutely. Thank you so much for talking with me today. Alexandra, is there anything else you want to add? Any closing comments?

So one thing I want.

Want professionals to take away? Is that the data protection regulations, Data Protection Act and the associated regulations should not be rigidly applied. To children's files that children and young people have the right to know what happened to them, and we should be using the legislation we have at the moment to support. People in being able to access as much

information about themselves and their background as is possible. So to to use the Data Protection Act as a barrier, I think is is not what was intended and that the the balance wherever there is a decision to be made, the balance should come down on the side of disclosing information about the young person. The the the care leaver, the adults that's been in care have been subject to adoption, so whenever there is. Any doubt? I think you should be putting an extra weight of of fairness into the that the balance on in in favour of disclosure rather than keeping an eye on the data protection regime which is not intended to be quite as damaging as I think. It can be.

Absolutely. Thank you. Thank you for your insights. I hope our listeners. Have some useful information to take away from this session. Please remember to take a look at the Quorum's bath website For more information about our members week and further information around listening to the child about their identity and more, including more resources about. Access to children's social care files and access to records for adopted people. Thank you.

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