



Neutral Citation Number: [2023] EWHC 293 (Fam)

Case No: SD30/2022

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14.02.2023

**Before :**

**MRS JUSTICE MORGAN**

**Between :**

**K**

**Applicant**

**- and -**

**Maya**

**(Through Her Children’s Guardian)**

**First Respondent**

**-and-**

**A County Council**

**Second Respondent**

-----  
-----

**Tom Wilson** (instructed by **Goodman Ray Solicitors**) for the **Applicant**  
**Eva Holland** (instructed by **Cafcass Legal**) for the **First Respondent**  
**Johanne Simmonds** (instructed by **A County Council**) for the **Second Respondent**

Hearing date: 20<sup>th</sup> December 2022

-----  
**Approved Judgment**

This judgment was handed down remotely at 10.30am on 14.02.2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

**MRS JUSTICE MORGAN**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their

family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**MRS JUSTICE MORGAN**  
**Approved Judgment**

**Mrs Justice Morgan:**

1. The child who is the subject of this hearing and with whose welfare I am concerned is a little girl who is now 11. In this judgment I will call her Maya. The applicant is K. She adopted Maya in Country F and brought her to the United Kingdom in July 2021. The adoption in Country F is not recognised as a matter of English law.
2. Maya's birth mother is Ms ZKT and her birth father is Mr ZKZ. Throughout the lifetime of these proceedings they have both been understood to live in the Southern part of Country F. They are both married, but not to each other. They relinquished the care of Maya when she was aged four. She has not lived with them since. The circumstances in which she has lived will be examined later. Maya's birth parents consented to the making of the Country F adoption order and were present at the hearing at which it was made. A feature of these proceedings is that neither birth parent has been served with notice of the application before me.
3. Since her arrival in the United Kingdom Maya has lived with the applicant. The application before the court dated 22nd February 2022 is for an adoption order.
4. The applicant is represented by Mr Wilson, the Child by Ms Holland taking her instructions from the Guardian Ms Demery and the relevant local authority by Ms Simmonds. I have had the benefit of detailed skeleton arguments of very high quality and, in circumstances where the factual situation has changed and developed shortly before the hearing, those documents have been amplified orally with skill and ability which has been of very great assistance in enabling decisions to be made for Maya. It is right also to recognise that Ms Demery has made very great efforts to ensure that communication has been established with Maya's birth mother. Without those efforts it is very unlikely that it would have been possible to make a final decision on the application at this hearing.

### **Background**

5. I have met Maya and seen for myself the bright, inquisitive and attractive little girl of whom I had read in the reports and statements filed. Maya's background however is not straightforward, and life has not always been comfortable or her future certain. It is unsurprising that she has needed the exceptional care K has given her or that Maya herself has wanted the reassurance of knowing that her future is settled, and decisions have been made so that she does not have to worry about uncertainty.
6. Maya was born in Country F in November 2011. She spent about the first four years of her life in her birth mother's care. When she was four, her birth mother, relinquished her into the care of a family member, Ms ZKF. I know that one day Maya will want to read this judgment. 'Relinquished' is, I expect a word it will be hard to read without feeling hurt. In making decisions for her, I would want Maya to know that I have not thought of 'relinquished' as meaning 'unloved' or 'unwanted' and nor should she. Sadly, Ms ZKF died in December 2016. After her death Maya moved into the care of a member of Ms ZKF's extended family, ZKD and Mr ETT. The evidence which has later emerged indicates that the way in which she was looked after led to Maya experiencing physical emotional and perhaps sexual abuse. The detail of that it is unnecessary to rehearse but it means that Maya now has an increased need for a warm, nurturing and stable home in which she knows she can trust the adults around her.

7. K first met Maya, by then aged 5, when she accompanied her brother-in-law on a trip to Town P in November 2016. This was shortly before Ms ZKF's death. During her stay in Town P, K spent increasing periods of time with Maya. Once she had returned to the United Kingdom, she kept up video contact with Maya and sent gifts and other items. Telephone calls with Maya continued after she moved to Ms ZKD's and Mr ETT's care. K also gave financial support, sending clothing, food parcels, medicine and the like and paying for her birthday party
8. The next time K visited Maya in person was on a trip to Country F in 2018. On that visit she became concerned for Maya's welfare since she appeared to be showing signs of malnourishment and marks from physical chastisement. Eventually, the social welfare authorities in Country F removed Maya from Mr ETT's care and placed her with a maternal aunt in Town P. Following that move, K continued to have frequent video calls and to support Maya financially. K pursued the process required to adopt Maya in Country F. This included a welfare assessment by the domestic authorities and the process of obtaining consent from Maya's birth parents. Ultimately, an adoption order was made in K's favour by the High Court of Country F (Family Division) on 19th November 2019.
9. After the adoption order K followed the proper process to secure Maya's travel to the UK for the purposes of adoption through the Centre for Adoption ("IAC"). The process included being positively assessed as a prospective adopter, obtaining a Certificate of Eligibility from the Department for Education, and being matched with Maya on 8th July 2020. Of note, in the documents produced during this process, the IAC characterised the assessment of K as being '*extremely thorough*', and as providing a clear demonstration that '*her motivation and tenacity are not in doubt*'. The assessments feeding in to the process further identified that K '*has thought deeply about her motivation to adopt [Maya], and is guided by [Maya's] needs rather than her own*', and that K '*is sensitive to [Maya's] difficult life story*' and '*has a positive, empathetic and respectful view of [Maya's] birth family*'.
10. On 18<sup>th</sup> July 2021 Maya travelled with K to the United Kingdom. The following day, K gave notice to A County Council of her intention to adopt. K applied for an adoption order on 22nd February 2022. This matter was transferred to the High Court on 8th April 2022.

### **Welfare Assessments**

11. The local authority Annex A report recommends that an adoption order be made. As to Maya herself it is recorded that she '*has been very consistent in her wish to be adopted by [K]*' noting that she has built a close relationship with K, and that she '*clearly looks to [K] for her needs to be met and is able to be open with her about her feelings and experiences. She calls her Mum...She has wanted to use [ her] surname and is upset when she sees [her birth surname] ...*'
12. Further, the author of the report observes that: '*K is brilliant at helping her to name and make sense of her feelings and guide her through challenges she has faced since being here... ...[Maya] and K have a strong bond that has been built over time since they met when Maya was four.*'

Overall, the report concludes, that: ‘K’s commitment to [Maya] since she has been here has been unwavering especially when put in the context that she first expressed a wish to adopt [Maya] six years ago and has taken a step-by-step approach to get here...  
... There is no doubt that there is added complexity from a transracial adoption and a single parent adoption but I feel confident that [K] is able to meet [Maya’s] needs both now and in the future and that she will be a strong advocate for her as she has been thus far.’

13. Ms Demery similarly recommends the making of an adoption order, strikingly she expresses her recommendation by saying that Maya’s welfare needs ‘*dictate*’ that an adoption order should be made. Subject of course to the legal requirements being fulfilled. In arriving at that recommendation Ms Demery when considering the harm experienced to date observes that Maya ‘... *has suffered harm from her previous adverse life experiences is without question. She has experienced physical, emotional and possible sexual abuse at the hands of previous carers. Not only that at the age of 5 her primary carer passed away suddenly. However, she is now in a home where she is well loved and with a care giver who is providing attuned parenting. Adoption by [K] affords [Maya] the opportunity to have a nurturing, reparative base from which she can begin to move on from the adverse experiences of her childhood and look forward to a more hopeful future. Therefore, the risk of her suffering further harm is greatly reduced*’.

### **Relevant Law and Legal Principles Engaged**

14. In addition to the complex factual history against which the application for an adoption order for Maya is brought, there are a number of legal and procedural complexities. Those aspects of the case are ones on which I have had very considerable help from the detailed analysis within the documents prepared by Mr Wilson and Ms Holland each of whom, from their different perspectives in the case strongly submitted that the adoption order which each urged me to make to secure Maya’s future should be on a properly secure legal basis. It is largely from their analyses that I draw here.

### **Service Of the Birth Parents**

15. The first issue arising is that of service. Neither birth parent here has been served with notice of the application to adopt Maya.

FPR 2010 r. 14.3 governs the parties to adoption proceedings and provides that each parent who has parental responsibility for a child is a respondent to an adoption application. However, the rule also provides that the court has a discretion to remove any person as a party to the proceedings and, pursuant to its general case management powers, the court is also able to permit notice not being served on a parent. Nobody disputes that I may in this case dispense with service on either or both of Maya’s birth parents, should I conclude that it is an appropriate exercise of my discretion in the fact-specific circumstances of the application before me

16. As a matter both of principle and of ordinary common sense, the mere fact that an adoption order was made in Country F removing the birth parents’ parental status under the law of Country F does not mean that they do not fall into the category of “parent” for the purposes of FPR r.14.3 (see *Re G*, at p.537). It would make no sense were

English law not to recognise the Country F adoption but, for procedural purposes, to have recognised its effect as having extinguished the birth parents' parenthood.

17. If I determine that the birth parents have consented to the making of an adoption order, as to which consideration follows, then I accept Mr Wilson's submission that there is no need for them to be served with notice of these proceedings. It would delay matters unnecessarily for Maya and without meaningful benefit to her in so delaying (see *Re C*, at [49]-[50]).
18. I accept also that if I determine that the birth parents, or either of them, have not consented to the making of an adoption order, it remains within the court's discretion to direct that they not be served with notice of these proceedings. Although concerned with different factual circumstances, the principles articulated by the Court of Appeal in *Re A, B and C (Adoption: Notification of Fathers and Relatives)* [2020] 1 FLR 1157 apply by analogy.
19. I will return to the question of service later in this judgment

Consent

20. This is a "non-agency" adoption and the relevant condition for the making of an adoption order in these circumstances is section 47(2) ACA 2002, namely that the court is satisfied that, in respect of each parent or guardian of the child:
  - a. The parent or guardian consents to the making of an adoption order; or,
  - b. The parent's or guardian's consent should be dispensed with.

For the avoidance of doubt I accept and agree with the position taken on behalf of the Guardian by Ms Holland, with whom Mr Wilson agrees, that whatever the arrangement was for Mr ETT when he came to be looking after Maya, there is no evidence that he was appointed as a guardian or that his consent otherwise falls to be considered under this section. I note also that his consent was not required by the High Court of Country F in relation to the adoption order made there. I am concerned here with Maya's birth mother and birth father when I consider this aspect.

21. Although the phrase "an adoption order" is broad in its scope, section 46(1) ACA 2002 makes clear that it is confined to '*an order made by the court on an application under section 50 or 51 giving parental responsibility for a child to the adopters or adopter*'. Section 144(1) ACA 2002 defines "the court" as the High Court or Family Court. The condition in section 47(2) ACA 2002 must therefore, and necessarily, be limited to consent to an English adoption order. Thus, the consent to the Country F order whilst evidentially significant is not something I can take in and of itself as consent for the purposes of this application.
22. Section 52(5) ACA 2002 defines consent as 'consent given unconditionally and with full understanding of what is involved; but a person may consent to adoption without knowing the identity of the persons in whose favour the order will be made'.
23. FPR 2010 r.14.10 provides that consent to the making of an adoption order may be given in the relevant form (namely, Form A104), or 'a form to the like effect or otherwise as the court directs'. As this case has developed this aspect has an increased

resonance since there has been contact established via Ms Demery with Maya's birth mother to discuss with her and receive from her information about the proposed adoption

24. Section 52 ACA 2002 provides that the court cannot dispense with the consent of any parent or guardian unless:
- a. The parent or guardian cannot be found or lacks capacity to give consent; or,
  - b. The welfare of the child requires the consent to be dispensed with

There is relatively little authority as to what constitutes an acceptable form of consent and, inevitably, each case must turn on its facts.

25. In *Re G (Foreign Adoption: Consent)* [1995] 2 FLR 534, Johnson J was concerned with a child born in Paraguay whose mother had consented to her adoption under the law of that country. The Paraguayan adoption was not recognised under English law. There was no doubt that the mother had consented to the Paraguayan adoption order and participated in the court proceedings. However, the possibility of an adoption order being made in England was not 'put to her' and she was not asked to consent to such an adoption. Johnson J therefore determined that the mother had not consented to an English adoption order and therefore her consent was not valid.
26. In *Re WM (Adoption: Non-Patrial)* [1997] 1 FLR 132, Johnson J was again concerned with a foreign adoption, on this occasion in El Salvador. The mother relinquished the child for adoption and she was adopted in El Salvador by an English couple. The adoption was not recognised under English law. Again, there was no doubt that the mother consented to an adoption order being made in El Salvador. However, by way of contrast with the situation in *Re G*, the prospect of a foreign adoption order had there been canvassed with the mother. As Johnson J explained: 'A member of the embassy staff had visited the mother in November 1993. In reporting the result of that visit, the ambassador wrote: "I explained to the mother the implications of adoption overseas and that she would no longer have any rights to the child. She said she understood and accepted this." I hold, on the basis of that information from the ambassador, that this mother was aware that there would be an adoption application in England, that the applicants would be applying for 'an adoption order' and that (in the words of the ambassador's letter) "she understood and accepted this"'

So it was that in those circumstances, the mother's consent to the adoption was valid.

27. A more recent decision concerning the issue of consent to adoption is to be found in *Re C (Foreign Adoption: Natural Mother's Consent: Service)* [2006] 1 FLR 318. Bodey J was concerned with a consent form signed in relation to an adoption order in Papua New Guinea. Having reviewed the previous authorities, he determined that consent to a foreign adoption could be sufficient evidence of consent to an English adoption. On the evidence before him, Bodey J determined that the consent was valid for the purposes of English law, identifying the following factors, at [34] – [40]:

The consent was signed, witnessed by a welfare officer, and expressed to be unconditional. In contradistinction to *Re G*, where consents had been expressed to be



revocable, the consent before him was to an adoption which, under the law of Papua New Guinea, was irrevocable (akin to English law).

It was established that the birth parent was aware of the effect of an adoption order.

It was clear, both from the evidence that the birth parent was consenting to an adoption under the law of Papua New Guinea or '*any other place that might recognise the consent*'.

The birth parent knew that the adopters were English expatriates resident for work purposes only in Papua New Guinea, and that the child would be travelling to live in the UK with her adoptive parents in due course.

28. Mr Wilson submits that there is assistance to be taken from other situations in which the question of consent, and the form in which it is suggested it has been given, falls to be considered by the Court. Parallels may be drawn with the issue of consent in the context of a parental order pursuant to section 54 of the Human Fertilisation and Embryology Act 2008, which requires the court to be satisfied that the surrogate has '*freely, and with full understanding of what is involved, agreed unconditionally to the making of the order*'. FPR r.13.11 prescribes the form of such agreement and is in almost identical terms to FPR 14.10. Examples of how the court has dealt with consent include:

a. *Re WT (Foreign Surrogacy) [2015] 1 FLR 960* – Theis J was unwilling to accept a signed form as evidence of agreement in respect of an Indian surrogacy, in circumstances where: (i) the documents were all in English, and the surrogate mother's ability to speak English was not known; and, (ii) the applicants had not met the surrogate and did not know her level of literacy.

b. *Re C (Parental Order) [2014] 1 FLR 654* – Theis J accepted a signed agreement in respect of a Russian surrogacy which was not in the prescribed form, in circumstances where: (i) the form had been translated into Russian; (ii) the form set out all the requirements to satisfy the court that the surrogate understood what was involved and the effect of giving consent; (iii) the surrogate signed the form in the presence of a notary who witnessed the document being signed and notarised it; and, (iv) there was evidence that the surrogate was literate and understood the document she was signing.

29. As with the question of service, I will consider later in this judgment the issue of consent in respect of each of Maya's birth parents.

#### Compliance with the Statutory Framework

30. Country F is not a contracting party to the 1993 Hague Convention on Adoption and is not named in the *Adoption (Recognition of Overseas Adoption) Order 2013*. The adoption order obtained in Country F is therefore not automatically recognised in this jurisdiction. K does not apply for it to be recognised at common law, her application instead is for an adoption order under domestic legislation, namely the Adoption and Children Act 2002.

31. Sections 83(4) and (5) ACA 2002 provide that Regulations may impose requirements and conditions upon any person intending to bring a child into the UK for the purposes

of adoption. Those regulations are the *Adoptions with a Foreign Element Regulations 2005* (“*AFER 2005*”), which impose stand-alone requirements upon both a prospective adopter and the relevant local authority and which modify those contained in the *ACA 2002*.

32. I therefore turn now to consider the statutory framework and the extent to which there has been compliance with it in the circumstances of this case.

*Regulation 3 AFER 2005*

33. Regulation 3 AFER required K to apply in writing to an adoption agency for an assessment of her suitability to adopt a child and to give that adoption agency any information that it may require for such an assessment.
34. K applied in writing to an adoption agency, IAC, for an assessment of her suitability to adopt a child and did indeed give such information as was required for that assessment. The positive prospective adopters’ report which resulted is dated 20th August 2019.

*Regulation 4 AFER 2005*

35. *Regulation 4 AFER 2005* required K to comply with a number of conditions before and after Maya’s travel to the UK. K has complied with the prescribed conditions as follows:
- a. *Reg 4(2)(a) AFER* – Prior to Maya entering the UK on 18th July 2021, K received a certificate of eligibility from the Secretary of State. That certificate is dated 13th February 2020.
  - b. *Reg 4(2)(b) AFER* – K provided the adoption agency, IAC, with the relevant information as to Maya’s details, information and reports from the relevant foreign authority, and met with the adoption agency to discuss the proposed adoption.
  - c. *Reg 4(2)(c) and (d) AFER* – K visited Maya in Country F and, after the visit, confirmed in writing to the local authority that she wished to proceed with the adoption, provided any further information received during the visit, and notified IAC of the proposed date of entry to the UK.
  - d. *Reg 4(3) and (4) AFER* – K accompanied Maya on entering the UK on 18th July 2021. The following day she gave notice to the local authority of Maya’s arrival and of her intention to adopt her.

*Regulation 5 AFER 2005*

36. It is not only the applicant’s compliance which is relevant. *Regulation 5 AFER 2005* ascribes a number of functions to and imposes requirements upon the local authority to whom the prospective adopter gives notice. These are largely concerned with record-keeping, evidence-gathering and reviewing the child’s placement once she travels to the UK.
37. There was some uncertainty within the lifetime of the application before me as to the local authority’s compliance with Regulation 5. In particular as to the timing of information sharing, visits to the child and reviews. The local authority has filed a

statement from the relevant social worker dated 10th June 2022 addressing the local authority's compliance and further evidence on 16<sup>th</sup> July 2022. From the evidence it emerges that:

a. *Regulations 5(1)(b) and (c)* – The local authority did not send reports to Maya's GP or Primary care trust, as required. However, the local authority has confirmed that K registered Maya with a GP.

b. *Regulation 5(e)* – The local authority was required to visit Maya weekly following notice of intention to adopt until the first review required by *Regulation 5(f)* (i.e. within the first four weeks of notice being served). The local authority evidence initially indicated that it did not comply with this, visiting on 29th July 2021, weekly for two weeks thereafter, and then a month later on 1st September 2021. The Local Authority set out compliance with weekly visits prior to the first review in its statement dated 16<sup>th</sup> July 2022.

c. *Regulation 5(f)* – The local authority was required to undertake a review within four weeks of notice of intention to adopt being served, and thereafter, if necessary, not more than three months later and six months after the previous visit. The local authority evidence initially indicated it did not comply with this, as the first review took place on 18th September 2021. Thereafter, reviews have taken place in compliance with the Regulation.

On behalf of the applicant Mr Wilson submits that these issues are, on any view, procedural and minimal. I agree that they are.

38. Regardless of any issues with the detail of compliance, Mr Wilson (with whom both Ms Simmonds for the Local Authority and Ms Holland agree) invites me to find that the local authority has in substance complied with *Regulation 5*. In summary he submits:

a. Adopting a purposive interpretation, the intention of *Regulation 5* is to ensure that the local authority has sufficient oversight of, and information about, the child's placement for the purpose of safeguarding and preparation of the relevant assessment documents. As the explanatory memorandum accompanying the Regulations makes clear, one of the policy objectives of the AFRs is to '*ensure prospective intercountry adopters have been assessed and approved in accordance with the appropriate procedures*'.

b. There can be no question in this case but that the placement has been properly scrutinised and monitored. The evidence that this is so I have seen in the Post-Placement Report dated 31st January 2022 and the Annex A report dated 20th May 2022.

c. K has complied to the letter with all requirements imposed upon her, such that the adoption agency, the local authority, and now the Court, have all necessary information. No agency or body has been prejudiced by the local authority's non-compliance.

d. Any failure to comply with *Regulation 5*, insofar as it exists, is solely a failure of the local authority, not of the prospective adopter, any harsh consequences should not fall on the prospective adopter who has acted in good faith and complied in full with all requirements imposed upon her. I agree that I should be slow in such circumstances to

impose harsh consequences upon a prospective adopter, K. I hold in my mind of course that effect of imposing those consequences would be felt most keenly of all not by the Local Authority or even K but by Maya.

39. There is ample authority for the proposition that the court should adopt such a purposive approach when concerned with issues as significant as the recognition of a child's parentage and the establishment of legal parenthood in circumstances where de facto parenthood is clear. I have been helpfully reminded of authorities such as A v P [2012] 3 WLR 369 and Re X (A Child) (Parental Order: Time Limit) [2015] 2 WLR 745. While concerned with parental orders, the principles derived from these authorities have also been applied in the adoption context (see Re TY (Preliminaries to Intercountry Adoption) [2020] 1 FLR 739; AX v SX [2021] 4 WLR 80; Re A (A Child: Adoption Time Limits s 44(3)) [2021] 2 FLR 625).
40. In Re A, at [25]-[31], Keehan J summarised the relevant principles concerning statutory interpretation. In summary, as Toulson LJ explained in Dharmaraj v London Borough of Hounslow [2011] PTSR 1523, at [25]: '*The modern approach towards breach of a statutory procedural requirement is to consider the underlying purpose of the requirement and whether it follows from consideration of that legislative purpose that any departure from the precise letter of the statute, however minor, should amount to the document being regarded as a nullity.*' Keehan J determined that the applicant had acted in good faith and been open with the local authority throughout, that the non-compliance had not prejudiced any party or the court, and that the making of an adoption order would be 'genuinely transformative' for the child. At [38], in determining that the adoption order could be made notwithstanding the non-compliance, Keehan J held that: 'Parliament surely intended a "sensible result". To rule that the adoption application should not be permitted to proceed on the basis of this non-compliance with what appears to be a mandatory requirement would not be a "sensible result"' I agree and adopt a similar approach in the circumstances attaching to the application in respect of Maya.
41. In Re TY, Cobb J was concerned with a foreign adoption and accepted non-compliance with time limits prescribed by the *AFER*, including the time limits prescribed for serving notice of intention to adopt. At [30], he held that:
- 'Parliament cannot really have intended that the application for an adoption order, with all its transformative characteristics would have to fail in limine and barred forever simply because of the failure of the applicant to comply strictly with this notice requirement (or indeed the earlier notice requirement) in the legislation. After all, Parliament surely intended a 'sensible result'. To rule that the adoption application should not be permitted to proceed on the basis of this non-compliance with what appears to be a mandatory requirement would not be a 'sensible result'.'*
42. Against this background, insofar as there has been any non-compliance on the part of the local authority, I adopt a purposive approach to interpreting the *AEFR* and to determine that, in substance, the relevant conditions have been met
- Section 42 ACA 2002 and Regulation 9 AFER 2005 51.
43. Section 42 ACA 2002 and Regulation 9 AFER 2005 prescribe the time that Maya must have lived with K prior to the adoption application being made. If there has been

compliance with sections 83(4) and (5) ACA 2002, that time period is six months. The time period rises to 12 months if there is want of compliance with sections 83(4) or (5) ACA 2002.

44. Maya has had her home with K since 18th July 2021 and K applied for an adoption order on 22nd February 2022. This is just a little over seven months. In circumstances where K has, as appears from the foregoing, complied with the conditions imposed by section 83(4) ACA 2002 this satisfied the prescribed time of six months. For the avoidance of doubt however had I determined that the relevant time period for Maya to have had her home with K is 12 months before the application, I would have given, retrospectively, pursuant to section 42(6) ACA 2002, the required permission to proceed.
45. It follows that I am satisfied that the statutory framework has been complied with sufficiently by the applicant and substantively by the Local Authority. The preliminaries for adoption are satisfied. Maya is eligible to be adopted, in that she is at the time of the application under the age of 18 and is not married. K is eligible to adopt, both by virtue of her age and her domicile.

### **Discussion**

46. The legal complexities of Maya's position have been such that it has been necessary to consider the application and to give directions at a number of hearings in advance of this one. The directions made have been focussed on acquiring fuller and better information about Maya's circumstances in Country F and especially on seeking to establish the whereabouts and position of her birth parents. As the case before me has evolved over those hearings, what is known about each of her birth parents -and therefore my approach to notice and consent in respect of each of them- has developed differently.
47. The position in respect of her birth father is, despite proper efforts, much as it was when the application first came before me. Notwithstanding the efforts which have been made to find him, and although it has been understood that he lives somewhere in the Southern part of Country F it has not been possible to trace him. Maya's birth Mother who, as I will consider shortly, has been found and spoken to and she was unable to shed any light on where he might be found since she now has no contact with him and neither does she have any contact details which might be provided so others might try to contact him. The information which Maya's birth mother gave to the guardian was that he is a fisherman and spends long periods of time away at sea. As appears later in this judgment when I consider the position of the birth mother, he is someone who did consent to the adoption order made by the High Court (Family Division) of Country F. I know however no more than that when I speculate on what might be his position as to consent to this application and whether he would consent. Speculation for so life changing an issue as this will not do. In his case therefore I am satisfied on all that I have heard and read at this hearing and having regard to the statement of facts prepared and lodged with the court, that the proper course is pursuant to section 52 (1)(a) of the Adoption and Children Act 2002, to dispense with his consent to the making of an adoption order on the ground that he cannot be found. I further direct in the light of that conclusion, that the need for service upon him is also dispensed with.

48. Maya's birth mother, is someone of whose position more has become known as the proceedings have continued. It is in large part the efforts to know more of her position which have meant that the proceedings have taken what Maya told me felt to her like a long time. There was good reason to think that Maya's birth mother could be found. If Maya is forever to be, in law, no longer the daughter of the woman who gave birth to her but the daughter of another, then before I make an order to that effect if there is any reasonable possibility of hearing the views of that woman, I would want to hear them. Strong efforts were made, not least by K herself to bring the views of Maya's birth mother into these proceedings. I have observed already the extent to which the birth mother (as well as the birth father) participated in the adoption proceedings in Country F. Thanks to the efforts of Ms Demery on the eve of this hearing I am satisfied that the birth Mother has also to a limited but meaningful extent participated in these proceedings.
49. In this case, the evidence before the court as to the birth mother's (and as it happens father's) consent is as follows.

*First*, there is a signed consent to adoption form dated 19th August 2016. It appears that the recorded date may be a clerical error but I have seen from the later statement of K that her solicitors informed her that they could not be relied upon in the adoption proceedings in Country F and they arranged for the forms to be re-done but there is no prospect of obtaining original records or court register from Country F now some 6 years on and in the light of intervening events in Town P. Of note are the following aspects:

*Second*, the form was signed by both birth parents and recorded on the face of it is that it was read out in both English and (the spoken language of the birth parents) and that the birth parents '*seemed perfectly to have understood it*'.

*Third*, the signed form describes the effect of an adoption order, which effect is akin to that of an English adoption order.

*Fourth*, this signed form records on its face that the consent is '*irrevocable and forever final*' and given '*entirely of our free will*'

*Fifth*, the signed consent recognises that the proposed adoption is by an English woman who is living at an address in the United Kingdom.

*Sixth* K's first witness statement, which I accept, details her conversations with the birth parents about the issue of consent and describes the birth parents' attendance at the hearing at which the adoption order was made. In her later statement, K explained that: '*The birth parents were asked by the Judge to take an oath and then the Judge asked them questions directly. I remember the Judge asking the mother off for giggling in the Court. She was nervous and the Judge did not like this. I remember her telling the birth mother that she would be thrown out of the court. The Judge asked the birth parents whether they had received any financial payment for the adoption. She explained the nature of the adoption order and asked them if they understood that they were giving up their rights and responsibilities for the child. They confirmed that they did and they were happy with this. They chose to give their evidence to the Court by swearing on the Koran.*

50. I accept the submission made to me at this hearing that it is therefore apparent that the birth parents seemed aware of the effect of their consent to adoption, and that the proposed adoption was by an English woman, living in England, with a view to the adoption being effective in this jurisdiction (albeit that in the form made in Country F it is not).
51. Yet more compellingly however though in relation only to the birth Mother and not the birth father, after a number of failed attempts, on the eve of this hearing contact was established with Maya's birth Mother. Ms Demery who is a very experienced guardian of the high court team had a detailed conversation with her, with the assistance of an interpreter. I found that conversation, the evidence of which I accept, not only helpful but also reassuring. Reassuring because I had felt a sense of disquiet when I read in K's statement of a nervous mother giggling in court and being told off by a judge who had threatened to throw her out of the court. The court in which she was apparently giving consent to the adoption of her daughter.
52. Within the attendance note made available to all following her conversation Ms Demery conveyed the following information which it is helpful to reproduce in full:
- Telephone call to Ms ZKT on 20<sup>th</sup> December 2022 with the assistance of [an] interpreter. The call lasted fifteen minutes. The call was conducted in a mixture of [ZKT's spoken language] and English. I explained my role and why I was calling her. She was aware that I would be calling. I told her I had visited [Maya] and [K] and that [Maya] is a lovely little girl. I asked about her relationship with [K] and when she first met her, but she could not recall when. She said she knows [K's] brother-in-law. I asked what she remembered of the adoption hearing in November 2019 and what the judge said. She recalled that she agreed to the adoption in court in Country F, and that she was happy for [K] to adopt her. I explained that although there was a hearing in Country F, there was different process in the UK I emphasized the implications of an adoption order, and that [K] would be recognised as [Maya's] mother and ZKT would have no parental rights. She told me that she was aware of this and that she was happy for [Maya] to be adopted by [K]. She is also happy that [Maya] is living in the UK. She confirmed that she has no contact with [Maya's] father, but he consented to the adoption in Country F. I asked whether she would like to see [Maya] if [Maya] came to Country F. She said she would. I asked if she had any questions of me about the process or about [Maya], and she did not. She said that she is "happy that all the paperwork is over". I thanked her for speaking to me. It was my impression that ZKT understands the implications of the adoption order and has given her informed consent*
53. Ms Simmonds for the Local Authority submits that it would be better to dispense with the consent in relation to the birth Mother. She makes the point that it would be safer. I see why she says that. It is, however in my view, an important part of Maya's life story and of her psychological safety to know how it is that she has come to be where she is. It is my view that there is an important distinction for Maya between an understanding that this court has decided the consent of her birth mother can be dispensed with, and the reality that in circumstances where concerted efforts have been made to contact her birth mother, the court is satisfied that that woman who gave life to her, has given her consent to Maya becoming in law the daughter of the woman she knows now as 'mum'.
54. For the reasons set out earlier Mr Wilson on behalf of K, supported by Ms Holland for the Guardian and Maya, invites me to conclude that the birth mother has consented to

her adoption of Maya, both under Country Fan and English law. I accept the detailed and thorough submissions of Mr Wilson and Ms Holland respectively that in the circumstances of this case I can do so.

55. I remind myself how fact-specific are questions such as this. On the particular facts before me, I am satisfied that in accepting her consent as valid I do not do so having a casual disregard for the formalities but rather that a purposive reading gives effect to the reality. That reality is, as I have observed, one which has and will continue to have significance for Maya. Were it the case however that my approach to the question of the birth mother's consent were not open to me, I would in any event have been satisfied that Maya's welfare required me to dispense with it and so arrive at the same end point by a different route.
56. Ms Holland rightly reminded me in her submissions that it is not only the question of consent to which I must turn my mind in relation to the mother's position and that although the guardian supports a conclusion that I should regard the mother as having given her consent there is the question of service also. That too, Ms Holland reminds me is an important procedural consideration. Her cautionary note is well sounded, and I of course do not regard the question of service of notice of these proceedings as a trivial consideration. Where, as here however I am satisfied that the birth Mother has consented, and reminding myself of the way in which at para [17]above I have thought already about the purpose and benefit of any further delay for service by analogy to Re C I am satisfied that there is no need to serve the birth Mother with notice of these proceedings. It is unlikely that this will often be the conclusion reached but as I have already had cause to observe, Maya's circumstances are strikingly unusual.
57. Having reached the conclusions, I have earlier in this judgment I move now to consider as required by statute, the relevant matters of the welfare checklist contained within the Adoption and Children Act 2002. In doing so I hold in my mind that it is Maya's welfare throughout the whole of her life that I am thinking about. I lean heavily also on – and accept and agree with – the thoughtful and careful consideration of the welfare checklist contained within Ms Demery's report.
58. Maya's wishes and feelings could not be clearer. She longs to use K's surname as her own. She thinks of K as her mother, trusts her and calls her 'mum'. Her traumatic life experiences have left her with an obvious and clearly expressed wish to know that her future into adulthood, as a member of K's family is assured. I accept that some of Maya's behaviour, interests, and thinking are those of a younger child, it is plain that she understands what an adoption order will mean for her and status and the permanency it will confer on her.
59. She will lose again in this jurisdiction that which she has already lost in her country of origin the status of being the child of the family into which she was born. I am however satisfied not only that the lifelong benefits of becoming an adopted person outweigh for her the loss entailed but that she will, in her life with K continue to know of her background and heritage. K has links through her own family with Country F, which is how she came to meet Maya in the first place. Although Maya is being raised in a home which does not reflect her culture, K is well attuned to her cultural needs and identity. Maya will have the opportunity (which thanks to the Guardian she knows her birth mother would welcome) to see her birth mother on trips to Country F.



60. Whilst Maya had in one sense the same typical physical, social, and emotional needs of other young people her age, easily met by K, she has, and no doubt will continue to have more complex needs in terms of identity and emotional needs than other young people of her age. That is almost inevitable from the trauma she has experienced in her life before she came into the care of K. K has sought out appropriate support for the trauma that Maya has suffered and has demonstrated already an ability to manage how that trauma has sometimes manifested itself in Maya's behaviour. She is receiving weekly psychotherapy and the evidence before me is that this will continue to be funded by the Adoption Support Fund for as long as it is needed.
61. I accept the Guardian's analysis that it is evident that K is completely child centred and thoughtful about Maya's cultural and emotional needs and ensures that they are met.
62. I am entirely satisfied on all of that which I have heard and read in respect of this application and upon a proper consideration of the welfare checklist that that only the making of adoption order sought will meet Maya's needs now, during the rest of her childhood and throughout her life.

### **Postscript**

Following on from the hearing at which I made the decision which is reflected in this judgment I met Maya. She had sent to me in advance of the hearing a letter illustrated with drawings to tell me a little about herself and to amplify what the Guardian had told me of her wishes and feelings. I knew already from what all counsel had told me that Maya had found it increasingly difficult to wait for a final decision about her future for so long. She had said she would like at some point to meet the judge making the decision. It was a pleasure to meet her. She confirmed to me that it had felt like a long wait. She was too polite to say an unnecessarily long wait, but I knew that is what she meant. I gave her a short explanation for why I had thought it necessary to wait. She accepted that explanation graciously and she was transparently delighted that she would now become the legally the daughter of K or, as she knows her, Mum.