



Neutral Citation Number: [2022] EWHC 2962 (Fam)

Case No: SD08/22

IN THE HIGH COURT OF JUSTICE
FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/11/2022

Before :

THE HONOURABLE MRS JUSTICE JUDD DBE

Between :

A	<u>1st Applicant</u>
And	
C	<u>2nd Applicant</u>
And	
B	<u>1st Respondent</u>
(through her Children’s Guardian Helen Ashton)	
- and -	
A District Council	<u>2nd Respondent</u>

Edward Lamb (instructed by Dawson Cornwell) for the 1st & 2nd Applicants
Jamie Niven-Phillips (instructed by CAF/CASS) for the 1st Respondent

Hearing dates: 9th September 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on 23 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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MRS JUSTICE JUDD

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.

The Hon Mrs Justice Judd DBE :

1. This is an application for a Convention Adoption Order with respect to a young woman (B) who is 17 years old. She was born in an Asian country (country A) and came to live in this country with the applicants in late 2020.
2. B was looked after by both her parents after she was born, but this did not last long. Her mother developed a severe mental illness which meant that she was no longer able to care for B (although she did and does have contact). B's father left the family home shortly after she was born, and has not seen her since. Social workers in country A reported him to be threatening and under the influence of alcohol when they visited him for the purposes of preparing their adoption report. B was brought up by her maternal grandparents for many years.
3. Unfortunately the maternal grandparents both developed health problems, including diabetes and high blood pressure in the period around 2014-2015. It became increasingly difficult for them to care for B, as they not only had their own health problems but were caring for their son who, like B's mother, suffers from a severe mental illness. As a result, the family agreed that the best plan for B would be for her to come and live in England with her maternal aunt and uncle (the applicants) and to be adopted by them. The applicants accordingly started the process by approaching the authorities in country A in 2016 with a view to achieving a Convention Adoption.

The 1993 Hague Adoption Convention

4. The cooperative framework of the 1993 Convention is based upon an agreed division of responsibility between the States concerned.
5. Article 4 of the 1993 Convention provides:-
“An adoption within the scope of the Convention shall take place only if the competent authorities of the state of origin –
 - (a) Have established that the child is adoptable;
 - (b) Have determined, after possibilities for placement of the child within the state of origin have been given due consideration, that an intercountry Adoption is in the child's best interests;
 - (c) have ensured that
 - (1) The persons, institutions or authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent in particular, whether the

- adoption will result in the termination of the legal relationship between the child and his or her family of origin;
- (2) Such persons, institutions and authorities have given their consent freely, in the correct legal form, and expressed or evidenced in writing;
- (3) The consent of the mother, where required, has been given only after the birth of the child; and
- (d)....”
6. Article 4 thus places a responsibility on the State of origin to provide the evidence of consent from those individuals whose consent is necessary, and that it is freely given and properly evidenced. Article 16 requires the State of origin to prepare a report as to the circumstances of the child. That report is then transmitted to the Central Authority of the receiving State.
7. Article 5 provides:-
- “An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –
- (a) Have determined that the prospective adoptive parents are eligible and suited to adopt;
- (b) Have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- (c) Have determined that the child is or will be authorised to enter and reside permanently in that State.
8. Article 5 thus places a responsibility on the receiving State to assess and approve the prospective adopters and to permit the adoptee to enter and (once the adoption order is made) to reside permanently there. Article 15 requires the receiving State to prepare a report as to the circumstances and qualities of the prospective adopters and to transmit it to the Central Authority of the State of origin.
9. Once these reports have been transmitted and received, Article 17 provides for the Central Authorities of the two states to agree that the child may be entrusted to the prospective adopters and that the adoption may proceed.
- Domestic Law.
10. In coming to any decision relating to the adoption of a child, the paramount consideration of the court must be the welfare of the child

throughout her life (s1(2) Adoption and Children Act 2002). The court must at all times bear in mind that, in general, any delay in coming to a decision is likely to prejudice the child's welfare.

11. Pursuant to section 1(4) the court must have regard to all the matters set out in the checklist set out from (a) to (f). In coming to a decision the court must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989) and the court must not make any order under this Act unless it considers that making an order would be better than not doing so (s1(6)).
12. Pursuant to section 47(1), an adoption order may not be made if a child has a parent or guardian unless one of three conditions are met. The first condition, pursuant to s47(2) is that the court is satisfied that either the parent or guardian consents to the making of the adoption order. The second is that the parent or guardian has consented under section 20 and does not oppose the making of an order. The third is that the parent or guardian's consent should be dispensed with. These provisions all apply in a Convention adoption, just as in a domestic one (Regulation 52 Adoption with a Foreign Element Regulations 2005).

Chronology

13. In May 2018, both B's father and maternal grandmother signed a document (duly notarised) that they consented to B being committed to the care and custody of the social care department in country A and agreed that placing her in an adoptive home at the earliest opportunity was in her best interests.
14. The Article 16 report was prepared by social workers from the social care department in country A. The report, which is dated October 2018, set out all the circumstances of B's birth and living conditions, and in particular the difficulties her grandparents were now facing in looking after her. The proposed adoption was approved as B had a strong connection with her maternal uncle and aunt despite the fact they resided in England. A psychological evaluation report was prepared as part of the assessment which concluded that B was a developing adolescent with unmet attachment needs, that she needed to be placed in a family environment where she could be more secure, and that adoption by her maternal aunt and uncle was in her best interests.
15. Meanwhile, in October 2017 the local authority here completed an Article 15 report as to the suitability of the proposed adopters.

16. In October 2020 the prospective adopters were informed that the Central Authority in country A and the Central Authority in England had come to an agreement under Article 17(c) of the Convention that the adoption could proceed.
17. Following the Article 17 agreement B travelled to the United Kingdom with a visa anticipating her imminent adoption. She has remained here ever since. The local authority visited B in her new home and prepared post placement reports as to B's welfare for the country A Central Authority. Once these had been completed the applicants applied to their local court for an adoption order. It was sent in September 2021 but was not issued until 18th May 2022. I will refer to this delay in more detail below.
18. The Annexe A report was completed in April 2022. The case was transferred to me in May 2022, with the first hearing on 8th June. By this stage the family were getting concerned, as B's visa was due to expire in September 2022.
19. Once the case was transferred to me, I joined B as a party and a Guardian from the Cafcass High Court Team was appointed to represent her. The Guardian's report was filed on 8th September.

The hearing

20. I read all the documents in the bundle provided to me, and the position statements filed on behalf of the applicants and the child. I also heard oral submissions.

The mother's parental responsibility

21. There is an issue in this case as to whether the mother has parental responsibility. The authorities in country A have stated that her parental responsibility was terminated by virtue of a provision within their family law as a result of incapacity. As a result her consent to the adoption was not sought or provided by that Central Authority.
22. Under Article 16(1) of the 1996 Hague Convention for the Protection of Children, the attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority is governed by the law of the state of habitual residence of the child. Although country A is not a party to the 1996 Convention, Article

- 20 provides that the provisions apply even if the law designated by them is the law of a non-contracting state.
23. At the time the legal provision in country A came into operation, B was habitually resident in country A. At the time of B's move to this country it appears therefore that her mother had no parental responsibility.
24. However, B has now moved to the United Kingdom, and plainly settled here so that she is integrated into a social and family environment. Whilst Article 16(3) provides that parental responsibility which exists before the change of habitual residence subsists afterwards, there is no parallel provision about parental responsibility which has been terminated.
25. Mr Lamb, who appears pro bono for the applicants, submits that the provisions of Article 4(b) namely that the Convention does not apply to decisions on adoption or measures preparatory to it, mean that the provisions of 1996 Convention cannot be deployed to determine parental responsibility in this case. He submits that it is the mother's status, or lack of it, pursuant to the law of country A which applies.
26. The question as to whether the 1996 Convention applies turns on whether the termination of the mother's parental responsibility under the family law of country A comes within the definition of a decision on adoption or preparatory to it. Even if it does not, Article 16(1) requires the court to determine the matter by reference to the state of habitual residence of the child. Whether I apply domestic law outside of the Convention or Article 16(1) within it the answer is the same, that the mother's parental responsibility should be considered by reference to our law. I do not accept that I should look to the law of country A to decide this point, and there is no order of foreign court that is capable of recognition.
27. Additionally it is not entirely clear from the documents I have whether or not the termination of the mother's parental responsibility under the law of country A is permanent, or would revive if the mother regained capacity.
28. In this jurisdiction, parental responsibility is governed by s 2(2)(a) Children Act 1989. As defined therein, the mother remains a parent with parental responsibility notwithstanding the fact that she does not have it in the country where she is habitually resident and domiciled. The Article

17(c) agreement between the Central Authorities of both country A and this country proceeded on the basis that there was no need to obtain the mother's consent as at the time B was still habitually resident there, but the situation has now changed.

29. As a parent with parental responsibility the mother is an automatic party to these proceedings (Rule 14.3 FPR 2010).

Parental consent

The father

30. Following enquiries made on B's behalf by her solicitor, the director of the social care department in country A has informed the court that B's father does not have parental responsibility for her under national law. At the time of B's birth, her mother was married to different man. In any event, what is described as a Deed of Voluntary Commitment was signed by the birth father, the mother's husband and the maternal grandmother on 20th September 2018 stating that each of them were not capable of raising, caring or exercising parental obligations for their child/grandchildren and that they voluntarily and unconditionally committed B to the care and custody of the social care department. The document declared their understanding that their parental rights would accordingly be terminated. The document declared that placing B in an adoptive home as soon as possible was in her best interests.

31. Having read all the documents in the case, including the child study report from country A, I am satisfied that B's birth father does not have parental responsibility for her and therefore that his consent to the adoption is not strictly required under our domestic law. Notwithstanding this, I am satisfied he knows about, and agrees to, her being adopted. I am also satisfied, as set out below, that the Deed signed is a form to 'like effect' as to that which is required pursuant to PD5A and Rule 14.10(1)(b) FPR 2010.

The grandmother

32. It is asserted in the reports from country A that the grandmother is B's guardian as a matter of law because of the incapacity of B's mother. I have not seen any other documentary evidence to that effect, but it is clear that she has been treated by the authorities there as such and therefore I approach the case on the basis that her consent is required unless dispensed and that Article 16.3 of the 1996 Convention applies. The grandmother has signed the Deed of Voluntary Commitment as

described above. It does not entirely mirror the Consent to Adoption Form as provided for in PD5A Civil Procedure Rules, but I am satisfied, pursuant to Rule 14.10(1)(b) Family Procedure Rules that it is a form to like effect. The agreement clearly records the understanding that parental rights over B would be terminated within three months of the deed being signed, and that it was in B's best interests to be adopted. It also records that the agreement was free and unconditional.

33. Therefore, I find that the grandmother has consented to the adoption.

The mother

34. I have explained above why I have come to the conclusion that the mother has parental responsibility. I now go on to consider what steps to take so far as her party status is concerned.

35. At the hearing in July Mr. Niven-Phillips brought to my attention that the mother had not been served. I agreed to wait for an expert assessment as to her capacity before deciding what to do next. Once it has been established that a party lacks litigation capacity, the court is required to appoint a litigation friend in accordance with Rule 15.1 FPR.

36. In a case such as this, the litigation friend would usually be the Official Solicitor.

37. The difficulty with appointing the Official Solicitor is that this process would inevitably take time. B's visa is about to expire. Although she may be able to remain for a period following the expiry of her visa before being at risk of removal from the UK this is not clear. If these proceedings are further delayed B may have to return to country A to go through the process of applying for another visa. If this happened, she would lose her college place (which is dependent on her being entitled to live and study here).

38. It is apparent to me from the reports of the Guardian, the submissions of the family and the local authority social workers involved in the case that B's mental health is very fragile. She is vulnerable not only from a genetic perspective, but also because of the adverse circumstances she has encountered in her life. She found it difficult to settle here initially and suffered homesickness. In recent months she has really turned a corner and is happy with her family and friends. If she was to return, she would be placed in a very uncertain situation given the problems with her

grandmother's health and the mental illness of her mother and uncle. There would be a serious risk to her mental and emotional health if this was to happen.

39. In the circumstances the local authority and the prospective adopters, supported by the Guardian, invited the court to direct that the mother should be removed as a party pursuant to rule 14.3(3)(b) FPR 2010 which would mean that the court could then proceed to make a final adoption order. They all submitted that this was an exceptional case on the facts.
40. In the Child Study report it is stated that the mother has been diagnosed with Bipolar Disorder with psychotic features, with erratic, shifting moods. She suffers from depression and oversleeping, and also from manic episodes which include aggression and destructive behaviours. She is not compliant with medication.
41. Once B had been joined as a party, her legal representative, Mr Niven-Phillips, submitted that there was a need for an expert assessment as to the mother's litigation capacity and her capacity to consent to the making of an adoption order at the case management hearing. This was arranged quickly by the applicants (Mr. Niven-Phillips provided an explanatory note and template documents) with a report being prepared by Dr. ST, psychiatrist and general physician. The report is clear and unequivocal. The doctor examined the mother on August 18th 2022. The doctor stated that even with prompts and a simple explanation, she was unable to understand sufficient information to be able to participate in the proceedings. She could not understand the facts of adoption and/or what happens in court. She was focussed on repetitive thoughts and was not able to repeat any facts relating to the adoption or indeed to repeat a simple sentence or phrase. Her thinking was disorganised and paranoid. She would find travelling overly challenging and stressful. In particular the doctor noted that 'she cannot understand that the adoption process has not yet been finalised even after careful explanation'; she thought the adoption had taken place years ago.
42. When considering an application for adoption, given the finality of the order, a decision to remove a mother as a party should plainly only be taken in the most exceptional of circumstances. I have read and given careful consideration to the Court of Appeal decision in Re A, B and C [2020] EWCA Civ 41 and the list of factors relevant to giving notice to fathers and relatives. I have also read the judgment in Re P (Discharge of a Party) [2021] EWCA Civ 512. In the latter case, just as in this one, no notice has been given to the mother of any application to discharge her as

a party, nor had she had any opportunity to file evidence, respond to the application, or made any submissions at all. Nonetheless, and after hearing the submissions on behalf of the applicant, the local authority and the Guardian, I have come to the conclusion that this step is necessary and justified in the very unusual and difficult circumstances of this particular case. My reasons for coming to this conclusion are as follows.

43. First, this is a 1993 Convention adoption where the State of origin is entrusted with the responsibility for obtaining the consent of those with parental responsibility and ensuring that it is given freely and with a full understanding of the consequences. Those consents were obtained from B's father and her maternal grandmother. The professional assessments in country A were thorough and careful. There is no doubt that the mother has not been able to exercise parental responsibility for B for many years as a result of serious and long term mental illness. This was recognised by the authorities in country A long ago. The Central Authorities in both countries were satisfied that consent from the relevant parties had been provided when coming to the Article 17(c) agreement. It is somewhat anomalous that the mother is not considered to have parental responsibility in the State of origin where she remains habitually resident, but is considered to retain it here.
44. Secondly, the adoption process has been going on since 2016 and has taken its toll on B. She has suffered very significantly as a result of her precarious circumstances in country A (I have not set them all out here, but her living circumstances there were very emotionally damaging), and has had to make a difficult adjustment when coming to live in this country. Despite the difficulties in her life before, she was very homesick and lonely when she arrived here. With the love and nurture she has been given by the applicants she has adjusted and has made enormous strides. If there are further delays there is a risk she will have to return to country A whilst matters are sorted out. If that happens she will lose her college place which is very important to her. Her mental health is fragile and losing her college place and/or returning to country A is likely to cause her emotional harm. It will seriously affect her prospects of settling down here and obtaining qualifications which will enable her to work and thrive. For many people this would be merely a setback, but I am satisfied in this case that the effect upon B could be much more serious and long lasting. Even the fear that this will happen affects her. The situation so far as she is concerned is urgent.
45. Thirdly, it was the maternal grandparents who looked after B and provided her with a home for as long as they were able. The plan for

adoption by the applicants is one which was devised and approved by the maternal family as in B's best interests. The psychiatrist who assessed the mother in August 2022 noted that she believed that the adoption had taken place years ago. B does speak to her mother quite frequently, and is sad that her mother has never been able to care for her, but there is no question as to the role she has and will play in B's life.

46. Fourthly following the deterioration in their health and the grandfather's death there is nobody in country A who can care for B even in the short term and provide her with the family unit she so badly needs. It is equally clear that she has a strong bond with the applicants and their children who consider her a full part of their family.
47. Fifthly, the authorities in both country A and in this country are clear that adoption is in B's best interests. The Guardian is firmly of the same view. Added to this, B herself wishes to be adopted and is of an age and degree of maturity where her wishes carry very great, if not decisive, weight.
48. There is thus no foreseeable prospect of the mother being in a position either to care for B or to have capacity to exercise her parental responsibility to agree to any other arrangement, including adoption. I cannot envisage any points that she would either be able to or wish to make to this court about the proposed order (which she believes has already been made) save that I am sure she would want to continue to have contact with B, something which B is able and willing to do.
49. In all the circumstances, therefore I cannot see any advantage to anyone (including B's mother) in prolonging these proceedings, and very considerable disadvantages, including long term harm that B may suffer, in doing so. I am prepared, having listened to the submissions of all the parties before me, to make the order removing the mother as a party on the basis that is in necessary and in the interests of justice. To do otherwise would risk causing serious emotional harm to B.

B's welfare

50. When coming to a decision, B's welfare throughout her life is my paramount consideration. I bear in mind at all times that in general any delay in coming to the decision is likely to prejudice her welfare and I must have regard to all the matters set out in the welfare checklist in section 1(4) of the ACA.

51. The child study report in country A that was prepared in 2018 set out B's family background and upbringing to date. It provided details of the mother's mental illness, and that of the maternal uncle too. B was neglected and ill treated by her mother when she was very young. Her father was asked to leave the home as a result of his drinking and he did so, and has had no relationship with his daughter since. As a result of the parents' problems, B's care was taken over by her grandparents. In 2013 the mother was diagnosed with mood disorder, bipolar type, with psychotic features. She was prescribed medication but was and is not compliant. In 2017 her diagnosis was changed to schizo-affective disorder.
52. The child study report explained that because the mother could not exercise her parental obligations, in accordance with the law in country A, they were taken over by the maternal grandparents as the nearest relatives. B lived with them from a very early age. Although she moved to live in the UK following her marriage, the applicant maternal aunt and her husband visited the family home in country A regularly and kept in close contact. B has therefore known both applicants well over several years. The grandmother informed the authors of the report that she and the grandfather had problems with their health and were physically no longer able to care for B. B told them that she wished to be adopted by the applicants. No other family members in country A were able to provide her with a home, and the father, when spoken to by the social workers, was unsure even of his daughter's name. He showed them that he was carrying a firearm, which they took as an indirect threat.
53. The outcome of the child study report was to recommend B's proposed adoption by the applicants.
54. B was psychologically assessed in June 2018, and the expert advised that she had unmet needs of attachment as a result of being exposed to an emotionally unhealthy environment. She also recommended that B be adopted by the applicants.
55. Once B arrived in this country she was subject to regular assessment by the local authority and there are reports up to and including July 2021, showing that, despite suffering some homesickness for country A, B was doing well.
56. The Annexe A report, prepared and filed in April 2022, strongly recommends that the adoption order be made. The social worker is confident that B has settled into her new family and integrated into it. She

has had to adjust to a very different way of life and community, but she has been warmly welcomed not only by the applicants and their children but also the local community. She misses country A but has settled here, making friends and attending college. The social worker states that B has been neglected and has grown up in an unpredictable environment where she has had to be self sufficient and care for the adults around her at times, including her mother, grandparents and uncle.

57. In her report the Guardian noted that B emerged as a thoughtful and discerning young person with a good sense of humour and warm personality. She believed B to have become increasingly settled here, and that she is now able to talk about the homesickness she suffered after she arrived. She now speaks fluent English. She is very close to the applicants' older children and has made friends locally. Importantly, the Guardian considered that she demonstrated a mature ability to understand and reflect on the concepts of adoption in both a practical and emotional sense. She understands that the order is for life. The Guardian reports that B is unequivocal in her expressed wishes to be adopted by the applicants, who she refers to as 'mum and dad'. Her primary requirement now is for stability and a loving family unit to surround her as she works towards securing a future for herself. There is no prospect of her birth mother or father being able to provide for her in an emotional or practical sense. She will keep in contact with her mother by Facetime as she has done ever since she came here.
58. The Guardian is completely satisfied that it is in B's best interests to be adopted. An adoption order, she says, is the only gateway to providing her with the stability she needs as she enters young adulthood and beyond. In her report dated 8th September she expressed her concern about B's anxiety and wellbeing if there was to be further delay in the proceedings.
59. It is clear from the evidence I have cited above that all the professionals who have been involved in this case, including the authorities in country A, the local authority here, and B's Guardian, strongly recommend that an adoption order in favour of the applicants should be made. Although B was homesick when she first arrived in the UK, she is now settled and very much wishes to be adopted by her aunt and uncle. She considers their children her siblings. B has suffered from disruption and uncertainty during her childhood as a result of her mother's inability to care for her, and the subsequent deterioration in the health of her maternal grandparents. An adoption order will not sever her relationships with her family, because the order proposed is in favour of the maternal uncle and

aunt. She has not been cared for by her mother for many years, and in any event maintains contact with her. B will also keep in touch with her maternal grandmother, who is very much in agreement with the proposed adoption. The effect on B of being adopted will be to give her a secure family in this country, which will give her the best chance of reaching her potential as she develops her independence and far beyond. She is attending college and is hoping to become a nurse.

60. B is young and vulnerable. Although her mother, grandmother and birth father remain in country A, none of them are able to offer her a secure home, which she will need for several years to come. B has already suffered emotional harm as a result of her circumstances and she is vulnerable to suffering further harm if she has to leave the applicant's home, or indeed unless she has the security of an adoption order.
61. B has had a relationship with the applicants for all of her life, albeit at a distance until she arrived in this country Almost two years ago. She is close to them and their children. They are her family, and understand (and share) her background. B will continue to have contact with her mother as she has done in the past, and is also in contact with her maternal grandmother. She has never had a relationship with her birth father and is unlikely ever to do so. It is important to record that the maternal grandmother is in favour of the adoption, and that the father has consented to it as well.
62. Taking into account all these matters, and all the evidence before me, I am satisfied that it is overwhelmingly in B's interests for her to be adopted by the applicants. It is true that this court could make orders under the Children Act (for example a Special Guardianship or a Residence Order) or indeed no order at all, but it would leave B without the legal security of having the applicants as her parents. They are her family, of course, but B would continue to be left without any real parents, certainly in law. B's immigration position would remain precarious, and her path to remaining permanently in this country would be unclear. If, for example, there is any delay to the making of an order, she is likely to have to return to country A to re-apply for a visa. If that happened she would have to relinquish her place at college.

Dispensing with the mother's consent

63. Section 52 of the ACA provides as follows:-

- (1) The court cannot dispense with the consent of any parent or guardian of the child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that –
 - (a) The parent or guardian cannot be found or lacks capacity within the meaning of the Mental Capacity Act 2005) to give consent, or
 - (b) The welfare of the child requires the consent to be dispensed with.

64. Here there is clear evidence that the mother is suffering from an impairment of the functioning of the mind within the meaning of section 2(1) of the Mental Capacity Act. Having read the report of Dr. ST it is clear that the mother is unable to make a decision to refuse or consent to adoption because she cannot understand the information even when explained to her simply. She is unable to retain what is said to her, or use the information as part of the process of making a decision. Nor did she seem able to communicate in any coherent form. During the assessment she was unable to follow what she was being told, and indeed to comprehend that B had not already been adopted. Her condition is very long standing, and I can see no likelihood in the future of her regaining sufficient capacity, even with assistance, to make such a decision.

65. Counsel's researches have not found any authority where the consent of a parent has been dispensed with on the ground of a lack of capacity to give consent. The use of the word 'or' at the end of paragraph 1(a) suggests that in such a case, once the court is satisfied that it is in the child's best interests to be adopted it does not have to be satisfied of the imperative contained in the wording of s52(1)(b) in quite the same way as is necessary when a parent withholds their consent and does have capacity. Nonetheless, it is important to record that I do consider that the imperative is satisfied, and that B's welfare does require her to be adopted. The alternatives are (as I have recited above in the welfare section) to make a Special Guardianship order, a residence order, or no order at all. Neither and SGO or a residence order would last beyond B's 18th birthday, and none of these alternatives would provide her with the lifelong security of being able in law to have the applicants as her parents and their children as her siblings, which is so important for her future development. Further, the making of an adoption order will secure her immigration status in this country which is also extremely important given the lack of secure family support in her country of origin. I recognise that an adoption order is a grave interference with the rights of the mother to respect for her private and family life pursuant to Article 8 European Convention on Human Rights, for it severs the legal ties with her daughter. Even though the mother has not cared for her for many years, this is still a serious infringement of the mother-daughter

relationship. I am satisfied, however, that this interference is necessary and proportionate in order to safeguard B's future welfare. I note the mother believed the adoption order to have been made a long time ago and so, inasmuch as she is able to understand the situation, this is something she has accepted.

Decision

66. For all the reasons set out above, I dispense with the mother's consent on the grounds that she lacks capacity, and make the adoption order sought.

Further matters

67. The applicants began the process of adopting B in country A in 2016 when they applied to the Inter Country Adoption Agency. The investigations and assessments required took several years, with the various reports completed in 2018. It was a further two years before the Article 17(c) agreement was reached so that B could travel here to live with her uncle and aunt, which she did in November 2020. Following her arrival, the Convention process required the local authority to prepare regular post placement reports so as to ensure B's welfare needs were being met. The last of these reports was filed in July 2021. The applicants then filed their application in September 2021.

68. There were a number of problems with their application. It did not contain the names of B's parents, only her grandparents. There was no Statement of Facts and the Annexe A report had not been prepared. A number of the documents were illegible. It appears that the requisite fee was not paid. This caused delay at the local court where the application had been made. Some of these difficulties were ironed out, but the Annexe A report was not ready until April 2022. Thereafter the application was ready for issue and this was done in May.

69. During this period, the applicants were getting anxious about the passage of time, given that B's visa was due to expire in September 2022. They sent a number of emails to the court expressing their concern. When the case was transferred to me my clerk received a number of emails, particularly from one of the applicant's friends, expressing concern about the delay and pressing for early hearing dates. Whilst I understand their motivation and anxiety, I wish to emphasize that the reason (in my judgment) that there have been delays in the proceedings is as a result of confusion on the part of the applicants and the local authority as to what the application process required.

70. When this case came before me for the first time, there did not appear to have been any input from lawyers at all, even from within the local authority who were not even represented at the most recent hearing in September (when at least the applicants had been able to secure some pro bono representation). The applicants are of modest means, and I can well understand that they could not afford representation at the hearing itself. Nonetheless this is a complex process which has suffered from the lack of any legal input until very recently. Had there been any lawyers instructed I am sure they would have ensured that the application was accompanied by all the right documents and information at the start. A lawyer representing either the local authority or the applicants (or even giving advice in advance) is likely to have realised that the mother's situation needed to be given more consideration from a legal perspective. The Convention Process is very thorough, and I can therefore appreciate that the local authority and adopters may have assumed that the application in this country was straightforward and somewhat administrative. In some cases that may be so, but not here.
71. Once B was legally represented, a number of gaps in the evidence were immediately identified, gaps which could have been filled months earlier, such as the issue of the birth mother's consent and capacity, whether or not the birth father had parental responsibility, and the status of the maternal grandmother in relation to B. I am extremely grateful to Mr Niven-Phillips for his assistance in this case, and I am sure that the applicants are too. They were also very fortunate that counsel, Mr Lamb, was prepared to act for them, pro bono, at the final hearing.
72. Luckily the most significant of the gaps, that of the birth mother's capacity, was able to be dealt with very swiftly due to the successful instruction of Dr. TS, albeit not swiftly enough to enable her to be represented by a litigation friend for this hearing. The question of the birth father's parental responsibility was also dealt with quickly by the authorities in country A. It has been possible, for the reasons set out above, to make the order now and avoid causing emotional harm to B by subjecting her to more uncertainty and delay.
73. Nonetheless it is important to emphasise the fact that an application for an international adoption under the 1993 Convention may not be at all straightforward. Local authorities must be aware of this and should consider obtaining legal advice in an appropriate case. They should also advise applicants accordingly so that they do not have unrealistic expectations of what the process entails.

74.