



Neutral Citation Number: [2021] EWHC 1153 (Fam)

Case No: FD19P00179

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/03/2021

Before:

THE HONOURABLE MRS JUSTICE THEIS

Between:

Z	<u>Applicant</u>
- and -	
A Local Authority	<u>1st Respondent</u>
- and -	
Y	<u>2nd Respondent</u>
- and -	
Mr & Mrs A	<u>3rd & 4th Respondents</u>
- and -	
X	<u>5th Respondent</u>
(A Child Through His Children’s Guardian)	

Ms Maureen N Obi-Ezekpazu (instructed by Lillywhite Williams & Co) for the Applicant
 Mr Garfield Braithwaite (instructed by Local Authority Solicitor) for the 1st Respondent
 Ms Kathryn Cronin (instructed by Osbornes) for the 3rd & 4th Respondents
 Ms Denise Gilling Q.C. (instructed by Cafcass Legal) for the 5th Respondent
 Y Did Not Attend

Hearing dates: 22nd 23rd & 24th February & 19th and 31 March 2021

Approved Judgment

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MRS JUSTICE THEIS

This judgment was delivered in private. The Judge has given leave for this anonymised version of the judgment to be published on condition that the anonymity of the children and members of their family must be strictly preserved and not published. 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 Theis DBE:

Introduction

1. This matter concerns an application by the biological father, ('Z'), under the inherent jurisdiction of the High Court to revoke an adoption order made on 5 September 2017 in relation to X, now aged 4 years. The other parties to the application, namely the local authority, the adopters (Mr and Mrs A) and the children's guardian all oppose the application. The birth mother, ('Y'), although a party to the application, has taken no active part in the proceedings. In the event the application to revoke is successful, Z has also applied for parental responsibility.
2. If the application to revoke the adoption order is not granted Z seeks leave under s51A Adoption and Children Act 2002 (ACA 2002) to make an application for contact. That application is not supported by any of the other parties. Mr and Mrs A make it clear that whilst they are not opposed to contact in principle, they agree to annual indirect contact and state any other arrangements should be left in their discretion.
3. These applications have been the subject of protracted proceedings due to a number of factors. A previous hearing on 4 June 2020 considered Z's application for a declaration that the adoption order was void ab initio due to what was said to be invalid consent to adoption being given by Y. Judgment was given on 24 June dismissing that application and permission to appeal was refused by Baker LJ on 29 July 2020.
4. The matter was first listed for substantive hearing on 6 August 2020 for 3 days. That hearing was adjourned due to the court's concern as to whether Y should be given a further opportunity to engage in the proceedings. The adjourned hearing listed on 14th October started, but had to be adjourned when it became apparent during the evidence of one of the witnesses on the first day significant relevant evidence had not been disclosed. A hearing in November 2020 had to be adjourned due to the unavailability of Z's counsel and the hearing finally took place on 22 – 24 February 2021. Written closing submissions were directed and a hearing took place for oral submissions on 19 March 2021.
5. Irrespective of the outcome of these applications, the court recognises the impact of these delays on both Z and Mr and Mrs A. For each of them it has meant a significant period of uncertainty that has no doubt been very difficult for them. Whilst the court's role is to determine the applications it does not do so unaware of the people who lay behind it, and the impact of any conclusions reached by the court.
6. The progress of these difficult proceedings has not been helped by a number of factors:
 - (1) The lack of a clear understanding as to how Z's statements were prepared. Whilst Z had some understanding of English he has required an interpreter in the hearings and during his oral evidence. Most of his statements were in English and considerable time was taken up on 4 August 2020 dealing with this issue. The statements should either have had an interpreter's certificate at the end (in accordance with Annex 2 of PD22A Family Procedure Rules 2010 'FPR 2010') or a signed translated version of the statement available.

- (2) Until the solicitor for Mr and Mrs A took responsibility for managing the electronic version of the court bundle by adding hyperlinks there had been repeated failure to agree an index and for a bundle to be lodged in accordance with PD27A FPR 2010, which was the obligation of the applicant's solicitor. To give but one example, the hearing on 22 February had to be adjourned for nearly 2 hours so the C section of the paper bundles delivered to court for the witnesses to use could be paginated in a way that was legible. Whilst the court received a written apology from Z's solicitors, this was not the first time issues had been raised about the bundle.
- (3) The late disclosure of material and information by Z and Mr O during the hearing on 14 October 2020 that resulted in that hearing having to be adjourned.

Relevant background

7. Y is a Polish national and at the time the parties met was living there with a child from a previous relationship. Z is a Togolese national who came to the UK in 2012 on a time limited visa. He has remained in the jurisdiction since and was living in the UK when the parties met.
8. Y's account of her relationship with Z is disputed by Z. Y gave her account to the local authority at the time she relinquished the care of X soon after his birth in October 2016.
9. According to Y, they first met in Poland in 2015, she then visited Z here on a regular basis and they ceased having contact when she was about 6 months pregnant. She said she came to the UK just before the birth to look for him, went to the address she thought he lived at but he wasn't there. She gave the local authority his name (now known to be incorrect) and some information about him but said she was unsure if the details she had given was his real name.
10. Y signed a section 20 agreement the day after X's birth and in her discussions with the local authority gave the reasons she was not able to care for X as being due to her limited financial circumstances, the health difficulties of an older child of hers in Poland and what she saw as the difficulties of bringing X up in Poland. Y said she intended to return to Poland.
11. According to Z, they met in the UK and were in a relationship in this jurisdiction from late 2015 and that relationship was continuing at the time of the birth. Y told him the child died at birth, he did not attend the hospital due to his immigration status and relied on what Y said about the risks of him being arrested if he did attend. Y sent Z a photograph of the child, he said he believed what Y said, although his friends doubted Y's account. Z describes them still continuing in a relationship, he paid for Y to return to Poland soon after the birth. According to Z, she had returned to the UK by 10 December 2016, as she attended an event with him and Mr O, and she then returned to Poland in January 2017.
12. The local authority issued care proceedings based on their concern that if Y returned to Poland there would be no-one in this jurisdiction who could exercise parental responsibility.
13. Y attended the first hearing on 8 November 2016 with legal representation. An interim care order was made and directions for disclosure from the Department of Work and

Pensions, the company where Y said she thought Z worked and an EX660 request was made to the Home Office. This was all based on the information Y gave regarding Z's details.

14. By the time of the next hearing on 18 November 2016, Y was still represented but did not attend as it was said she had returned to Poland. The application was re-allocated to Pauffley J. Y remained represented at the hearing on 28 November 2016, although she was said to still be in Poland.
15. Y attended the next hearing on 14 December 2016 and was represented. The local authority had understood she flew in from Poland the previous day. At that hearing Y signed the forms under ss19 and 20 ACA 2002, giving her consent to X being placed for adoption and giving advance consent to adoption. The order and transcript of that hearing records that the forms were explained to Y with the assistance of an interpreter and the Children's Guardian. Although Y was shown the form that would have enabled her to agree not to be given notice of the adoption application, she did not sign that form.
16. Although the implications for the care proceedings were raised at the hearing on the 14 December the order was structured in a way that provided for any application for leave to withdraw them to be done in a way that gave Y an opportunity to reflect on the consents she had given.
17. On 28 December 2016 Y sent an email to the local authority confirming she did not withdraw her consent to the proposed adoption.
18. As a consequence, on 13 January 2017 the local authority made an application to the court to withdraw the care proceedings. The application was considered on the papers and the application granted by order dated 17 January 2017.
19. On 7 February the decision to place X for adoption was approved by the local authority Fostering and Adoption Panel. That decision was ratified by the Agency Decision Maker on 14 February 2017.
20. Mr and Mrs A were approved as foster to adopt carers on 8 March 2017 and X moved to their care on 14 March 2017, pursuant to s22 ACA 2002. On the 19 April 2017 the placement changed to become one for adoption, pursuant to s19 ACA 2002, following X being matched with them by the local authority matching panel.
21. Mr and Mrs A made an adoption application in July 2017, following directions being made the adoption order was made on 5 September 2017.
22. According to Z after Y returned back to Poland in January 2017, they remained in regular contact and the plan was for her to return back here. For various reasons that did not happen.
23. According to Z in October 2017 he looked in a bag of belongings Y had left with him, as he described in his statement '*out of curiosity*'. It was when he looked in that bag he saw for the first time details of the care proceedings and that X was alive. Z informed his friend Mr O about this information. Mr O has filed statements and gave evidence in these proceedings.

24. On 25 October 2017 immigration solicitors wrote on Z's behalf to a person who was Z's previous foster carer. That letter was not responded to and only became available in these proceedings when the father gave it to the Children's Guardian.
25. In September 2018 a different firm of solicitors wrote to the local authority, stating they were instructed on behalf of Z and sought details about the adopters, so they could serve proceedings on them. The local authority responded saying they would accept service.
26. On 22 March 2019 Z issued a C66 application seeking disclosure of the details of the care proceedings and to set aside any care, placement and adoption order. Alternatively, to seek leave under s 51A ACA 2002 to apply for contact.
27. On 1 May 2019 Z was directed to file a statement setting out the evidence he relied upon to establish he is the putative father, when he first became aware of the proceedings, the reasons for any delay and details of his current circumstances and any contact he has had with the mother since 2016 and what information he has about her current whereabouts.
28. On the 24 June 2019 the court made directions for an EX660 on the basis of Z's name, which he confirmed was the only name he was known by, and a fuller statement in response to the matters previously directed. Z was directed to exhibit copies of all documents in Z's possession which relate to Y or X, with a direction to explain how and when each document came into Z's possession. Directions were made for the local authority to seek to serve Y.
29. The hearing on 8 August 2019 was adjourned to enable Z's legal aid application with his current solicitors, Lillywhite Williams & Co, to proceed. The evidence was re-timetable and the matter listed on 21 October 2019.
30. At the hearing on 21 October 2019 the court was informed Mr and Mrs A were aware of the application. Directions included service on Mr and Mrs A, Cafcass, further witness statements from Z regarding his relationship with Y and family life, the local authority in response to Z's evidence and any application under s20 Family Law Reform Act 1969 for DNA tests.
31. On 24 October 2019 Z issued an application seeking a direction for DNA tests, contact and disclosure of information relating to any steps to locate X's father.
32. On 28 November 2019 Mr and Mrs A and X were joined as parties to the proceedings, DNA testing was directed and the matter listed for further directions on 5 February 2020.
33. DNA results dated 5 February 2020 confirmed Z is X's biological father. Case management directions made on 5 February 2020 provided for disclosure of documents from the local authority, further statements from the parties, steps to notify Y of the proceedings and notification of the proceedings to the Secretary of State for the Home Department (SSHD) with a direction for the SSHD to notify the court and the parties if she wishes to intervene or make any representations. The matter was listed for final hearing on 5 and 6 May 2020, with a pre trial review on 2 April 2020.

34. The SSHD confirmed she wished to intervene as the decision she is required to make in respect of Z's immigration status is directly affected by the outcome of these proceedings. The matter was re-timetabled by an agreed order on 25 March 2020 with the pre-trial review adjourned to 28 April 2020.
35. On 28 April 2020 the SSHD was joined as an intervener. Directions included seeking transcripts of previous hearings in the care and adoption proceedings, the application and orders in the adoption proceedings and skeleton arguments. It was accepted the two day hearing on 5 May 2020 was unsuitable for a remote hearing and the matter was further listed to deal with specific disclosure applications and future management of the proceedings on 4 June 2020.
36. On 7 May 2020 Z issued an application seeking a declaration and order that the adoption order is a nullity and void ab initio, for disclosure of documents, parental responsibility and declaration of parentage.
37. On 4 June 2020 the court heard full argument of Z's applications. In the reserved judgment dated 24 June 2020 the application for a declaration that the adoption order was void ab initio was refused. Detailed case management directions were made for the filing of further evidence, disclosure and the matter listed for a 3 day hybrid hearing on 6, 7 and 12 August 2020.
38. On 29 July 2020 Z's application for permission to appeal was refused by Baker LJ.
39. The hearing on 6 August 2020 was primarily adjourned for further steps to be taken, including via the Polish Embassy, to notify Y of these proceedings. Directions were made for further disclosure from the local authority and the order notes the unsatisfactory arrangements regarding the court bundle. The matter was re-listed for three days on 14 October 2020, with a pre-trial review on 28 September 2020.
40. The hearing on 14 October 2020 commenced with Z starting his evidence and his witness Mr O's evidence was interposed. It became clear on the first day there was material evidence, by way of photographs and messages, that had not been disclosed to the parties. In addition, there was uncertainty as to the extent to which Z's statements had been translated or interpreted to him at the time they were signed. This resulted in the hearing being adjourned on 15 October 2020 with detailed directions for statements to be filed by Z, Mr O and Z's solicitor setting out when the material had come into the possession of Z's solicitor, identifying the dates and circumstances of the photographs or messages and details about the steps taken to interpret or translate Z's statements. The matter was adjourned to a three day hearing on 25 November 2020.
41. On 23 October 2020 the SSHD applied to be discharged as an intervener on the basis that she will be provided with the judgment and is still able to assist the court with any ongoing immigration issues by way of providing any further disclosure, if requested. That application was granted on 16 November 2020.
42. Due to the unavailability of Z's counsel and the limited time to secure alternative representation the parties agreed the hearing listed on 25 November 2020 should be adjourned. By order dated 26 November 2020 the matter was re-timetabled to a 3 day hearing on 22 – 24 February 2021, with a pre-trial review on 27 January 2021. Directions made on 27 January 2021 ensured the hearing could proceed on 22 February.

43. The following gave oral evidence at the hearing on 22 February: Z, Mr O (Z's friend); Ms L and Ms W, both social workers who were involved with Y at the time of X's birth and during the subsequent proceedings; Ms B, Children's Guardian.
44. At the conclusion of the evidence directions were made for written submissions and the parties made oral submissions at a hearing on 19 March.

Y's position

The local authority and the court have made extensive efforts to seek to engage Y in these proceedings. This has been via the social worker, Ms W, and through the Polish Embassy. Ms W has filed a number of statements setting out the steps that have been taken, including arrangements being put in place for her to have contact with a solicitor. The last time Ms W spoke to Y was on 6 March 2020 and the last time she responded by email was in July 2019.

45. The result has been the court has not had the benefit of Y's account of events being provided and tested through the forensic process.

The evidence

Z

46. Z filed nine statements between June 2019 and January 2021.
47. His oral evidence sought to portray a relationship where he was in love with Y, she was with him and he had been open to her about his immigration position. He said he informed her about his immigration position after she came to the UK. She stayed at St Mary's Road and he moved in there with her. In the summer of 2016 they moved to Dereham Road, where they only stayed for a month. Z gave a long detailed answer about the arrangements for payment of the deposit for that move, that he had given Y cash which he suggested she had not used for the way intended. As a consequence, he had to leave that accommodation and went to stay at Wellwood Road, Goodmayes in about September/October 2016. At some point during 2016 Z said Y had moved to Uxbridge, due to it being more convenient for her work particularly as her pregnancy advanced. Z described visiting there from time to time, staying overnight on three occasions, and was able to give some details about the address and accommodation.
48. Z was asked about the photographs that had been produced. The first picture of Y showing she was pregnant Z said was taken in Poland and sent to him in April/May 2016. The later photographs were at Dereham Road and the 4 photos of them en route to Uxbridge he said were on 30 September 2016. By that stage he described Y living in Uxbridge but still visiting Dereham Road, suggesting this was part of Y's plan that he would not see her on a daily basis. Z said Y refused to give him the delivery date for the birth. One of the photos he produced he said shows them on 21 October 2016 at Y's address in Uxbridge. Z said Y was aware at the time of X's birth he was living at Wellwood Road. He described Y ringing him in tears in the early hours of the morning saying the baby had died. When he said he would come to the hospital to help she resisted this, saying if he did he would be asked for his identity. He described trying to call her again when she didn't pick up. When she did she said she had been under medical treatment and would come home. Z said he sought the advice of Mr O, who

said Z should ask for a picture of the child. He has produced the photo Y sent him. When he showed it to Mr O, Mr O said he did not believe Y. Z said he did not believe Y would go to this extent.

49. Z described Y attending Wellwood Road after the birth, she was still bleeding and had to return to hospital. According to him Y resisted his suggestion to go with her due to any requests to him for identity. He said she went back to the hospital two or three times, collected her things from the Uxbridge property and brought them to Wellwood Road.
50. Z said Y went back to Poland in November to refresh and renew her passport.
51. Z was asked about the event Y attended with him on 10 December 2016 and the photographs he produced of that event. He said he was pleased she returned and he tried to discuss funeral arrangements with her, and this was raised at the community meeting they attended. When they returned home Z described Y as feeling trapped and her behaviour changed. According to Z, Y wanted the relationship to end as he had introduced her to people from his community with degrees.
52. Z agreed Y went back to Poland in late 2016/early 2017. He understood from Y she had a case against the hospital about the circumstances of the birth and he considered he couldn't do anything without the approval of Y due to his status. Z said he understood Y was going to come back to the UK but for various reasons that didn't happen. He relies on some photographs of a car accident which he said Y told him had happened on the way to the airport. He also raised issues about how Y had said she had been able to travel to Germany.
53. By October 2017 Y had still not returned. According to Z Y said she was going to send DHL to collect the bag she had left with Z. It was only then he opened the case and sent Y photos of documents, which she had requested in messages to him. After that he said Y blocked his messages.
54. Z was asked by Ms Cronin about the sequence of events in 2016 relating to the accommodation, Y's job in Uxbridge and on what basis they could manage separate accommodation. Z's response to being asked why he didn't move to Uxbridge was it had to be up to Y, she didn't invite him. Z was also asked about his financial support over the last nine years which he said had come from the church he belonged to. He said it depends on their budget, sometimes £150 sometimes more, he said he also has received money from his brother in the US since 2000.
55. Ms Cronin explored with Z his responsibility for the relationship break down with Y. He denied his immigration status was part of the problems between them, as Y had suggested. Ms Cronin explored with him the Home Office records of how Z came to this country on a time limited visa. He said he was young at the time and believed what he was told, that he would have a job by the people who completed the visa forms. He accepts he gave the visa forms to the officer in Ghana, was aware what was in the forms about his family although in re-examination said the forms were in English. He accepted he was not married, as the visa form said he was. When asked if he was content to lie to an entry clearance officer to get a visa he said at that moment he didn't know, he was young and very keen to fulfil his dream to come to Europe. Z accepted if he had attended the hospital he would have discovered the truth about X but said he was

prevented from doing so by Y as *'she scared me if I go to the hospital my identity would be revealed'*. He accepted his sister in law in the US advised him not to believe Y but Z said he was in love with Y and believed what she was saying. He said he understood Y had commenced an action against the hospital.

56. In his oral evidence Z showed some insight into X's position, recognising that he had been with Mr and Mrs A for a considerable period of time. He described how difficult these proceedings had been for him and that he had been offered no support. He described wanting to have contact with Mr and Mrs A and then with time to X. He showed an appreciation of the upset and distress that would be caused to X if he left Mrs and Mrs A's care, also the need for any contact to be at X's pace.

Mr O

57. Mr O provided three statements. He has known Z since 2015, he met Y in 2016, was aware when Y became pregnant and saw them a few times socially. He described being told by Z that X had died and saw the photo. He sent it to his sister who said she did not think the baby in the photo was dead. He described meeting Z and Y at a community meeting on 10 December where Z announced the death of the baby. Mr O described the community wishing to help with the arrangements for the funeral but Y became annoyed and said it would be discussed later. He said two weeks after the community meeting Y announced she was going to Poland and did not return. Mr O described Z being under pressure to leave the home he was living in, as it was in Y's name. He described being on the phone to Z who said Y had left some things in the house and upon Mr O seeing the documents he said he thought X was alive. In his second statement he set out the dates when the photographs he produced were received by him and then disclosed. Almost all were sent at the time of the hearing in August and were shown to Z's solicitor and counsel on 6 August 2020. He confirmed he had seen Z and Y together at the St Marys address and at Wellwood Road on one occasion.

Mr and Mrs A

58. Mr and Mrs A, who did not give oral evidence, have provided two statements. In each they have set out how X has settled in their care and their updated position about contact is set out in their most recent statement. They remain supportive of indirect contact and do not rule out the possibility of direct contact in the future but consider that decision should be left for them to decide, and they emphasise the need to move at X's pace. In their most recent statement they state as follows:

'2. Contact with [X's] birth father is something that we have given great consideration. We want [X] to understand that he has a birth father, to know about him and, when he is old enough to choose whether he wants to have contact with him.

3. We also understand that his birth father will want to be reassured about his wellbeing and his progress. We currently have indirect letterbox contact with [X's] birth mother which we conscientiously comply with and we would also agree to letterbox contact with the Applicant for [X's] sake. However, as previously stated and further elaborated upon in this statement, we are opposed to any form of court imposed direct contact and ask the court to allow us as [X's] parents to decide as to the timing and extent of any direct contact should that be in [X's] best interest while he is a child.'

Ms L

59. Ms L was the allocated social worker for the 10 days after X was born. In her statements and oral evidence she confirmed she saw Y three times and hers as well as Y's signature is on the section 20 document. She said the first meeting was about an hour, there was no interpreter. Ms L said Y didn't want an interpreter and they were able to converse in English. In discussing the signing of the section 20 agreement it was explained to Y about getting legal advice and Ms L said she understood that. Ms L said she did not understand Y as saying she didn't want X's father to know, she understood Y as providing the details she had about the father with the hope they would be able to get details. Ms Obi-Ezekpazu asked what steps were taken to verify the information Y was giving about her accommodation and her other child in Poland. Ms L said they would only visit the accommodation if Y was returning there with the child.
60. Ms L's second meeting was two days later, when Y attended the offices to register the birth. An interpreter was offered but Y declined. The birth was registered and a discussion took place with Ms L's team manager and head of service about legal and jurisdiction issues. Ms L said the focus at that stage was on parental responsibility, as Y was saying she was going to return to Poland.
61. The third meeting with Ms L was at the first court hearing in the care proceedings on 8 November 2016 when she introduced her to Ms W, who was going to take over as the allocated social worker. She said she did not recall asking about the father on that occasion, as the details were in Ms L's statement in the care proceedings, which had come from the initial referral form and their first meeting. Ms L said she did not recall in the subsequent meetings Y saying she did not want the father involved. According to Ms L, Y told her that her parents were aware she was pregnant but she wanted to tell them in person about X being adopted. When pressed about any process for checking whether the information given by the mother was correct, Ms L said Y was consistent in the information she gave.

Ms W

62. Ms W signed 9 statements that deal with her involvement with Y at the time of the care and adoption proceedings, and the steps taken to seek to engage Y with these proceedings. She described the hearing on 14 December 2016 when Y signed the documents relating to X's adoption as being an emotional one for everyone. She said one of the reasons why time was given for Y to reflect was because she had agreed at that hearing she was going to see X the next day. She said the contact visit the next day was equally emotional as it was the first time Y had seen X and was able to converse with the foster carer who was also Polish. She said Y appeared to want the same as the local authority, to find the father if they could.
63. Ms W said she met Y at the hearing on 8 November 2016, the following day at the office, at the hearing on 14 December and the 15 December when she had contact with X. At the meeting on 9 November she described Y giving the same information as she had previously and Ms W asking her to check emails and social media for any other information relating to the father. Ms W said the court process was used to check any information about the father. Ms W now accepted that Y was untruthful in the information she gave, although she said there is no information available about any motive for that. Since the 15 December she has spoken to her once on the telephone,

otherwise they have communicated by email. She agreed the first time Y gave Z's name was in an email on 15 July 2019 and the emails from Y were more frequent in the early stages. The last time she spoke to her was on 6 March 2020 and the last email was the 18 May 2020. Ms W confirmed the only financial assistance they gave Y related to her flight costs from Poland to attend the hearing on 14 December and related taxi costs, although they have no proof of when the flights were. Ms W accepted she was surprised by the evidence that Y was in the country for the event attended on 10 December with Z, and Y had not given any further information about Z when they met at the court hearing on 14 December, or the contact the following day. Ms W said at the time Y appeared to be genuine. There were no further enquiries made regarding Z once the care proceedings were withdrawn, as Ms W said they had no additional information.

64. Ms Cronin asked Ms W about her conversation with Y on 6 March. Initially it was understood Y had wanted to find the father, in these proceedings Y disputed Z's account and was trying to give a justification, Ms W said it is difficult now to know what her motivation was.
65. Ms Gilling QC asked how Y had the documents that Z found in October 2017, Ms W said she gave Y a draft of the report on 14 December.

The Children's Guardian

66. The Children's Guardian, Ms B, has provided two reports and does not support the adoption order being revoked or leave being given for Z to make an application for adoption. The Children's Guardian had been able to hear Z's evidence and acknowledged the reflective content, including the thought Z had given to X in the context where Z says Y did not give a truthful account, the reality of the time X has been with Mr and Mrs A and the impact on X of being moved from them. The Children's Guardian noted Z acknowledged he wanted to be helped by support and guidance, which she supported, and she saw the benefits for X in that being made available for Z. The Children's Guardian acknowledged that there had been no assessment of Z as a parent, as he had not been able to participate in the earlier care and adoption proceedings. Looking at the position now and going forward through these proceedings there is now more information about Z, which would benefit X. Whilst the Children's Guardian supported the idea of some form of mediation/support that was not in the context of adjourning any proceedings, due to the detriment of ongoing proceedings, or with it having any stated outcome. She acknowledged what she saw as Z's better appreciation of X's position in his oral evidence. The Children's Guardian considered Mr and Mrs A are best able to assess when X would be ready for any contact with Z, focussed on X's best interests and there is not a definitive timescale. The Children's Guardian saw the value of work with Z if the applications were refused to assist Z understand the legal framework, that he would not have a role in X's life but that did not erase Z's position from X's life. In addition, whilst Z feels aggrieved about what Y did the Children's Guardian considers Z needs to be assisted in coming to terms with what happened. The Children's Guardian understood the concerns about wider knowledge about X's circumstances by those who are providing support for Z. The Children's Guardian confirmed her view that if the order was revoked it would have a huge impact on X, which is increased by the complexities of the history.

Legal framework

67. Ms Cronin provided an extremely helpful summary of the relevant cases concerning revocation of adoption orders under the inherent jurisdiction.
68. The starting point is that '*Adoption orders which have been lawfully and properly made will only be set aside in highly exceptional and very particular circumstances*' per Wall LJ in *Webster v Norfolk CC and Others* [2009] EWCA Civ 59 [2009 FLR 1378 at [149]
69. In *In re O (A Child) (Human Fertilisation and Embryology: Adoption Revocation)* [2016] EWHC 2273 (Fam) the former President reviewed the authorities and drew attention to a few key propositions in paragraph 26 as follows
- i) Under the inherent jurisdiction, the High Court can, in an appropriate case, revoke an adoption order. In relation to this jurisdictional issue I unhesitatingly prefer the view shared by Bodey J in *Re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order)* [2013] EWHC 1957 (Fam), [2013] 2 FLR 1609, para 6, and Pauffley J in *PK v Mr and Mrs K* [2015] EWHC 2316 (Fam), para 4, to the contrary view of Parker J in *Re PW (Adoption)* [2013] 1 FLR 96, para 1.
 - ii) The effect of revoking an adoption order is to restore the status quo ante: see *Re W (Adoption Order: Set Aside and Leave to Oppose)* [2010] EWCA Civ 1535, [2011] 1 FLR 2153, paras 11-12.
 - iii) However, "The law sets a very high bar against any challenge to an adoption order. An adoption order once lawfully and properly made can be set aside "only in highly exceptional and very particular circumstances": *Re C (Adoption Proceedings: Change of Circumstances)* [2013] EWCA Civ 431, [2013] 2 FLR 1393, para 44, quoting *Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378, para 149. As Pauffley J said in *PK v Mr and Mrs K* [2015] EWHC 2316 (Fam), para 14, "public policy considerations ordinarily militate against revoking properly made adoption orders and rightly so."
 - iv) An adoption order regularly made, that is, an adoption order made in circumstances where there was no procedural irregularity, no breach of natural justice and no fraud, cannot be set aside either on the ground of mere mistake (*In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239) or even if there has been a miscarriage of justice (*Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378).
 - v) The fact that the circumstances are highly exceptional does not of itself justify revoking an adoption order. After all, one would hope that the kind of miscarriage of justice exemplified by *Webster v Norfolk County Council and the Children (by their Children's Guardian)* [2009] EWCA Civ 59, [2009] 1 FLR 1378, is highly exceptional, yet the attempt to have the adoption order set aside in that case failed.
70. The cases have emphasised an adoption order effects a change that is intended to be legally permanent. It changes the child's status, once an adoption order has been made

the adopted child ceases to be the child of his previous parents and becomes the child for all purposes of the adopters as though he were their legitimate child (s 67 ACA 2002). The strong policy reasons for not permitting the revocation of adoption orders once made have been set out in the cases and include such matters as the intended effect of an adoption order and the impact that could be done to the lifelong commitment of adopters to their children if there was the prospect of challenge by the natural parents that could secure the return of the child. It is within this context that the courts discretion under the inherent jurisdiction sits and why the cases have repeated that it can only be exercised in highly exceptional and very particular circumstances.

71. There is no issue that any findings the court makes is on the balance of probabilities in accordance with the principles set out in *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2008] 2 FLR 141
72. The inherent probability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred: common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities – per Lord Hoffman in *Re B* at paragraph 15.
73. The rule of *R v Lucas* [1981] QB 720 was adopted in the family courts (see, for example, Baker J (as he then was) in *L and M (Children), Re* [2013] EWHC 1569 (Fam)). The principle is that if the court concludes that a witness has lied about one matter it does not follow that he has lied about everything. A witness may lie for many reasons, for example out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure.

Submissions

74. Ms Obi-Ezekpazu has provided a detailed skeleton argument and closing written submissions, supplemented by her oral submissions on 19 March.
75. Ms Obi-Ezekpazu's primary submission is the adoption order is void ab initio, as it was obtained by Y's fraud through the untruthful information she gave the local authority and the court about Z's circumstances, in particular incorrect name, date of birth and an untruthful account about the history of their relationship, with the consequence that any steps to find him would be unsuccessful. Also, the adoption process was so undermined by procedural irregularities that it should be revoked, in effect that the local authority and the court should have taken more steps or undertaken more enquiries than it did.
76. Reliance is place upon the provisions of the Fraud Act 2006 ss1, 2 and 3 and that once evidence of fraud is established, which Ms Obi-Ezekpazu states it is, the court has no option but to set the judgment aside because fraud has a special place in the setting aside of judgments. She submits Y knew the information she was giving was false, she did so with the intention of securing an adoption order thereby depriving Z and X of family life.
77. Reliance is placed on the decision of the Supreme Court in *Takhar v Gracefield Developments and Others* [2019] UKSC 13 at paragraphs 43 – 48, 54 - 56 to underpin the submission that once established fraud unravels all. The fact that the court is

concerned with an adoption order Ms Obi-Ezekpazu submits should not have any impact on the outcome as there are no welfare considerations or discretionary powers that the High Court has that can enable the order to remain in effect, as fraud unravels all.

78. If her submissions regarding fraud are not successful Ms Obi-Ezekpazu submits the absence of natural justice in this case means that it falls within the exceptional category of cases where the court should exercise its discretion and revoke the adoption order. Reliance is placed on Y giving untruthful information to the local authority about the identity of the father, Y not giving accurate information about the birth of the child to the father or any information to him about the care proceedings and the local authority failed to undertake any purposeful enquiries to identify and locate the father. Ms Obi-Ezekpazu submits there were procedural irregularities in a number of ways including the way the local authority conducted interviews with Y without an interpreter, the way the application to withdraw the care proceedings was dealt with and comply with parts of the 2005 Adoption Agencies Regulations relating to the father.
79. If her primary position regarding the revocation of the adoption order is not successful Ms Obi-Ezekpazu submits the court should grant permission under s 51A for Z to make an application for contact. That would enable the relevant assessments to be undertaken.
80. In his closing submissions on behalf of the local authority, Mr Braithwaite makes a number of points relating to the factual background. The financial arrangements between Y and Z he submits '*remain mystifying*', in particular how the accommodation was paid for and the inconsistencies between the written account in the statements and Z's account in his oral evidence. He submits the photographs demonstrate Y knew where Z was at the time of X's birth as the photograph in the bundle taken on 7 October 2016 is outside Wellwood Road, even though Z in his first statement in these proceedings said he lived in Dereham Road and in a later statement he said that the St Mary's address had been the last known address. He accepts the evidence demonstrates that Y did inform Z that X had died, as set out in the statements from Mr O and the photographs he produces which Mr O said came from Z. He notes that Z's six statements filed prior to the hearing in October made no mention of the photographs or their onward transmission to Mr O.
81. Mr Braithwaite submits the local authority and the court could not do more than they did on the information they had from Y about notifying the birth father.
82. He submits Z's case fails to undertake any proper analysis of the impact on X of the order sought. When that is done Mr Braithwaite submits both applications should be dismissed.
83. Ms Cronin, on behalf of Mr and Mrs A, acknowledges the complexity of this case and the importance for all of the lay parties. As she notes, it includes consideration of disputed and possibly unknowable facts; the birth mother, Y, who has declined to participate in this litigations but strongly supports X remaining in the care of Mr and Mrs A; the birth father, Z, with irregular and uncertain immigration status who feels strongly that he was deceived by Y and that resulted in him being denied the opportunity to know and care for X; Mr and Mrs A who played no part in the relinquishment of X or the process that followed but have established a devoted and happy family life in what they assumed would be a forever family; and, X, now 4 years old who has been

placed with Mr and Mrs A since he was 4 ½ months and is securely embedded in his adoptive family but from Z's perspective has been denied the opportunity to live with and know his birth paternal family and their cultural background.

84. Ms Cronin submits the Fraud Act 2006 does not apply as, leaving to one side other reasons why it is not applicable, s5 makes clear that any 'gain' or 'loss' relates only to money or other property. As Ms Cronin submits these provisions simply have no application to the alleged deception in this case, neither does the case law on fraud relied upon by Ms Obi-Ezekpazu. They relate to forgery in a commercial property transaction. The issues raised by Y's deception are inherently more complex and should be considered in the context of the established line of authorities dealing with applications such as these by reference to the exceptionality threshold. Ms Cronin rejects the submission on behalf of Z that oust welfare, seeking in effect the revocation of the adoption order irrespective of any welfare considerations. Ms Cronin submits that is contrary to the case law that deals with revocation of such orders where welfare is part of the evaluation the court is required to undertake in determining whether the exceptionality threshold is met.
85. Ms Cronin submits that whilst not seeking to diminish Z's distress at losing the chance to assume the care of X there is other important evidence that needs to be weighed in the balance. All the evidence suggests X is embedded within Mr and Mrs A's family. For him they are the only parents he has known, he has thrived in their care and his placement with them is secure, stable and meets all of his welfare needs. Y supports that continued placement, as does the Children's Guardian following her own enquiries. If the order was revoked he would lose that stability and it would risk the secure attachment X enjoys with Mr and Mrs A.
86. As regards contact Mr and Mrs A have made their position clear. They support continued indirect contact, do not currently support direct contact but remain open to it. Whilst at times Z showed some insight into X's needs they remain concerned that Z's various positions from his perspective lead to him being introduced to X. They wish to retain discretion about when that may be right for X. They will conscientiously support letter box contact and will ensure X knows of his birth father and his family. Any future contact is additional to not a replacement for his existing family life.
87. Ms Cronin places some reliance on *HX v Local Authority & Ors (Application to Revoke Adoption Order)* [2020] EWHC 1287 (Fam). In that case the birth mother was an asylum seeker in the UK. She gave inconsistent accounts of her background and of the child's father, declined to reveal his identity to the local authority or the court engaged in care and placement proceedings. MacDonald J noted that there was a marked lack of rigour and urgency in those proceedings in taking steps to identify the whereabouts of the birth father. The birth father subsequently notified the court that he sought to care for the child and he was given notice of the adoption proceedings in June 2019. Four months later the court made an adoption order, with steps having been taken to seek to engage the father. During that four month period the father did not seek to make any of the applications available to him to oppose the making of that adoption order and made no application until his application to revoke the order 3 months after the adoption order was made. MacDonald J concluded at paragraph 60 that whilst acknowledging the procedural deficiencies he had identified in the care and placement proceedings he was satisfied that in the adoption proceedings what had taken place could not amount to a fundamental breach of natural justice *'that constitutes the highly exceptional*

circumstances justifying the exercise of the court's discretion to revoke an adoption order'. Ms Cronin submits the failure to make enquiries and the delays in this case are what she terms '*culpable*' delays which, even having regard to the breach of natural justice, do not allow for the revocation of a 4 year settled adoption.

88. Ms Gilling in her submissions focuses on X's position. She notes the view of the Children's Guardian that X is '*emotionally, psychologically and physically settled in their care*' and that any change in his circumstances is likely to have an impact on his emotional and psychological wellbeing.
89. In her closing submissions Ms Gilling invites the court not to exercise its discretion and revoke the adoption order due to adverse impact on X's welfare, particularly bearing in mind the length of time X has been with Mr and Mrs A. Whilst the Children's Guardian recognises the more reflective parts of Z's oral evidence and wanting to understand and move forward his position in wanting to maintain his application to revoke the adoption order if there was not agreement about contact highlighted his limited appreciation about the impact of that on X. The Children's Guardian recognises that although these proceedings have been difficult for all concerned what it has meant is more information about X's background being available, particularly in relation to Z.
90. The Children's Guardian does not support Z being given leave to make an application for contact. In her view life story work will be important for X, it will be a gradual process and needs to be taken at a pace that meets X's needs. From her enquiries the Children's Guardian is confident Mr and Mrs A will be sensitive to this and ensure steps are taken when they consider it is right for X.

Discussion and decision

91. It is difficult to imagine a more complicated factual background for the court to seek to navigate through and piece together the course the relationship between Y and Z took. This is due to their differing accounts, that the court has only had the active participation of one of them and, on the face of the documents, they may each have other factors driving the accounts they give.
92. What is not in dispute is that Y was pregnant, she gave birth to X and Z is X's biological father. The ground becomes less firm when the court is looking at the circumstances that led up to the pregnancy, the birth and the period prior to the issue of these proceedings.
93. Z's immigration status is precarious. He is an overstayer who has lived here for about 9 years after the expiry of his 7 day visa. He has set out in his statements the circumstances when he arrived here and accepts that the visa application submitted by him contained inaccurate information about his family circumstances, although seeks to suggest he was not aware of the detail.
94. It is more likely Z and Y met in person in this jurisdiction, even if they met first online, as, on the information the court currently has, it is unlikely Z would have risked leaving the jurisdiction, due to his uncertain immigration status in 2015.
95. As to where and how the relationship developed there is limited information available from photographs in April/May that Z was able to identify where they were taken, and

how that fitted in with the different accommodation they lived at. The first photograph of Y pregnant Z says was taken when she was in Poland. The subsequent photographs were during the later stages of the pregnancy in September/October.

96. There still remained uncertainties about the timing when the accommodation moves took place and, bearing in mind the apparent limited financial circumstances of Z and Y, the basis upon which they were able to afford or manage living in separate accommodation; Z in Dereham Road or Wellwood Road and Y in Uxbridge. It doesn't stand up to close scrutiny if Z is correct that he was not working and reliant on ad hoc financial support from his church and Y was said to be working in the Uxbridge area and chose accommodation there to avoid the travelling.
97. A complicating factor are the documents that appear to suggest Y went to Turkey in August 2016 and entered into a marriage. How does that fit in with the account that Z gives of them being in a close loving relationship during the pregnancy? Either it was not as Z suggests, or demonstrates the extent to which Y was able to deceive.
98. The circumstances surrounding the birth are far from clear. Very little contextual information is given by Z. He deals with Y's initial contact and the way he received the information over the next few days. Despite the issues raised about Y's account by the people who are around him, Z's evidence is he remained unquestioning about what Y had told him over a period of many months.
99. In his first statement on 11 June 2019 Z states he has not had any contact with Y since 2016. In his second statement he refers to Y visiting him for a short time the day after the birth and returning to Poland (which he said he funded), Y returning for 2 weeks in December and then going back to Poland. In his second statement Z states he was in communication with Y every day by Facebook messenger. In that statement Z describes opening the bag Y had left in his accommodation in October 2017 and, for the first time, seeing documents that suggested X was still alive and that Y had entered into a marriage in Turkey. In that statement he says *'I was mortified that she had lied to me about my son dying and furious at how I had been deceived by her throughout....I immediately approached a firm of solicitors called Okafor & Co to assist with my case. Although they stated they could help me I waited and waited for advice but none was forthcoming'*. In a later undated statement (at C109 of the bundle) Z produces some Facebook chats between Z and Y which Z said was *'in or around May 2017 when the 2nd Respondent and I were discussing the bag of papers she had left behind in our flat. I was moving flat at the time and I needed to discuss her belongings she had left behind'*. In the chat exhibited it refers to Y saying she had some documents in there. The position is further complicated by the late disclosure of texts between Z and Y which suggest Y sends a text to Z on 11 December 2016 at 22.18 saying *'im going to hospital. Bleeding to much'* to which Z responds *'Okay good it's better babe'* at 23.05 and the next entry is 7 January 2017, although the message Z sent saying *'Hi'* is not responded to.
100. Z knew that the solicitors wrote a letter in October 2017. That letter was not received by the local authority until January 2018. Z then sets out he was *'eventually'* given assistance by a firm of solicitors, R Spio & Co, who wrote to the local authority in September 2018. The local authority responded asking for confirmation of the identity of their client and a notice of acting. There was no response to that letter. Z obtained legal aid through his current solicitors and these proceedings were commenced in March 2019.

101. Attached to Z's second statement dated 15 October 2019 are 16 photographs of either Y alone clearly pregnant or Z and Y together. They were not identified with any dates or context. They appear to be taken on about 9 separate occasions, probably between early 2016 to October 2016, although it now appears one may have been on 10 December 2016. It became clear during the evidence at the hearing in October that other material had not been disclosed, despite the clear directions of the court in previous orders. The statements that followed that hearing seek to provide an account of the material Z had sent to his solicitors. A confusing schedule of the 165 photos attached to Z's statement dated 9 November 2020 make it clear material that was in the possession of Z's solicitors in August 2020 had not been disclosed. This included photographs of Z in different locations (such as the accommodation in Uxbridge, central London and a dinner following the meeting on 10 December), as well as at least 40 photos of the documents that were found in Y's suitcase that had been sent to Z's solicitor in October 2019.
102. Z seeks to paint a picture of him being blinded by love and his feelings for Y. It is far from clear whether that stands up to any scrutiny or whether it is a convenient way to avoid answering difficult questions. In the days following the birth a number of people had cast doubt on Y's account, in particular Mr O, his family and Z's sister in law. When pressed about his position, for example why he didn't get someone else to make enquiries on his behalf, Z responded that due to his feelings for Y he accepted her account.
103. That position then needs to be looked at in the context of the events that followed. On Z's account Y went back to Poland in November, returned for 2 weeks in December when he understood she had a court case about what went on in the hospital, she returned to Poland due to her uncle's death. Y did not return, as he had expected. On his later account he was in contact with her daily until he looked in her case in October 2017 and saw the documents.
104. What Z's account does not explain, if she was out to deceive him from the start, is why she remained in contact with him, why she left important documents that demonstrated X was still alive in his possession and why, if the message exchanges he produced are correct, she was asking Z to look for them.
105. In addition, what needs to be considered is, if Z's account is correct, there remained a twelve month period where apart from the photo he had not seen any confirmation about what had happened to X, Y's behaviour had changed after the meeting on 10 December and following her return to Poland there had been repeated unfulfilled promises over an extended period to return back to this jurisdiction. This is all in the context where Z's friends and family doubted Y's account and Z states he did not look at the possessions Y had left. On one view Z's position becomes more difficult the longer the period becomes.
106. Even when Z did find out that X was still alive there then followed further delays. Following the letter sent in October 2017 there then followed a delay of another year before any further communication was made with the local authority. This was at a time when Z had the support of his friends and from the church.
107. Y's position is far from straightforward. She has not engaged with these proceedings since May 2020 despite the efforts made by the local authority and the court. In the lead

up to the hearing in December from the local authority and the court's perspective there was nothing to suggest what Y was saying was inaccurate. The local authority understood her position to be that she supported steps being taken to find X's father. What is now known is those efforts were bound to fail as the information provided was inaccurate. The local authority appropriately asked for further information, but none was forthcoming. There is nothing to suggest the local authority were aware Y remained in contact with Z at that time.

108. The information Y has given in her emails and in discussion with Ms W raises questions about the nature of Y and Z's relationship and whilst that evidence has not been tested it cannot be ignored in the evaluation the court needs to undertake.
109. In answer to questions from Ms Gilling Q.C. Z demonstrated some insight into X's position and the consequences for X if the application was granted. What he said is he sought first of all to have contact with Mr and Mrs A then '*with time it will be up to the adoptive parents to....they will introduce me to [X]*'. He accepted it was important for X to remain where he is and that he is well cared for. He hoped for there to be agreement with the adoptive family for the benefit of X, although it was in the context of him wishing to meet and be introduced to X. He acknowledged it would help him to have some help to prepare for the prospect of any contact with X. Z clearly struggled with the conflict of wanting his position to be recognised and the reality of X's position. At the end of his oral evidence it became clear that what he really wanted was for him to be in contact, which I took to mean with Mr and Mrs A and, in turn, X. As he observed '*I am after his [X's] happiness. I have to accept there is a compromise*', however he concluded his evidence that in the absence of agreement he seeks the adoption order to be revoked.
110. Ms Obi Ezekpazu provided a schedule of findings dated 27 July 2020. Whilst such schedules can be of assistance in some cases, I do not regard this unusual case as one of them. I agree with Ms Cronin the position is more nuanced than Ms Obi-Ezekpazu's schedule allows for.
111. Drawing the threads together, bearing in mind the unusual background to this case and the unsatisfactory nature of some of the evidence, I have reached the following factual conclusions.
 - (1) Whilst the relationship between Y and Z probably started when they met on line they are unlikely to have met first in Poland due to Z's immigration status and the inability of him to be able to travel to another jurisdiction. They are more likely to have first met in person in this jurisdiction in late 2015/early 2016.
 - (2) Following Y becoming pregnant early in their relationship, it was unlikely the relationship continued in the way either Y or Z have suggested. Whilst it is right the court must factor in that Y has chosen not to engage with these proceedings, her account has consequently not been tested and that impacts on the weight her account is given. However, it does not follow that the court should then accept without question Z's account.
 - (3) Z's account of his relationship, including such observations about the depth of his love for Y and being blinded by the strength of those feelings, is undermined by a number of factors, including (i) the periods of time when Y was in Poland; (ii) his

inability to provide any rational account about where Y was working and what it involved; (iii) why they needed or how they funded separate accommodation; (iv) his unquestioning acceptance of Y's account of X's birth when those around him doubted it in the way he and Mr O described. Z's actions and inconsistent accounts in 2017 in relation to Y's possessions left in the accommodation he was living in do not make sense. He first referred to the message exchanges between him and Y about them as taking place in May 2017, that was then changed to October 2017. Unfortunately the messages do not have any contemporaneous information on them regarding the date. Y leaving such critical documents in Z's possession in the circumstances where she gave the account she did to Z about X's birth make no sense either.

- (4) Y's account is also undermined by a number of factors. First, the inconsistency between what she informed the local authority at the meetings in the period after X's birth about her lack of contact or knowledge about Z's circumstances and what appears to have been her contact with Z after the birth, her attendance at the event on 10 December and her continuing contact with Z. Second, how the evidence about the marriage in Turkey in August 2016 fits into the picture. Third, why she would leave a number of important and detailed documents in Z's possession for such a long period of time. Fourth, why she has not taken any continuing part in these proceedings bearing in mind the implications for X.
- (5) As a consequence whilst the information given by Y to the local authority and the court in relation to her account of her relationship with and knowledge of Z were incorrect, it is far from clear what her motivation was. Whilst it may have been to secure an adoption placement for X in this jurisdiction, to do that in circumstances where she remained in contact with Z and left possessions in his control that risked providing Z with the necessary information as X's position does not necessarily support that position.
- (6) Z denied he used any other names, or that he had worked. There is no evidence other than from Y that he used other names, and this was only first raised by Y in her email communication with the local authority in July 2019. As I have already set out, the evidence about the financial circumstances of Y and Z remains far from clear. In his oral evidence Z gave somewhat long and incoherent accounts about his financial circumstances, the financial arrangements regarding their accommodation and how he was able to fund Y's air fares with the result that I regard neither Y and Z have given a full and accurate account of their financial circumstances and resources. The position is further complicated by Z's letter to the court dated 17 April 2020 where he alleges Y deceived him to exhort money from him.
- (7) Whilst it is right the discussions with the mother and the social workers took place without an interpreter, that was offered, the mother declined and Ms L and Ms W's evidence is accepted that Y understood what was being discussed, both generally and in relation to the signing of the s20 agreement. This is supported by Y's position in her statement and through her legal representatives in the care proceedings and by the discussions that took place at court on 14 December with an interpreter present.
- (8) Z's account of this period does not stand up to close scrutiny. On his account X had died and a year later he still had no information about the circumstances of X's

death and none of the communications between him and Y raise this issue. This was in the context when those around him, his family and Mr O, did not believe Y's account in the first place. What remains inexplicable is the delay in Z taking any steps to get anyone to make enquiries on his behalf, looking at the possessions left by Y earlier than he did and then the further delays once, on his account, he became aware X was still alive. Even taking account of his difficulties in getting legal advice, with the detailed information he had, bearing in mind the importance of what was at stake, and the wider support he had, it is difficult to understand why there was such a long gap before any effective communication was made with the local authority.

- (9) The position the court is left in is that whilst it is clear Y and Z had a relationship, that it was an intimate relationship that resulted in Y becoming pregnant with X and giving birth to him the nature of the relationship leading up to the birth and afterwards is more complex. On the information the court has it is not in a position to reach any further conclusions regarding the nature and extent of the relationship other than during the pregnancy and afterwards Y and Z remained in contact, spent some time together, probably limited to some weekends, as evidenced by the photographs and the extent of that relationship was not disclosed by Y to the local authority or the court in the care or in connection with the adoption proceedings. From about April 2016 Y was mainly based in accommodation in Uxbridge and Z in St Mary's Road, followed by Dereham Road for about a month then Wellwood Road from about September/October 2016.
- (10) It is more likely than not that Y did inform Z that X had died at birth, this is supported by the account given by Mr O and in a copy text dated 1 November 2016 between Z and a friend (which was not disclosed until November 2020). What is not clear is why Z remained the only person who believed that at the time and the reasons for his continuing belief about that until October 2017. Z's response of being '*blinded by love*' lacks credibility in the context of the evidence about the nature of the relationship between Z and Y, in particular after 10 December.
- (11) The information the court has from the local authority and the court records is that notification to the birth father and any further information about him was repeatedly raised, orders were made and enquiries undertaken. There is no suggestion that Ms L and Ms W, the local authority and the court did other than act in good faith on the information available.
- (12) Whilst part of Z's position is that he is not responsible for the delays that have taken place again that too needs careful analysis. If his position is that he accepted Y's account that X had died at birth, it is difficult to understand why he did not raise any further issues about that with Y, bearing in mind the willingness of his church to assist with any funeral arrangements and what he understood was a court case Y had in connection with the birth. X's position simply did not feature again in Z's evidence in the communications between him and Y in the time up to October 2017. In addition, even making all due allowance for the difficulties Z is in, his actions after October 2017 resulted in the delay in contacting the local authority and the delay in these proceedings. By way of an example in these proceedings, the failure to disclose the material that was in the possession of his solicitor in October 2019 and August 2020 until the statements signed on 9 November 2020 remain inexplicable.

(13) To his credit in parts of his oral evidence Z demonstrated insight and understanding about X's position and the security of his placement with Mr and Mrs A. As well as highlighting the difficulties for X, Z recognised the difficulties he would have in managing and welcomed the idea of any support that could be available for him. Whilst he could only see such help through the lens of a staged process that would result in him being introduced to X, the fact that he recognised it would be helpful to have such support is likely to benefit X in the long term, irrespective of the outcome of these proceedings.

112. Turning first to consider Z's application to revoke the adoption order. I have reached the conclusion that order should be refused for the following reasons:

(1) As the court has acknowledged above, it is acutely aware of the significance of these proceedings for the people concerned, in particular Z, Mr and Mrs A and X.

(2) I accept the submissions of Ms Cronin that the provisions in the Fraud Act 2006 do not apply in this case. There is simply no basis upon which it could be said that the gain or loss is in money or other property, as set out in s5.

(3) This court is guided by the principles outlined by the line of cases summarised by the former President in *Re O* set out above, which, as the cases demonstrate, include consideration of the welfare of the child concerned as part of the court's decision as to whether the circumstances are highly exceptional. As was set out in *Re O* '*The fact that the circumstances are highly exceptional does not of itself justify revoking the adoption order*'. Where, for example, there has been a failure of natural justice, and a party with a right to be heard on the application for the adoption order has not been notified of the hearing or has not for some other reason been heard, the court has jurisdiction to set aside the order and so make good the failure of natural justice, but that can't be in a vacuum. As Sir Thomas Bingham MR stated in *Re B* '*I would also have little hesitation in holding that the court **could** set aside an adoption order which was shown to have been obtained by fraud*' [emphasis added]. Ms Obi-Ezekpazu has sought to suggest that this is as of right, which is not supported by the authorities. It is of note that *Re B* states it *could* be set aside, not that it will.

(4) I am satisfied on the information the local authority and the court had no further steps could or should have been taken. I accept the evidence of Ms L and Ms W that they had nothing to suggest Y or the information she was giving was other than genuine. The information the court was given was addressed with orders, such as disclosure orders. Within the adoption proceedings suitable enquiries were made through CFAB regarding the position in Poland and whether Y's mother would be in a position to care for the child. At each stage the local authority and the court took such further steps it could to seek to find and inform X's birth father.

(5) At the time of X's birth and relinquishment there was no family life established as between Y and Z. Y was living in Uxbridge, had been there for some time with only periodic visits from Z, there was a short period they lived intermittently together at Dereham Road and Wellwood Road, although Y did not give up her accommodation in Uxbridge. Z reports Y was angry at the time of her pregnancy, did not want to marry Z and married another person in August 2016.

(6) Z undertook no enquiries following X's reported death. He had the name of the hospital, the date of birth and Y's name. Those around Z at the time did not believe what Y said and told Z to question X's claimed death. Y informing Z not to attend the hospital and Z's reasons for not doing so lend support to what Y has said is Z's primary concern, namely his ability to stay in the UK. The longer Z took no action to enquire about the circumstances of X it becomes increasingly clear that his primary focus is his own position.

(7) The further delays during 2017, when Z took no steps to find out more about X's position or look at the possessions left by Y, meant a further 12 months passed with little being done by Z in relation to establishing the position about X. The October 2017 letter sent on Z's behalf, the failure by Z to take any steps to follow that through (when he had access by then to over 40 pages of detailed information from Y's possessions) for nearly 12 months and then further delays prior to this application were in part avoidable. Z had the support of his church and Mr O. I agree with Ms Cronin the claim by Z of fraud and breach of natural justice have to be looked at in the context of all the information the court has, including the steps taken by Z and any reasons that may lay behind them. I am satisfied that Z deliberately refrained from investigating the report of X's death driven by his own position and when he learned of the deception a further 15 months passed before he made the application the court is considering today. Each of those actions by Z do not stand up to close analysis. In my judgment Z could and should have taken steps earlier than he did.

(8) The issues in this case do need to be considered in the light of the guidance given in *A, B and C* [2020] EWCA Civ 41 where the court would consider matters that may justify overriding the mother's request not to notify the child's father or relatives. They include matters such as whether the father has parental responsibility, whether there is an established or potential family life, the substance of the relationship and the likelihood of a family placement. Whilst this situation is very different on the facts it is relevant that Z did not have parental responsibility, a potential family life with Y or family support here.

(9) As was made clear in *Re O* the fact that the circumstances may be highly exceptional does not of itself justify revoking an adoption order. The court cannot ignore the consequences for X. The revocation of the adoption order would restore the status quo ante. It would re-instate Y's parental responsibility. As she appears to have no wish to assume X's care there would need to be further court proceedings, including consideration as whether an adoption order should be made in favour of Mr and Mrs A. Such a position on the evidence the court has would place X at real risk of significant harm due to the uncertainty regarding his identity, the undermining of his secure legal relationship with Mr and Mrs A and close family relatives and what Ms Cronin refers to as his '*lived and secure identity*'. Such fundamental changes are beyond X's current understanding and would very likely have long term adverse consequences for his welfare needs, as the Children's Guardian has set out.

113. Turning now to consider Z's application under s 51A ACA 2002. In considering the application the court is required to have consideration to the matters set out in s51A (5), namely, any risk there might be of the proposed application disrupting the child's life to such an extent that he or she would be harmed by it, the applicant's connection with the child and any representations made to the court by the child or Mr and Mrs A. In my judgment leave should be refused for the following reasons:

- (1) As *Re B (A Child: Post Adoption Contact)* [2019] EWCA Civ 29 makes clear the relevant legal principles remain unchanged that it will only be '*in an extremely unusual case that a court will make an order to which the adopters do not agree*'.
 - (2) Mr and Mrs A have consistently said they will support indirect contact and do not rule out direct contact in the future but wish to retain their discretion as to if and when that should take place. So, they do not agree to any order at this stage or for the foreseeable future.
 - (3) I accept Mr and Mrs A's evidence, supported by the Children's Guardian, that direct contact should not take place or be considered in advance of the necessary life story work with X. This is based on their knowledge of X and his current needs.
 - (4) The life story work in this case is not going to be straightforward due to the complexity of the background and Mr and Mrs A have actively sought advice and assistance about this.
 - (5) I am satisfied that in the circumstances of this case there is a risk of the proposed application disrupting X's life to such an extent that he would be harmed by it. Z has, for understandable reasons, an unrealistic expectation about future contact with X. His oral evidence demonstrated that he wished it to happen sooner rather than later and showed little appreciation of the impact of that on X or those who care for him. Also, there is a risk that Z has not fully accepted Mr and Mrs A's role, as was demonstrated by the varying answers he gave in oral evidence about his wish for the outcome of these proceedings.
 - (6) Whilst Z's connection with the child is important he has no established relationship with X and X has limited, if any, knowledge of him. It is going to require sensitive work and support for X before there could be consideration of any direct contact.
 - (7) The general submissions about the research made by Ms Obi-Ezekpazu are relevant in so far as such research helps inform the courts approach but each case must be considered on its own particular facts.
114. Although the court has refused both applications made by Z, I do consider it would be helpful for Z to be able to be given some support to help him come to terms with what has taken place, and assist him to understand the legal framework that will provide for X in the future. I also hope he can be given guidance to engage in the indirect contact that Mr and Mrs A support.
115. The parties may also want to consider whether Z would find it helpful to be given an agreed summary of the outcome of these proceedings, which may help inform those who provide him with support in his community.