



Neutral Citation Number: [2021] EWHC 3168 (Fam)

Case No: ZC21Z00026

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

**IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002**  
**AND IN THE MATTER OF YP (DOB: 04.02.2003)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26/11/2021

**Before:**

**MRS JUSTICE ARBUTHNOT**

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**Between:**

A

**Applicant**

- and -

R

**First Respondent**

- and -

YP

**Second Respondent**

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**Mr Andrew Powell** (instructed by **Hughes Fowler Carruthers**) for the **Applicant**  
**The First Respondent appeared in person**  
**Ms Ruth Cabeza** (instructed by **Dawson Cornwell**) for the **Second Respondent**

Hearing dates: 26<sup>th</sup> October 2021  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives and any litigants in person by email. The date and time for hand-down is deemed to be at 10:30am on 26<sup>th</sup> November 2021.

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MRS JUSTICE ARBUTHNOT

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mrs Justice Arbuthnot:**

**Introduction**

1. The applicant “A” applies for an adoption order in respect of the second respondent “YP”, who is a Swiss national born on 4<sup>th</sup> February 2003, he is now aged 18. The application was issued on 3<sup>rd</sup> February 2021, the day before his 18<sup>th</sup> birthday. The application is supported by YP’s birth mother, the first respondent, whom I will call “R”, and by YP.
2. A is a Swiss national who has lived in London since 2017. A very successful businessman, he is now aged 88. He and R were married in 1992 and divorced in 2002. A married again and when that marriage ended in 2011, A, R and YP became a family unit. A and YP have pre-settled status in the UK. R does not.
3. A is the partner or close friend of YP’s birth mother. R is a Swiss and Spanish national who lives in Switzerland.
4. YP has a birth father “X”, who was never married to R and never lived with her. X had regular monthly or every two months contact with YP. This contact has continued for years and shows that X has a long-standing commitment to his son. For no obvious reason the last contact between X and YP was in 2019; this had nothing to do with Covid nor did it relate to A’s application to adopt YP.
5. This is, in essence, an application for a stepparent adoption order. R has parental responsibility for YP and is an automatic respondent to the proceedings.
6. R and YP have lived in Switzerland throughout his childhood whilst he has attended school in Switzerland. A has lived in London but he has spent time also in Switzerland where he has a flat. It appears from the statements provided by A, R and YP that the latter has spent his holidays with A either in London or travelling to various places around the world with him. Emotionally, YP considers A to be his father.
7. X was given notice of the proceedings and attempts have been made to contact him on a number of occasions by A’s solicitors, the local authority and the Cafcass reporting officer. There was little response from him except it would appear that he opposes the application. He was given notice of the proceedings and of the hearing and also given an opportunity to intervene in these proceedings but did not respond to that invitation.
8. A Swiss lawyer, Alain Berger, was instructed in these proceedings to advise whether X as the birth father had parental responsibility for YP under Swiss Law. In short, the evidence is clear, the birth father does not have parental responsibility for YP and is not an automatic party to these proceedings. Mr Berger confirmed that YP’s mother, R, is the only parent with parental responsibility for him. R and X, the birth father, were not married at the time of YP’s birth and there had never been a legal declaration of joint custody. X’s consent to the Adoption Order is therefore not required.
9. Ms JG, the Cafcass reporting officer, raised the question of YP’s inheritance rights and the recognition of an English adoption order in Switzerland. Mr Berger confirmed in his addendum report dated 14 October 2021 that an English adoption order would be recognised in Switzerland as long as A was domiciled and was a citizen in England.

10. The local authority provided an Annex A, Rule 14 report written by Ms AG in which she did not support the making of an adoption order but accepted that the application was finely balanced. She was concerned about YP's loss of his relationship with the paternal family which may be occasioned by an adoption order.
11. After the departure of the report writer from the employment of the local authority, an addendum report was provided dated 19<sup>th</sup> October 2021 by Ms K, where this time an adoption order was recommended.
12. YP was joined as a party to the proceedings on 16 March 2021 and has instructed his legal team directly. A Cafcass reporting officer had provided a report and had interviewed A, R and YP. In a report dated 10<sup>th</sup> September 2021, she considered there were no welfare issues preventing an Adoption Order from being made.

### **Issues**

13. Whether the pre-conditions for the making of an adoption order are satisfied.
14. A particular question is whether A is the partner of R within the definition of the Adoption and Children Act 2002 ("ACA 2002").
15. A more difficult question relates to whether YP has had his "home" with A "at all times" during the six months preceding the application, 3<sup>rd</sup> August 2020 and 3<sup>rd</sup> February 2021. It is accepted by the parties that YP was in Switzerland during this period. The question is whether he had had his home with A during the preceding six months notwithstanding that he was in Switzerland during this time whilst A was either in Switzerland or in London. If he has not had his home at all times with A in the preceding six months, then the criterium in section 42(3) of the ACA 2002 is not met and an adoption order cannot be made.
16. Finally, if the pre-conditions are met, the court must consider whether it is in YP's best interests to make an adoption order.

### **Evidence**

17. I had a bundle of evidence including statements from A, R and YP, two Annex A, Rule 14 reports from the local authority, statements from the expert on Swiss law and finally the report of the Cafcass reporting officer.
18. The statements of A, R and YP were consistent. A settled in the United Kingdom in 2017 although he had owned his flat in London for 20 years. He had pre-settled status as did YP. A also owns property in Switzerland and stays in a flat he owns there. When in Switzerland he does not live with R and YP.
19. A had been married to R between 1992 and 2002, but they were divorced before she had YP. A first met YP when he was aged three. A and his third wife spent increasing time with YP and R. He became a father figure to YP and is very fond of him; they spent as much time together as they could. The three of them became a family unit after his divorce from his third wife in 2011.
20. Their relationship was cemented through travel when YP was not attending school in Switzerland and shared interests such as stage musicals and restaurants, in particular

those providing Iraqi cuisine. The family had travelled together including to Las Vegas one December, Panama over Christmas 2019 and A and YP had travelled to Israel together. They spend Christmas together almost every year although R's mother lives in Switzerland and they visit her too.

21. R said YP's home had "gravitated to London". R would have spent much more time here were it not for Covid.
22. During the six months I am concerned with, A flew to Switzerland in July 2020 and stayed until November 2020 and spent much time with YP and R but R said "it has not been the same as our usual family routine" (D2). During the period of time when YP was not able to come to London due to Covid and school and A was back in London, A and YP were in touch a few times a week by telephone.
23. The plan was that YP would finish school in the summer of 2021 and then relocate to London for them to be together, in the event YP is going to university in Switzerland and will not be studying in London.
24. A explained that adopting YP would recognise legally their current arrangements. He treats YP as his son and provides for him financially and YP treats A as his father. YP has a special nickname for A "Youkind". A wants to be legally responsible for YP and specifically provide for YP fully on his death.
25. A said YP's home life "is and has remained with me in London throughout" although what he meant by that was that during the holidays YP would stay with him either in A's flat in London or they would be travelling abroad together. YP had his own bedroom in London. A compared it to an arrangement by which a child goes off to boarding school and returns to the parents' home in the holidays.
26. The mother, R, explained that YP and A have a very special bond and relationship. YP will cook for A, cut his hair and even helped him shave after he had broken his shoulder.
27. The family have discussed the application together and are all very happy about it. They want their legal reality to reflect their social reality. A considers himself to be YP's stepfather.
28. A explained that his lawyers had attempted to contact YP's birth father X but received no proper response. After A's lawyers sent letters in English, X replied in French saying he did not understand English and he did not know what they wanted. French translations of the letter then were sent.
29. There was an implication in the first social worker, Ms AG's, Annex A, Rule 14 report that A had not mentioned the fact that he had two older adult children in his first statement of 4<sup>th</sup> May 2021. He set out the circumstances surrounding his estrangement from these children in his second statement of 30<sup>th</sup> July 2021.
30. Born in Switzerland, after their parents' divorce the two older children had been taken by their mother firstly to Canada and then to Switzerland, before returning to Canada. A had lost touch with his son and had not seen his daughter for six years, since she had pressed him for money. They were now in their early fifties.

31. One of the first social worker's concerns covered in her report was the loss to YP of his paternal birth family. R and X had met as teenagers but their relationship began in 2002 whilst R remained in Switzerland and X stayed in Paris. The pregnancy with YP was planned.
32. R explained that YP's relationship with his birth father was very different to the one with A. It appeared to the court that she was playing down YP's relationship with his paternal family although I accepted it was clear that the YP's contact with his father was not meaningful for YP although it had been regular until 2019.
33. R said YP and X do not speak on the telephone and when they did meet they never did anything together and YP has never gone on a holiday or on a trip with his birth father.
34. As to YP's wishes and feelings in relation to the application, these were set out in YP's statement of 19<sup>th</sup> May 2021. He very much wants to be adopted by A and has known him virtually all his life. He confirmed that although he lives in Switzerland with his mother in their rented flat, he feels his home is in London with A. He said that although Covid had restricted his ability to travel and he had remained in Switzerland for school, he would say his home was in London with A.
35. A had always been there for him. He had helped him with his schoolwork and gives him advice. They enjoy doing the same things together. When YP is not with A he speaks to A several times a week on WhatsApp.
36. YP had seen his birth father in February 2020 when the paternal grandfather was ill and before that in November 2019 in Switzerland. They exchange occasional texts. In June or July 2021, after the end of the school year he had visited maternal family members in Spain when he also saw his birth father when he went to his paternal grandparents' house.
37. YP said the order was very important to him because it reflected the reality of his life on the ground.
38. The Annex A, Rule 14 Report prepared by Ms AG from the tri-borough Fostering and Permanence Team provided an objective and balanced view of the A, R and YP.
39. The social worker described the relationship between R and A and said that they consider themselves to be good friends, in a committed familial relationship. They have remained living separately but spend significant time together including stays in each other's homes and going out for dinners, day trips and holidays.
40. YP was described as a mature and well-mannered young man who was able to articulate his views and feelings. There are no concerns about his behaviour nor about his emotional well-being. The social worker described Switzerland as his home country but that YP enjoys the excitement and bustle of London.
41. The social worker found YP had a reasonable understanding of adoption and its consequences. He recognised that A would be legally recognised as his parent whilst X would no longer have that legal role. YP understood that he would spend time with A for the rest of his life. He recognised that being 18 years of age it would have a different impact on him to the one it would have had had he been much younger.

42. Because of Covid, the social worker had not had the opportunity of seeing A and YP together, which was unfortunate, but she was able to have remote meetings with A, R and YP.
43. She concluded that A had played a significant and consistent paternal role in YP's life. He had shown his commitment to YP in a number of ways by guidance, practical and emotional support and also by financial support. A pays for his schooling, other day-to-day activities and travel. YP values his advice and opinions. With YP looking at his future options he would need guidance and opportunities to develop his skills and to support his career choices. In short, A is the consistent father figure in YP's life.
44. Medical reports were obtained on A and YP. There were no issues which would impact on the making of an order.
45. The social worker considered the significance of the loss to YP of any rights to inheritance from X. The trouble was it had not been possible to find out about his assets. YP was not concerned about losing out on an inheritance from his father. A told the social worker that although he has considerable assets, he had not made a will and was planning on leaving them to charities. Although if YP went into business with him then he would be a beneficiary of that asset.
46. YP did not feel the order would affect what was a limited relationship with his father. He described them never playing together and in all their meetings for a weekend a month or every two months had only left the flat together once for a walk. He could not see his father resuming any contact. There was no strong emotional connection between them. He last heard from his father in a text telling him his paternal grandfather had died. It was sent a few days after his birthday but it had not mentioned that event. It must be said the death of a grandfather is of rather more significance perhaps than the 18<sup>th</sup> birthday of a child.
47. YP has a relationship with his paternal family which he described as "good" (E26), some of whom live in Spain, some in Paris. R said the adoption order would not make a difference to those relationships. R did not want the paternal family to be contacted about the Adoption.
48. The social worker was concerned that an Adoption Order would impact negatively on the relationship between YP and his birth father. She pointed out that although he had no strong feelings now he may feel differently about that in the future. Certain key events in YP's life might trigger that. She was also concerned that the extended paternal family with whom he has a good relationship is not aware of the adoption plans and R did not want them to be contacted about this. Their reaction might have an adverse impact on YP. She was also concerned about the impact on YP of the two adult children of A finding out about the adoption. A did not have contact details for his children and did not want the social worker to contact them.
49. The social worker noted that YP had not known that A had two adult children of his own. A did not know that YP had contact with his paternal family nor that he had had consistent contact with his father over many years. The social worker said it was a finely balanced case but that adoption was a serious and significant order with irrevocable consequences. YP's wishes would be the principal reasons for

recommending it. Beyond that, she could not see what benefit it would bring. The family arrangements would continue as before.

50. The social worker recognised the court may take a different view and give more weight to his wishes and feelings.
51. There was an addendum report produced by Ms K from the local authority which considered some of the questions raised by the social worker. A, R and YP had answered the questions raised by the first social worker. By then the birth father had made it clear he was not engaging in the proceedings. The addendum report recommended the granting of an Adoption Order.
52. The Cafcass reporting officer, JG provided a report dated 10<sup>th</sup> September 2021. She discussed the fact that YP thought it was for his birth father to tell his paternal family about the proposed adoption. He said he did not see his birth relatives much. Ms JG considered that YP was aged 18 and able to make his own decisions. Contact between YP and the birth father had not occurred for a number of months by the time of the report.
53. JG pointed out there were advantages for YP of inheriting from A. She said it was not dealt with explicitly, but she thought inheritance may be a part of A's, R's and YP's thinking. This would of course provide security for YP. She explained that in Switzerland a child has an automatic right to inheritance so A may be limited in what he can inherit from A without adoption. I agreed with JG's analysis of the situation that the application may have been partly as a result of a question of inheritance rights in Switzerland.
54. A balance may have to be struck between his rights to inheritance and the loss of a relationship with his father and the paternal family. From YP's point of view he would suggest there are emotional, and as Ms JG says, probably financial advantages, to the making of such an order.

#### **Contact with X, the birth father**

55. The local authority tried to contact X by sending two letters on 6<sup>th</sup> and 16<sup>th</sup> April 2021 which were in French and emailed to his current address. There were also attempts to call him on 11<sup>th</sup> and 20<sup>th</sup> May 2021 but there was no reply, so a voice message was left in French.
56. The Cafcass reporting officer said that she had contacted the father and that her attempt had elicited a response from the father that he recognised that YP was an adult and he saw it as being about an inheritance.
57. X's views about the application were clear also from the evidence of YP and his mother. R told the social worker that the birth father had been in contact with her on 14<sup>th</sup> March 2021 saying that he did not support the adoption and would not consent. YP said X hardly spoke to him when he saw him in June 2021 although X had told him that the adoption order was "stupid".
58. X was given the opportunity to take part in these proceedings but did not do so.



## Submissions

59. Mr Powell and Ms Cabeza argued that at the relevant time, in the six months leading up to the application, between 3<sup>rd</sup> August 2020 and 3<sup>rd</sup> February 2021, YP was in Switzerland “largely” owing to being at school there and because of Covid restrictions making travel to England difficult. YP’s home was in England and would have been in the preceding six months had there not been Covid preventing travel. I have set out some of the cases relied on by Mr Powell and Ms Cabeza in their argument below.
60. Mr Powell relied on recent cases concerning applications for parental orders in surrogacy cases where the expression “home” was to be given “a wide and purposive interpretation” in *Re A (A child: Surrogacy: s54 Criteria)* [2020] EWHC 1426 (Fam) at paragraph 58.
61. Mr Powell accepted there was a physical separation between A and YP during the six months the court is concerned with but contended that “the court can find [YP’s] home was with A having regard to A’s and YP’s rights guaranteed by Article 8 of the ECHR”.
62. Mr Powell recognised that statutory provisions can be construed in such a way that they comply with the ECHR by giving words meanings which they would not bear if “normal rules of statutory interpretation applied” (Lord Neuberger in “The role of judges in human rights jurisprudence: a comparison of the Australian and UK experience” (8<sup>th</sup> August 2014) relied on by Mr Powell in his skeleton at paragraph 21).
63. Mr Powell recognised however as Lord Rodger said in *Ghaidan v Godin-Mendoza* [2004] 2 AC 557 at paragraph 115: “In any given case, however, there may come a point where, standing back, the only proper conclusion is that the scale of what is proposed would go beyond any implication that could possibly be derived from reading the existing legislation in a way that was compatible with the Convention right in question. In that event, the boundary line will have been crossed and only Parliament can effect the necessary change”.
64. Mr Powell relied on the ECtHR case of *Kroon v The Netherlands* (1994) 19 EHRR 263 [1995] 2 FCR 28 where it was said at paragraph 32 that “Where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible as from the moment of birth or as soon as practicable thereafter the child’s integration in his family. At paragraph 40, the court said “in the court’s opinion, “respect” for “family life” requires that biological and social reality prevail over legal principles”.
65. Mr Powell set out examples where in a number of cases a broad interpretation had been made of “family life”. Munby P in *Re X (A Child) (Surrogacy Time Limit)* [2014] EWHC 3135 (Fam), decided that family life existed between two parents and their children despite the fact that the parents were not married and lived in different houses.
66. In *Re A*, Keehan J considered the concept of “home” and said it should be construed flexibly. He concluded that: “the term ‘home’ must be given a wide and purposive interpretation. The authorities make clear that the term is not and should not be restricted to cases where the applicants live together under the same roof. It is the plain intention that A will be cared for by both of them, albeit not necessarily, and not at

present, on the basis of an equal shared care arrangement.”. In that case the father had not had any direct contact with the child.

67. Ms Cabeza for YP supported the application and relied on *Re G (A Child) (Adoption: Placement outside Jurisdiction)* [2008] EWCA Civ 105. I will consider that case later in the judgment. This was a particularly helpful case as it considered the meaning of “home” in section 84(4) of the ACA 2002.
68. I was grateful to both for their submissions.

### **Law and discussion**

69. The rules concerning adoption orders are set out in the Adoption and Children Act 2002 (“ACA 2002”). The preliminaries to adoption are to be found in sections 42 to 45. The rules for the making of adoption orders are found in sections 46 to 51.
70. By section 44(3) of the ACA 2002, notice must be given to the relevant local authority not more than two years, or less than three months, before the date of the application for the adoption order. Notice was given to the local authority on 25<sup>th</sup> August 2020, therefore the requirement of section 44(3) is met.
71. Section 47 sets out the two routes to adoption, the second has no application to these proceedings. I set out both limbs for completeness:

#### **“47 Conditions for making adoption orders**

(1) An adoption order may not be made if the child has a parent or guardian unless one of the following three conditions is met; but this section is subject to section 52 (parental etc. consent).

(2) The first condition is that, in the case of each parent or guardian of the child, the court is satisfied—

- (a) that the parent or guardian consents to the making of the adoption order,
- (b) that the parent or guardian has consented under section 20 (and has not withdrawn the consent) and does not oppose the making of the adoption order, or
- (c) that the parent’s or guardian’s consent should be dispensed with.

(3) A parent or guardian may not oppose the making of an adoption order under subsection (2)(b) without the court’s leave.

(4) The second condition is that—

- (a) the child has been placed for adoption by an adoption agency with the prospective adopters in whose favour the order is proposed to be made,

- (b) either—
  - (i) the child was placed for adoption with the consent of each parent or guardian and the consent of the mother was given when the child was at least six weeks old, or
  - (ii) the child was placed for adoption under a placement order, and
- (c) no parent or guardian opposes the making of the adoption order.

(5) A parent or guardian may not oppose the making of an adoption order under the second condition without the court's leave.

(6) The third condition is that the child —

- (a) is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted, or
- (b) is free for adoption by virtue of an order made, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)).

(7) The court cannot give leave under subsection (3) or (5) unless satisfied that there has been a change in circumstances since the consent of the parent or guardian was given or, as the case may be, the placement order was made.

(8) An adoption order may not be made in relation to a person who is or has been married.

(8A) An adoption order may not be made in relation to a person who is or has been a civil partner.

(9) An adoption order may not be made in relation to a person who has attained the age of 19 years.

(10) In this section, “Scottish permanence order” means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).

72. A pre-condition to the making of an adoption order is that the person to be adopted has never been married or been in a civil partnership at the date of the adoption order

(section 47(8) ACA 2002). He must not have attained the age of 19 by the time of the order (section 47(9) ACA 2002). Both of these requirements are met in this case.

73. By section 49(3) A has to have been “habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the application”. There is no doubt that A has been habitually resident in England since 2017; the requirement of section 49(3) is met.
74. By section 49(4) of the ACA 2002 an application for an adoption order may only be made if the person to be adopted has not attained the age of 18 years on the date of the application. YP had his 18<sup>th</sup> birthday the day after the application was made. The requirement of section 49(4) is met.
75. Section 49 proscribes the categories of applicant for an adoption order. An application may be made by one person (section 49(1)(b)) but only if it is made under section 50 or 51 and one of a number of conditions is met.
76. The relevant part of section 51 of ACA 2002 is set out below:

**“51 Adoption by one person**

(1) An adoption order may be made on the application of one person who has attained the age of 21 years and is not married or a civil partner.

(2) An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted.

(3) ...

(3A) ...

(4) ...

(5) ...

77. A is not married to R and therefore it is necessary to consider the definition of “the partner of a parent of the person to be adopted...” in section 51(2).
78. The definition is found in section 144(7) of the ACA 2002 which says:

“(7) For the purposes of this Act, a person is the partner of a child’s parent if the person and the parent are a couple but the person is not the child’s parent.”
79. Section 144(4) states:

“(4) In this Act, a couple means—

- (a) a married couple, or

- (aa) two people who are civil partners of each other, or
  - (b) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship.
80. The first question for the court is whether A is the partner of R within the meaning of section 144(4)(b). Are they in an enduring relationship? A says that his relationship with R is not a conventional one. They were married, then divorced and became a family unit of three after his divorce from his third wife. He spends time with R when she is in London and sees her in Switzerland when he is there.
81. R said that although she lives in a rented flat in Switzerland where her son goes to school and she had not applied for pre-settlement status, she spends as much time as possible with A when YP is not at school in Switzerland. R manages A's properties, arranges any appointments, makes his food, runs any errands and drives him around. She goes to him for advice, and he asks her for advice. They have a mutually supportive relationship.
82. When YP is at school, R is in Switzerland with him and A is usually in London but they spend time together in London in the school holidays. R said when YP finishes school they are looking to move to London. YP said his mother and A are in a relationship together and the three of them are a family unit. There is no suggestion that either A or R have other partners.
83. The weight of evidence allows me to find on balance that they are living as "partners in an enduring relationship" within the meaning of section 144(4)(b). A and R may live in different homes, in separate countries, but they have a long-standing commitment to one another. They were married once and now share the care of YP, both bring him up, they both given him emotional support, A helps YP financially as well. They consider themselves to be a family unit.
84. Under the ACA 2002, parental consent is required or must be dispensed with. Section 52(6) defines parent as "a parent having parental responsibility". From the evidence of the Swiss lawyer, YP's birth father does not have parental responsibility within the meaning of s52(6) of the ACA 2002 and therefore his consent is not required for the making of an adoption order. R, YP's mother, has provided her consent to, and supports, the making of an adoption order. The requirement of parental consent in section 52(6) of the ACA 2002 is satisfied.

## **Home**

85. The most contentious part of this case is that A must satisfy the court that the condition set out in section 42(3) of ACA 2002 is met:
- "If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child must have had his home with the applicant or, as the case may be, applicants, at all times during the period of six months preceding the application."
86. The question is whether YP had "his home" with A "at all times during the period of six months preceding the application".

87. The six months preceding the application is between 3<sup>rd</sup> August 2020 and 3<sup>rd</sup> February 2021. During that period, YP did not come to London, he was at school in Switzerland and Covid made his travel difficult. During that period A was in Switzerland between July and November 2020. I accept that although they were living in different flats during that period they were constantly seeing each other or in touch. I accept too that in pre-Covid times, YP would have spent his summer holiday travelling with A or in London with him and was likely to have spent Christmas with him either in London or in Switzerland.
88. A 2008 case of *Re G (supra)* considered the meaning of the child’s “home” being with the applicant “at all times in the preceding ten weeks” in section 84(4) of the ACA 2002. Section 84 concerns giving parental responsibility prior to adoption abroad. It is set out below:
- “84 (1) The High Court may, on an application by persons who the court is satisfied intend to adopt a child under the law of a country or territory outside the British Islands, make an order giving parental responsibility for the child to them.”
- (2) An order under this section may not give parental responsibility to persons who the court is satisfied meet those requirements as to domicile, or habitual residence, in England and Wales which have to be met if an adoption order is to be made in favour of those persons.
- (3) An order under this section may not be made unless any requirements prescribed by regulations are satisfied.
- (4) An application for an order under this section may not be made unless at all times during the preceding ten weeks the child’s home was with the applicant or, in the case of an application by two people, both of them.
- (5) ....
- (6) ....
- (7) ....
89. There were two applicants for an adoption order in *In Re G*. They were US citizens who came over to this country to adopt the child. The wife stayed in this jurisdiction for the ten weeks required by section 84(4) whilst the second applicant husband stayed for three weeks as his employment required him to be back in the United States. It was argued at first instance and on appeal that the three-week visit of the second applicant did not meet the requirement of section 84(4) of the ACA 2002.
90. The court at first instance held that it did. On appeal on behalf of the birth mother it was argued that the intention of Parliament was for a child to make her home “at all times” during the ten-week period with both applicants. The child did not and therefore she argued the application should fail.

91. The court at first instance considered the proper construction of the phrase “during the preceding ten weeks the child’s home was with the applicant or in the case of an application by two people both of them”. At first instance, HH Judge Vincent pointed out that the word “residence” had not been used nor “continually in the care of”, and “has his home with” is not defined in the ACA 2002. He looked at various hypothetical examples and found that “it becomes clear that the presence of the child at a particular geographical location and the presence of one or both of the parents with the child at any particular time are not factors critical to the existence of the concept of the child having his home with them. It could even be argued that for the words ‘has his home with’ there could be substituted the words ‘has a home provided by’.
92. On appeal, having considered the judgment given below, the court held that HH Judge Vincent had given section 84(4) “a sensible and purposive construction”. Sir Mark Potter, the President of the Family Division said at paragraph 22

“22...“We think the judge was correct to identify the purpose of the provision as being not just to ensure that a relationship should begin to be established between the adopters and the child over a continuous period in a domestic context but also to enable the domestic authorities...to assess Mr and Mrs C and the relationship enjoyed with PG [the child].

23. We agree with the judge that the issue is one of fact and degree. The physical presence of Mr C throughout the ten-week period was not necessary to satisfy the proposition that PG’s home was with both Mr and Mrs C throughout that period. Had Mr C not been present at all during the period or only for a day or two, the situation would no doubt have been different. In that event it is unlikely that the local adoption agency would have had an adequate opportunity to make a proper assessment of him as a prospective adopter of PG. We would not attach much weight to telephonic contact between a prospective adopter and child of 18 months, which might be relevant to an older child. But Mr C’s presence was plainly sufficient to enable a satisfactory assessment to be made. In our view the judge was right to construe section 84(4) as he did and the degree of Mr C’s presence was such as to entitle the judge to find that the requirements of that subsection were satisfied.”

93. I was referred to two authorities of some age where the meaning of “home” was considered. They were both decided before the coming into effect of the Human Rights Act 1998.
94. The first case was *Re Y (minors) (adoption: jurisdiction)* Fam D 33, a 1985 case. In *Re Y*, Sheldon J considered the meaning of “home” in section 9 of the Children Act 1975 where the applicants for an adoption order had no right of occupation of any house or flat in England. The applicants made occasional visits to England and stayed with a married daughter.
95. Sheldon J made some pertinent points when considering whether the applicant had a “home” in this jurisdiction at page 36j:

“The further question remains, therefore, of what is to be regarded as a ‘home’ for these purposes. It is a question to which little or no assistance in finding an answer is provided by ss 107(1) and 87(3) of the 1975 Act. Nor, in my view, unless it is to be given for any particular purpose some arbitrary statutory meaning, is the concept capable of precise definition. Nor, too, in my opinion, should such a definition be attempted beyond indicating the principal features that a ‘home’ may be expected to embody. Subject to that, in my judgment, it must be a question of fact in any particular case whether or not the applicant has a ‘home’ here within the meaning of the 1975 Act.

“‘Home’ is defined thus in the *Shorter Oxford English Dictionary*:

‘A dwelling-house, house, abode: the fixed residence of a family or household’ one’s own house; the dwelling in which one habitually lives or which one regards as one’s proper abode.’

It is a definition which, in my judgment, contains the essential elements of a ‘home’ as it is to be understood for present purposes. I have no doubt that an individual may have two homes’ but each, in my judgment, to be properly so called, must comprise some elements of regular occupation (whether past, present or intended for the future, even in intermittent), with some degree of permanency, based on some right of occupation whenever is required, where, in the words of Kekewich J in *Re Estlin, Prichard v Thomas* (1903) 72 LJ Ch 687 at 689, ‘you find the comforts of what is known as a home’, the fixed residence of a family or household.

It is a concept which may also have different meanings in different contexts, so the definitions to be found in other cases in connection with other statutes may, for present purposes, be misleading. Nevertheless, I am encouraged in my conclusion by finding a similar theme in two judgments of Evershed MR and Salmon LJ. Thus, Evershed MR in *Beck v Scholz* [1953] 1 All ER 814 at 816, [1953] 1 QB 570 at 575, in a judgment concerned with the Rents Acts, said:

‘The word “home” itself is not easy of exact definition, but the question posed, and to be answered by ordinary common-sense standards, is whether the particular premises are in the personal occupation of the tenant as his or her home, or, if the tenant has more than one home, as one of his or her homes. Occupation merely as a convenience for... occasional visits... would not, I venture to think, according to the common sense of the matter, be occupation as a home’.



So also, per Salmon LJ in *Herbert v Byrne* [1964] 1 All ER 882 at 887, [1964] 1 WLR 519 at 528, a case concerned with the Landlord and Tenant Act 1954:

“Home” is a somewhat nebulous concept, incapable of precise definition... In my view, if the evidence establishes... a substantial degree of regular personal occupation by the tenant of an essentially residential nature, it would be difficult, if not impossible for a court to hold that he was not in occupation of the premises as a home...’

The requirement that the applicant or applicants must have a ‘home’ within the jurisdiction for the period specified, however, does not also import an obligation that they or the child should be living or residing there at or for any particular time or length of time. Of course the less time that any of them spend there the more difficult it is likely to be to persuade the court that it is a ‘home’; but the only statutory obligation in this connection would seem to be that they should spend sufficient time there to enable the local authority concerned to see all parties together in their ‘home environment’ as provided by s 9(3) of the 1975 Act and properly to investigate the circumstances as required by s 18. What that will involve in terms of residence will be a question to be decided in the light of the facts of each case.”

96. In *Re KT (A Minor) (Adoption)* [1993] Fam Law 567, Ward J considered the question of whether a child had his “home” with the proposed adopter “at all times during the preceding 13 weeks” before the making of the order under section 13(1) of the Adoption Act 1976. The child lived with his grandparents during the week and his aunt at weekends and during the holidays, but the applicant aunt took all the major decisions concerning his upbringing. Ward J considered the aunt met the criteria. The case was not different from the boy being away at boarding school during the week and Ward J was perfectly satisfied that for the purposes of section 13 he resided with the applicant. The adoption order was made.
97. A has his main home in this country since 2017 and before then had owned his flat for 20 years in London. A has another home in Switzerland.
98. A provides YP with a bedroom his home in London and in normal times YP lives with him during the school holidays when they are not travelling together.
99. YP has another home in Switzerland with his mother but says that he considers London to be his main home.
100. A, R and YP are one family unit even though they are based in different countries. A and R are jointly bringing YP up. Both have been involved in giving guidance and advice and making decisions about him.
101. A and YP have obtained pre-settled status. This would tend to show an intention to live in this jurisdiction in the future. I accept an argument against that position is the fact that YP has now decided to go to university in Switzerland.

102. Were it not for Covid and his school YP would have come over in the usual way during the school holidays in the period between 3<sup>rd</sup> August 2020 and 3<sup>rd</sup> February 2021 to spend time with A in their home in London.
103. “Home” will never be seen merely in a physical or geographical context. “Home” is a place where there is an emotional connection which is just as important. The flat in London has an emotional significance to A and YP. There is much evidence about their father-son feelings about each other.
104. The close and loving relationship between A and YP which has been in place for many years finds its expression in the home in London where the family comes together as one unit in one place. In Switzerland YP lives apart from A. YP feels that the London flat is his main home.
105. YP considers A to be his father. When they are separate, they speak several times a week. A gives advice and guidance to YP who respects his views. A gives financial support to YP, this includes paying for his schooling and day-to-day expenses but it is a two-way street, YP has helped A with his physical needs particularly after A broke his shoulder a few years ago.
106. The concept of “home” to a child changes as they become more independent. “Home” becomes more fluid as a child or young adult has more freedom to move from one country to another, living with one person or another or on their own. YP is now aged 18. Inevitably he will be less dependent on others and can make a choice about where he will live. He has made it clear to the court that he considers his main home to be in London with A.
107. In earlier authorities where the meaning of “home” was considered, it was usually one physical place and the emotional bonds were based on an applicant and usually a young child being together in that home. A relationship 15 or more years ago would be based on the physical perhaps supported by letters and occasional telephone calls when a parent and child were apart.
108. The change between then and today is complete. There is now a new way of building a home, an emotional connection with another person, by email or more likely frequent WhatsApp or other multimedia video calls and the like. In this case this occurred several times a week. Communication which used to be occasional has become as it did in this case, very frequent. This enables relationships to be developed and maintained.
109. YP’s relationship with A was maintained at all times by this method of communication when he was not seeing him in Switzerland or London. During the six months preceding the application this communication continued in person when they were both in Switzerland or remotely when A was in London and YP was in Switzerland finishing school. If anyone had asked YP where his home was at this period he would have answered the same way, that it was in London but that he also had a home in Switzerland. YP was prevented from going to his home in London by events which were outside his control.
110. I have asked myself whether the rather nebulous meaning of “home” set out above puts a strain on section 42(3) of the ACA 2002. I am fortified by the observations of past

judges who have noted that no definition of home is set out in the ACA 2002. Other judges have approved a wide and flexible interpretation of “home”. It is a concept which may also have different meanings in different contexts. Mr Powell contends that the European Convention on Human Rights demands an interpretation of the ACA 2002 which gives effect to the undoubted Article 8 rights of A and YP.

111. The original intention of the requirement in section 42(3) was to enable the local authority to observe the child and the prospective adopter together in their home. There is no suggestion from either the social workers or the Cafcass reporting officer that they have not been able to assess the relationship between A and YP. We have all become used to working effectively but remotely in the past 18 months and that is what the Annex A report writers and the Cafcass reporting officer have done.
112. I have no doubt that there is a family tie between A and YP and in my judgment, this is a situation where the court should act to enable that tie, those family rights, to be maintained. The concept of “home” should be given a wide and flexible interpretation. This is not a case where a particular geographical location is required, I do not consider that R and YP need to be living with A in one place for YP to have a home with A. I have concluded that home in this context of an 18 year old who has known the applicant almost all his life, who is bound to him emotionally and sometimes geographically and regards him as his father meets the requirement of having “had his home with the applicant...at all times during the period of six months preceding the application” even though YP was in Switzerland during this period.
113. On these particular facts, I find that YP had his home with A at all times from 3<sup>rd</sup> August 2020 to 3<sup>rd</sup> February 2021, the six months preceding the application.
114. The application for an adoption order meets the criteria set out in the ACA 2002.

### **Welfare**

115. In coming to a decision, I have had to have regard to the welfare checklist set out in the ACA 2002.
116. I have had the assistance of two allocated social workers, Ms AG and Ms K and of a Cafcass reporting officer, Ms JG, who have considered what is in YP’s best interests throughout his life.
117. In the local authority’s first rule 14 report Ms AG said observed:

“In my professional opinion [YP] has a secure, stable and loving relationship with [A], which has existed since [YP] was three years old. [A] has played a significant role in [YP]’s upbringing to the extent that [YP] views [A] as his father and [A] views [YP] as his son and only child. [A] has provided [YP] with love, guidance and financial support. He has been a positive role model for [YP] throughout his life. [YP] speaks very highly of [A], believing he is knowledgeable, kind, and like a father to him. When I asked [YP] to describe what makes a good father, he said someone who spends time with you, does things with you and for you, and someone you can talk to anything about. [YP]

said that [A] has consistently done all of these things for him throughout his life. [YP] has also demonstrated his love and care to [A]; for example, after an accident where [A] broke his shoulder, [YP] was emotionally supportive of [A] and even assisted with his physical care.” [at E43].

118. As I explained above, Ms AG concluded that she was unable to support the application but considered it to be a finely balanced decision. The social worker was concerned particularly that YP would lose his relationship with his father and paternal family when his father had been committed to contact with him for all his life.
119. The second social worker, Ms K took the opposite view having had answers to the questions raised by her colleague. In her addendum dated 19 October 2021, she observed at E68:

“Taking into account the additional information made available following the submission of the Annex A dated the 27.05.2021 and with regard to [YP]’s age, welfare and understanding of the legal proceedings the local authority recommends that an Adoption Order is granted in respect of [YP].”
120. Ms JG, the Cafcass reporting officer, had concluded that there were no particular welfare issues that would prevent the making of the adoption order.
121. I have given particular weight to YP’s wishes and feelings. He wants the father-son relationship that he has had with A for almost all his life to be recognised and made legal. He is aged 18 and his views deserve the court’s respect. He understands the legal concept of adoption and what it will mean for his relationships. He feels that A is his father and he wants A’s role in his life to be recognised legally.
122. The question that troubled Ms AG the first social worker, was the likely effect on YP of having ceased to be a member of his paternal family. Nobody had informed the members of the extended family about the proposals. There is still a paternal grandmother who was alive. YP spoke about cousins he was in touch with.
123. It did seem to me however that there would be very little change to the relationship of YP with the extended paternal family. In the future, if A will forgive me for saying so, A who is aged 88, will die and there is no reason for this adoption order to interfere with the relationship between YP and his cousins in the medium to long term.
124. Ms AG, the first social worker was concerned about YP’s relationship with his birth father, X. The order would sever this relationship in law. By all accounts, although the father has not taken part in these proceedings, he is against the application and thinks it is about money. The order will interfere in the short term with X’ right to a family life with YP but in reality, I suspect the relationship which is casual and occasional, may well continue, particularly once A has died.
125. Ms AG was also concerned about the effect his adoption would have on the adult children of A. It seemed to me that they are not part of A’s life and that any problems of inheritance will be sorted out with the assistance of lawyers in due course. That is not a concern which would prevent this adoption.

126. Overall, when I balance YP's strongly held wishes and feelings at the age of 18 against his birth father's occasional and fairly superficial relationship with his son, this interference with X's rights to a family life with YP is proportionate and in YP's best interests for the rest of his life, but more likely for the rest of A's life. In my judgment this court should make an adoption order in the particular circumstances of the case.
127. This order will ensure that the *de facto* strong and enduring family relationship between A and YP is recognised legally. The adoption criteria are met and I find it is in YP's best interests to make the order.
128. That is my judgment.