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Neutral Citation Number: [2021] EWHC 91 (Fam)

Case No: OX44/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/01/2021

**Before :**

**MRS JUSTICE LIEVEN**

**Between :**

**THE PROSPECTIVE ADOPTERS**

**Applicants**

**and**

**THE MOTHER**

**First Respondent**

**And**

**A COUNTY COUNCIL**  
**(as adoption agency)**

**Second Respondent**

**The Applicants represented themselves**

**The First Respondent did not attend and was unrepresented**

**Martha Gray (instructed by A County Council) for the Second Respondent**

**Hearing dates: 17 December 2020**

**Approved Judgment**

.....  
MRS JUSTICE LIEVEN

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 Lieven DBE :**

1. The Applicants have applied for an adoption order under s.46 of the Adoption and Children Act 2002 (ACA) in respect of a baby boy (AK). The issue in this judgment is an application for a declaration that the Local Authority (LA) is not required by the Court to notify the Romanian Central Authority of these proceedings or to seek their assistance in identifying the birth father and wider family.
2. The Applicants made a part 19 application for directions as to the notification of the Romanian Central Authority at the same time as making the adoption application. The Applicants are litigants in person and as the issue before me principally concerns the LA's duties, the LA has taken the lead. I am very grateful to Ms Gray, acting on behalf of the LA, for the assistance that she has given me.
3. The First Respondent is the child's mother, "the Mother". She is a Romanian national and travelled to the UK when 8 months pregnant. AK was born at XX Hospital on 8 April 2020. The Mother had come to the UK with the express purpose of giving birth here and relinquishing the baby. The Mother spent one night in hospital with AK but has had no contact with him since. He was initially placed in foster care and then moved to live with the Applicants.
4. Through the adoption process the Mother has declined to give any details of the Father. However, the LA has discovered that the Mother gave his name and date of birth when she was admitted to hospital for the birth. At the prompting of the social worker she has written a letter to AK, which can be given to him when he is older, in which she again names the Father but gives no contact details for him, or any way other than via his name, by which he could be identified.
5. The LA social worker, Ms Hornby, has spoken to the Mother on two occasions and made multiple other attempts to meet her. The Mother has made entirely clear that she does not wish to participate in the court hearings and wants the baby to be adopted and placed into a loving home. It is clear from Ms Hornby's evidence that the Mother is fully aware of this hearing but has chosen not to attend. The Mother's position has been clear, unequivocal and consistent ever since AK's birth.
6. When AK was born the Mother was interviewed with an interpreter by the initial social worker, Ms Healey. The Mother told Ms Healey some of the background and more is set out in the letter she wrote to AK. The story that has been given is consistent in both accounts and in what she has said to Ms Hornby. Ms Hornby gave oral evidence to the court, and it was her clear opinion that the Mother was being truthful in her account.
7. The Mother said that she comes from the Roma community in Romania, as does the Father. The Mother is now 23 years old and she started a relationship with the Father which lasted over a year. When she told the Father that she was pregnant the Father wanted her to have a termination. However, she was too far into the pregnancy to have a legal termination in Romania. The Father made clear to her that he wanted nothing to do with the baby and ended the relationship with her. Shortly thereafter he started a relationship with another woman to whom he is now married with a young baby.

8. The Mother has explained that in the Roma community having a baby in these circumstances would be a disgrace to the family. Both she and AK would be ostracised from the Roma community without any family support. She told Ms Healey and Ms Hornby that if her father found out about the baby, he would shave her head and be violent to her. I note that in the letter to AK the Mother says that her father would not physically harm her, but Ms Hornby said that she thought the Mother was saying this to protect AK from the truth. Ms Hornby was convinced that the Mother felt a genuine physical fear of the consequences if her father and wider family became aware of the pregnancy and birth.
9. The Mother's version is entirely supported by her mother, Ms G, who travelled to England with her when she was pregnant and has supported her through the birth and the adoption process. They have concealed the pregnancy from other members of the family who live in England, including the Mother's aunt who lives close by.
10. The Mother has consistently refused to give any details either of the Father, or her wider family. It has therefore not been possible for the LA to contact them or make any investigations in respect of them. The Mother has been clear that she wishes AK to be adopted by a family in the UK and to be given a loving home by them.
11. The Applicants issued their applications on 5 October 2020, including the Part 19 application, and the matter was transferred to the High Court by HHJ Vincent on 16 October 2020.
12. At the first hearing, the court set the matter down for determination of the Part 19 application. The question of whether Cafcass should prepare a welfare report in respect of the child was left open for enquiries to be made with the High Court Cafcass team. This led to a proposal from Cafcass that there might be advantages to joining AK as a party, leading the court to join AK by an order on the papers of 30 October 2020. However, the order was subsequently stayed on the joint application of the Local Authority and Cafcass who noted that the appointment of a Guardian would trigger an obligation to notify the Romanian Central Authority of these proceedings under Article 37 of the Vienna Convention on Consular Relations 1963 ("the Vienna Convention"); thus rendering the Part 19 application academic.

### The Issues

13. This case raises two inter-related questions:
  - a) Whether the Local Authority is under a legal obligation to notify the Romanian Central Authority of these proceedings; and
  - b) Even if the Local Authority is under no such formal obligation, whether any inquiries should be made of the Romanian Central Authority in order to seek their assistance in identifying the birth father and wider family as well as conducting any assessments.

#### Issue One - Notification of the consular authorities

14. The obligation to notify consular authorities in certain prescribed circumstances stems from Articles 36 and 37 of the Vienna Convention. Article 36 provides as follows:

*“36 Communication and contact with nationals of the sending State*

*1. With a view to facilitating the exercise of consular functions relating to nationals of the sending States —*

*(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;*

*(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner.*

*Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;*

*(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.*

*2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.”*

15. The relevant sections of Article 37 which concerns ‘Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents’ provides that:

*“If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty—*

*(a) ...*

*(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments.”*

16. The applicability of these provisions to care proceedings concerning foreign nationals is well-established (see e.g. *Re E (A Child) (Care Proceedings: European Dimension)* [2014] EWHC 6 (Fam), [2014] 1 WLR 2670, sub nom *Re E (Brussels II Revised: Vienna Convention: Reporting Restrictions)* [2014] 2 FLR 151 and *Merton London Borough Council v B (Central Authority of the Republic of Latvia Intervening)* [2015] EWCA Civ 888, [2016] Fam 123, sub nom *Re CB (A Child) (No 2) (Adoption Proceedings: Vienna Convention)* [2016] 1 FLR 1286). In the former case, Sir James Munby P at [41] identified three points to be borne in mind in the context of care proceedings under Part IV of the Children Act 1989:

*“41. (i) First, Article 36 enshrines the principle that consular officers of foreign states shall be free to communicate with and have access to their nationals, just as nationals of foreign states shall be free to communicate with and have access to their consular officers.*

*(ii) Second, the various obligations and rights referred to in paragraphs (b) and (c) of Article 36(1) apply whenever a foreign national is “detained”; and where a foreign national is detained the “competent authorities” in this country have the obligations referred to in paragraph (b).*

*(iii) Third, Article 37(b) applies whenever a “guardian” is to be appointed for a minor or other foreign national who lacks full capacity. And Article 37(b) imposes a particular “duty” on the “competent authorities” in such a case.’*

....

*47. It is highly desirable, and from now on good practice will require, that in any care or other public law case...*

*(iii) Whenever a party, whether an adult or the child, who is a foreign national,*

*(a) is represented in the proceedings by a guardian, guardian ad litem or litigation friend; and/or*

*(b) is detained*

*the court should ascertain whether that fact has been brought to the attention of the relevant consular officials and, if it has not, the court should normally do so itself without delay.”*

17. The Department for Education Guidance entitled ‘Child protection: Working with Foreign Authorities’ similarly suggests that as a matter of good practice:

*“Social workers need to consider working with foreign authorities at a number of stages during child protection cases, including:*

*a. when carrying out an assessment under section 47 of the Children Act 1989, where the child has links to a foreign country, in order to*

*understand the child's case history and/or to help them to engage with the family;*

*b. when a child with links to a foreign country becomes the subject of a child protection plan, has required immediate protection, or is made subject to care proceedings, the social worker should consider informing the relevant foreign authority; and*

*c. when contacting or assessing potential carers abroad (such as extended family members)' (p.5)."*

It goes on:

*"Social workers should inform the relevant Embassy when a child with links to a foreign country has become the subject of a child protection plan, has required immediate protection or has become the subject of care proceedings, unless doing so is likely to place the child or family in danger and provided any necessary consent to disclose information has been obtained. Decisions should be linked to a robust and thorough risk assessment."*

18. However, in the case of *Re JL and AO (Babies Relinquished for Adoption)* [2016] EWHC 440 (Fam), [2016] 4 WLR 40, [2017] 1 FLR 1545, Mr Justice Baker (as he then was) held that notwithstanding the terms of the Vienna Convention, the observations of the President and the departmental guidance, a distinction should be drawn between 'a child who is taken into care by compulsion, without the consent of their parents, and a child who is taken into care with parental consent'. He observed:

*"66. The former is, or may be, 'detained', but the latter manifestly is not. Accordingly, a child who is voluntarily given up for adoption by his or her parents, or otherwise voluntarily accommodated, cannot be said to be 'detained'. It follows that, when a child of nationals of a foreign country is relinquished for adoption, or otherwise voluntarily accommodated by a local authority, there is no obligation under Art 36 of the Vienna Convention to notify consular officials of the foreign state.*

*67. Secondly, even where a local authority is under no obligation to notify the embassy because the child is not being detained within the meaning of Article 36, it may conclude, in the exercise of its statutory powers and obligations to carry out assessments of children in need, that it is necessary to contact foreign authorities in order to improve its understanding of those matters to which it must have regard under s.1(4) of the 2002 Act, including the child's background, the effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person, the child's relationship with its relatives, and the ability and willingness of any of the child's relative to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs. Whether or not the local authority needs to make such enquiries of the foreign country will depend on the circumstances of each case.*

68. *Thirdly, in circumstances where the child is joined as a party to proceedings, as summarised in FPR rule 14.1, a guardian will be appointed under rule 16.3. In practice, this includes all applications for placement orders, all applications for orders under s.84 and certain applications for adoption orders, including cases where a CAFCASS child and family reporter recommends that the child be a party and the court accepts that recommendation. Following the guidance of the President in Re E reiterated in Re CB, the court is under an obligation under Article 37 to notify the consular authorities when a guardian is appointed even in those cases where no obligation arises under Article 36.*

69. *Having dealt with the general matters, I turn, at last, to consider the issues arising in each case.*

70. *As set out above, the issues arising in JL's case are: (1) Does the court have jurisdiction to make a placement order? (2) What order, if any, should be made in this case? In the event, the resolution of those issues in this case is relatively straightforward. All parties, and the Estonian authorities, are agreed as to the outcome, and the only issue has been how to achieve it."*

19. While technically obiter, the Local Authority relied upon the above in inviting the court to determine that no obligation arose under Article 36 of the Vienna Convention to notify Romanian consular authorities on the facts of this case.
20. It follows from *JL* that although there is no obligation to notify the consular authorities under Article 36, if the child is joined as a party and a Guardian is appointed under FPR r16.3 then there would be an obligation to inform the consular authorities under Article 37. There might be a potential argument about whether or not the appointment of a Cafcass Guardian within the meaning of the FPR falls within the terms of the appointment of a "guardian" in Article 37. However, that argument was not advanced before me and does not fall for determination in this case.
21. If the child is a party then a Guardian would be appointed, and notification would follow. Therefore, the next matter to be considered is whether or not the child should be joined as a party.
22. The child is not automatically a party in proceedings for an adoption order under s.46 ACA. FPRr14.3(1) provides for the circumstances where the child must be joined.
  1. *The child is not an automatic respondent to the proceedings and is only to be joined as a party in specific circumstances (FPR r14.3(1)), namely where:*
    - *permission has been granted to a parent or guardian to oppose the making of the adoption order (section 47(3) or 47(5) of the 2002 Act);*
    - *the child opposes the making of an adoption order;*



- *a children and family reporter recommends that it is in the best interests of the child to be a party to the proceedings and that recommendation is accepted by the court;*
- *the child is already an adopted child;*
- *any party to the proceedings or the child is opposed to the arrangements for allowing any person contact with the child, or a person not being allowed contact with the child after the making of the adoption order;*
- *the application is for a Convention adoption order or a section 84 order;*
- *the child has been brought into the United Kingdom in the circumstances where section 83(1) of the 2002 Act applies (restriction on bringing children in);*
- *the application is for an adoption order other than a Convention adoption order and the prospective adopters intend the child to live in a country or territory outside the British Islands after the making of the adoption order; or*
- *the prospective adopters are relatives of the child.*

2. *This is supplemented by r14.3(2) which provides that:*

*'The court may at any time direct that a child, who is not already a respondent to the proceedings, be made a respondent to the proceedings where –*

*(a) the child*

*(i) wishes to make an application; or*

*(ii) has evidence to give to the court or a legal submission to make which has not been given or made by any other party; or*

*(b) there are other special circumstances.'*

3. *It can therefore be seen that while there exists a discretion to join a child as a party to adoption proceedings, there is no requirement to do so unless certain prescribed circumstances apply. Indeed FPR 2010 r16.30 provides that rather than joining the child as a party to adoption proceedings, ordinarily:*

*'In proceedings to which Part 14 applies, the court will appoint a reporting officer where –*

*(a) it appears that a parent or guardian of the child is willing to consent to the placing of the child for adoption, to the making of an adoption order, or to a section 84 order; and*

*(b) that parent or guardian is in England or Wales.'*

23. The principal duty of the reporting officer is to witness the signature of the parent or guardian giving consent to the placing of the child for adoption. They may report on other matters if asked to do so by the court, see r16.33.
24. If the child is joined, then an obligation to inform the consular authorities arises under Article 37. There are a series of cases concerning relinquished babies in which the child has been joined; (*Re JL and AO*; *Re RA (Baby Relinquished for Adoption: Case Management)* [2016] EWFC 25, [2017] 1 FLR 1610; *Re TJ (Relinquished Baby: Sibling Contact)* [2017] EWFC 6, [2017] Fam Law 372; *Re M and N (Twins: Relinquished Babies: Parentage)* [2017] EWFC 31, [2018] 1 FLR 293; *A Local Authority v A Mother and Another* [2017] EWHC 1515 (Fam), [2017] 2 FLR 1321; and *Re A (Relinquished Baby: Risk of Domestic Abuse)* [2018] EWHC 1981 (Fam), [2018] All ER (D) 01 (Aug)). However, only *Re TJ* and *Re RA* appear to have concerned applications for consensual adoptions under s 19 and s 20 ACA 2002. The reasons why the child was joined as a party to the proceedings are not recorded in any detail in either case.
25. In *Re ABC (Adoption: Notification of Fathers and Relatives)* [2020] 3 WLR 35 the Court of Appeal was considering three cases where the mothers had concealed their pregnancies and did not wish the fathers to know of the births. In each case the plan for the babies might have involved adoption. Peter Jackson LJ, who gave the only judgment, set out the balance to be undertaken between the various interests involved. In relation to whether the child is joined as a party at [88(2)] the Judge said: “*directions should be given on issue joining the child as a party and appointing a CAFCASS officer to act as the children’s guardian in the application*”.
26. However, this passage was taken from an agreed statement between the parties and there is no discussion in the judgment as to whether it would always be necessary to join the child. The opening words of [88] simply says these matters will “*require attention*”. It therefore appears to me that the Court of Appeal was not intending to set in place a requirement in all cases, where such issues arose, that the child should be joined. If the Court of Appeal had meant to create such a requirement then I have no doubt that they would have set out their reasoning and conclusions on that issue in clear terms.
27. It follows from what is set out above that there is no legal obligation for the child to be joined and thus no obligation to notify under Article 37. That conclusion however brings one to the second issue, whether it is appropriate on the facts of the case to notify the consular authorities, or, which will have the same result, to join the child as a matter of the Court’s discretion?

#### Issue Two – discretion to notify the consular authorities

28. In *Re JL* Baker J at [69] contemplated the situation where the LA was not under a duty to notify the consular authorities but might conclude that it was necessary to do so in order to better understand those matters they needed to have regard to under s.1(4) of the ACA 2002. There are two main reasons why it might be considered appropriate to notify the consular authorities. The first is to seek further information about the birth father and the wider family. This could include seeking assessments of such family members to see whether they might be suitable people to care for the child. The second is to seek the views of the Romanian authorities more generally on

placement and future legal process, including whether the proceedings should be transferred to Romania.

29. On the first reason, in *Re ABC* Peter Jackson LJ set out in detail the factors that are relevant when determining whether a putative father should be notified of the existence of a child who might be adopted. He said:

*(6) There is no single test for distinguishing between cases in which notification should and should not be given but the case law shows that these factors will be relevant when reaching a decision:*

*(i) Parental responsibility. The fact that a father has parental responsibility by marriage or otherwise entitles him to give or withhold consent to adoption and gives him automatic party status in any proceedings that might lead to adoption. Compelling reasons are therefore required before the withholding of notification can be justified.*

*(ii) Article 8 rights. Whether the father, married or unmarried, or the relative have an established or potential family life with the mother or the child, the right to a fair hearing is engaged and strong reasons are required before the withholding of notification can be justified.*

*(iii) The substance of the relationships. Aside from the presence or absence of parental responsibility and of family life rights, an assessment must be made of the substance of the relationship between the parents, the circumstances of the conception, and the significance of relatives. The purpose is to ensure that those who are necessarily silent are given a notional voice so as to identify the possible strengths and weaknesses of any argument that they might make. Put another way, with what degree of objective justification might such a person complain if they later discovered they had been excluded from the decision? The answer will differ as between a father with whom the mother has had a fleeting encounter and one with whom she has had a substantial relationship, and as between members of the extended family who are close to the parents and those who are more distant.*

*(iv) The likelihood of a family placement being a realistic alternative to adoption. This is of particular importance to the child's lifelong welfare as it may determine whether or not adoption is necessary. An objective view, going beyond the say-so of the person seeking confidentiality, should be taken about whether a family member may or may not be a potential carer. Where a family placement is unlikely to be worth investigating or where notification may cause significant harm to those notified, this factor will speak in favour of maintaining confidentiality; anything less than that and it will point the other way.*

*(v) The physical, psychological or social impact on the mother or on others of notification being given. Where this would be severe, for example because of fear arising from rape or violence, or because of possible consequences such as ostracism or family breakdown, or because of significant mental health vulnerability, these must weigh*

*heavily in the balancing exercise. On the other hand, excessive weight should not be given to short term difficulties and to less serious situations involving embarrassment or social unpleasantness, otherwise the mother's wish would always prevail at the expense of other interests.*

*(vi) Cultural and religious factors. The conception and concealed pregnancy may give rise to particular difficulties in some cultural and religious contexts. These may enhance the risks of notification, but they may also mean that the possibility of maintaining the birth tie through a family placement is of particular importance for the child.*

*(vii) The availability and durability of the confidential information. Notification can only take place if there is someone to notify. In cases where a mother declines to identify a father she may face persuasion, if that is thought appropriate, but she cannot be coerced. In some cases the available information may mean that the father is identifiable, and maternal relatives may also be identifiable. The extent to which identifying information is pursued is a matter of judgement. Conversely, there will be cases where it is necessary to consider whether any confidentiality is likely to endure. In the modern world secrets are increasingly difficult to keep and the consequences, particularly for the child and any prospective adopters, of the child's existence being concealed but becoming known to family members later on, sometimes as a result of disclosure by the person seeking confidentiality, should be borne in mind.*

*(viii) The impact of delay. A decision to apply to court and thereafter any decision to notify will inevitably postpone to some extent the time when the child's permanent placement can be confirmed. In most cases, the importance of the issues means that the delay cannot be a predominant factor. There may however be circumstances where delay would have particularly damaging consequences for the mother or for the child; for example, it would undoubtedly need to be taken into account if it would lead to the withdrawal of the child's established carers or to the loss of an especially suitable adoptive placement.*

*(ix) Any other relevant matters. The list of relevant factors is not closed. Mothers may have many reasons for wishing to maintain confidentiality and there may be a wide range of implications for the child, the father and for other relatives. All relevant matters must be considered.*

*(7) It has rightly been said that the maintenance of confidentiality is exceptional, and highly exceptional where a father has parental responsibility or where there is family life under article 8. However exceptionality is not in itself a test or a short cut; rather it is a reflection of the fact that the profound significance of adoption for the child and considerations of fairness to others means that the balance will often fall in favour of notification. But the decision on whether confidentiality should be maintained can only be made by striking a fair balance between the factors that are present in the individual case.*

30. I will deal with each factor set out above in turn. This is a comprehensive list of considerations and I have no need to put a further gloss upon it. I will simply go through each factor and apply it to the facts of this case, so far as they are known to the court.
31. Parental responsibility: The Father does not hold parental responsibility in English law. It is not known whether he would hold parental responsibility under Romanian law but, assuming that he does, he would still not be treated as a parent within the ACA 2002. He has not acquired parental responsibility under either section 2 or 4 of the Children Act 1989.
32. Article 8 rights and the substance of the relationships: This is a question of fact depending on the evidence before the Court. I accept Ms Hornby's view as to the truth of the Mother's account of her relationship with the Father. In her letter to AK the Mother says:
- “Let's talk a little bit about your father too. His name is XX. He's a 21 year old Romanian and he also lives in Bucharest, the capital city of Romania. He is also from a Roma background. We met 2 years ago, in 2018 to be precise. We fell in love with each other...we were very young. We were so unaware of what was going to come. A year into our relationship, we moved in together for a while. The minute he found out that I was pregnant, he decided to leave us. After a while, he became romantically involved with someone else and started a new relationship. He now has a baby girl. No one from my family ever knew that I was pregnant. I have concealed this, because I feared my Dad's reaction. My Mum works in the UK. This is where you were born. I came over on holiday to see her and, on the 8th April 2020, I gave birth to you. The minute I opened my eyes and saw you, I realised that you really are the spitting image of your Dad.”*
33. The Mother's account has been consistent throughout and appears to be supported by Ms G and the surrounding circumstances. The Mother and Father had a relatively short relationship and, according to the Mother, the Father has made absolutely clear that he does not wish to have a relationship with, or responsibility for, the child. There is therefore no established family life between them.
34. I also accept what I have been told about the Mother's fear of her own father if he knew about the child, and of being rejected by her community. She has made very considerable efforts to keep the birth from her wider family and to ensure the child is brought up in the UK. Again, this is supported by Ms G who has indicated that she does not know of any members of the family would be able to look after AK.
35. In those circumstances the interference with the Father and the wider family's Article 8 rights is a matter I give relatively little weight to. There is no family life between them and AK, and there appears to be very little prospect of such family life being created. The fact that the maternal grandmother is supporting the proposed adoption and keeping the birth from the wider family strongly supports a conclusion that the wider family would not provide for AK's welfare.

36. The likelihood of a family placement being a realistic alternative to adoption: As I have set out above, on the evidence before me which I accept, there appears to be no realistic prospect of such a family placement.
37. The physical, psychological or social impact on the mother or on others of notification being given: In my judgement this is the most determinative factor here. Ms Hornby has said in her statement that, in her view, trying to identify and contact AK's father would cause the Mother significant emotional distress. She told me that she believed that the Mother was genuinely scared of the community, including her father, finding out about AK's existence. The Mother has gone to great lengths to hide her pregnancy and the birth from the wider family, both by coming to the UK and then ensuring that her aunt does not know about the birth. It is impossible to judge the level of risk to the Mother if her family came to know about the child. However, the nature of the risk is that it is not possible to carry out the type of investigations that would allow a more detailed assessment of the level of risk to the Mother, either from actual violence or social ostracism.
38. On the evidence before me I accept that there would be a serious negative impact on the Mother, if either the Father or her wider family were informed about the birth. I come to this conclusion both because of the Mother's statements, but also because of the lengths that she has gone to to keep the birth a secret.
39. Cultural and religious factors: The Mother in her letter has explained that it is not acceptable in the Roma community for a woman to have a child outside wedlock. Again, it is not possible to assess the strength of this factor and it may well vary between families. However, having accepted the Mother's fears as being genuine, the cultural factors militate further against notification.
40. The availability and durability of the confidential information: It is again very difficult to assess whether or not the Romanian authorities would be able to trace the Father if they were requested to do so. What is in my view clear is that it would be almost impossible to do so in a way that guaranteed the Mother's wider family were not aware of what had happened. Given the minimal likelihood of either the Father or the wider family wishing to care for the child, I do not consider it appropriate to investigate this issue further.
41. The impact of delay: This is again an important factor. The process of notifying the Romanian authorities and them trying to identify the Father could be a lengthy one. It is strongly in AK's interests for this matter to be settled reasonably expeditiously.

### Conclusion

42. As set out in ABC I have to consider all these factors together in a holistic assessment. In my view the factors here point strongly in favour of not joining the child and not seeking the assistance of the Romanian authorities to find the Father and the wider family. The Father does not have parental responsibility in English law. The evidence strongly suggests that he would not wish to care for the child and that there is little likelihood of the Mother's wider family wishing to do so. The Mother is in genuine fear of her family finding out about the birth and I accept it would cause real distress and possibly very serious consequences if they did find out. It might well be that even if the Romanian authorities were notified, they would not be able to find the Father in

any event. Balanced against all those factors is that the fact that AK has a loving home in the UK, and it is clearly in his best interests for court proceedings not to be delayed. Therefore, on the first reason for notifying the Romanian authorities I consider this to be a clear cut case where it would not be appropriate to notify and there is no good reason to join the child as a party.

43. I turn to the second reason for notification, namely to invite the Romanian Central Authority's view on placement and whether proceedings should be transferred to Romania. I am more concerned about this reason than was the Local Authority. It must be remembered that AK is a Romanian citizen and is not a British citizen. Although there is no duty under the Vienna Convention to notify, for the reasons set out above, that does not mean that the Court can simply ignore the fact that it would be making an order about a foreign national without the relevant authorities of that state being informed. As Baker J made clear in *Re JL* there remains a discretion to notify where the Vienna Convention does not require it.
44. In my view, it will be the unusual case where a court would choose not to notify the relevant authorities of the other state where a foreign child is in the process of adoption. In effect, here the citizen of one country is going through a process by which he will become a citizen of another country, in circumstances where he is too young to express a view, and the first country is not being informed. However, I accept that this is an unusual case. AK is unable to express any view on the situation. For the reasons I have set out above, I consider it to be both in his best interests and those of the Mother, that the Romanian authorities are not notified because of the risk to the Mother, the lack of benefit to AK from doing so and the inevitable and possibly prolonged delay. For those reasons, I will exercise my discretion not to notify the Romanian consular authorities.