



# Why is time often of the essence when it comes to Adoption?

Adoption is the legal process by which an individual or a couple become the parents of a child. It has been a legal concept in England and Wales since the implementation of the 1926 Adoption Act although adoption can be traced right back to Roman times when male children were “*adopted*” to ensure an heir and the continuation of a family’s lineage.

There is currently no legal mechanism for the cross-border recognition of domestic adoption orders and therefore if you adopt a child abroad, you can’t assume that it will necessarily be recognised in England or elsewhere and it is prudent to seek appropriate specialist legal advice.

Adoption orders made in Scotland, Northern Ireland, Isle of Man, and the Channel Islands are automatically recognised in England and Wales, as are adoptions certified by the competent authorities as having been made in accordance with the 1993 Hague adoption Convention and adoption orders made in certain specified countries (known as ‘*designated list countries*’). All other orders are not automatically recognised, and action is required to achieve recognition or acquire parental status in this country.

This was the situation that the applicant in, [\*X v X & Anor \(Time Barred Adoption\) \[2024\] EWHC 364 \(Fam\)\*](#) found himself in.

The applicant had adopted his stepson in Ukraine and when the family moved to this country, following the Russian invasion of Ukraine, they discovered that the Ukrainian adoption order was not recognised in this country. In addition, with the child fast approaching his 18<sup>th</sup> birthday, there was also a significant hurdle to achieving an adoption order in this country.

In this country it is only legally permissible to adopt a child. Whilst it is possible to adopt an adult in other countries, for example USA, Canada, Japan and Germany, it is not possible in this country.



Consequently, an adoption application cannot be issued after a child's 18<sup>th</sup> birthday. Very sadly, many families realise this too late, and they lose the opportunity to achieve the lifelong legal relationship that adoption creates. There are several other the legal formalities that the applicant must fulfil including, crucially in this case, notice of a proposed adoption application must be given to the relevant local authority not more than two years, or less than three months, before the date on which the application for the adoption order is made (Section 44(3) of the Adoption and Children Act 2002). The purpose of this requirement is to enable the relevant local authority to commence the required checks concerning the prospective adoption and then offer advice to the court. In the case in question, by the time that the family had sought legal advice and decided to embark on an adoption application in this country, the applicant was only able to provide the local authority with 2 ½ months prior notice of his intention to adopt his stepson in this country, given his stepson was going to be 18 in 2 ½ months' time. Had the applicant provided the stipulated three months required under s.44 it would not have been possible to apply to adopt before the child turned 18. Thankfully this did not prove an insurmountable hurdle to his application.

The applicant acknowledged that the formal requirements for notice to be given to the local authority were not met and invited the court to proceed in any event and relying on an established line of authority (which included *In Re X (A Child) (Parental Order: Time Limit)* [2015] Fam 186 and *Re A (A Child) (Fam D)* [2021] 1WLR 1381,) for the proposition that the court can, where it is necessary and appropriate to do so in all the circumstances of the case, exercise a discretion to proceed where there has been partial non-compliance with a statutory requirement.

In granting the application Mrs Justice Arbuthnot said this:

*"21. It was clearly in Z's best interests throughout his life that an adoption order should be made. He had been adopted in Ukraine and believed that he was in the same legal position in this country. He had been living with the applicant as a family member for 16 years, the applicant was married to his mother, and the applicant had had another child with the mother, W, Z's half-sister. The half-siblings had a close and loving relationship.*

[REDACTED]

[REDACTED]



[REDACTED]

The Applicant in *X v X & Anor (Time Barred Adoption) [2024] EWHC 364 (Fam)* was represented by Helen Blackburn, Partner at iFLG instructing Counsel, Ruth Cabeza at Harcourt chambers

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