

# SUSSEX RUDD CENTRE CONFERENCE

## FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

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# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

**As old as Moses, as new as Superman as  
tragic as Oedipus**

- Competing Discourses

# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

## **Best Interests of Child**

- Multiplicity of adult interests
- Child as vulnerable party
- Child Rights
- Changing national norms/national legislation

# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

## 1993 HAGUE CONVENTION

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## UN Convention on the Rights of the Child (CRC)

- Article 2
- Article 3
- Article 12

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## European Convention on Adoption of Children

- Two versions – 1967 and revised version from 2008

# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- Scope



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

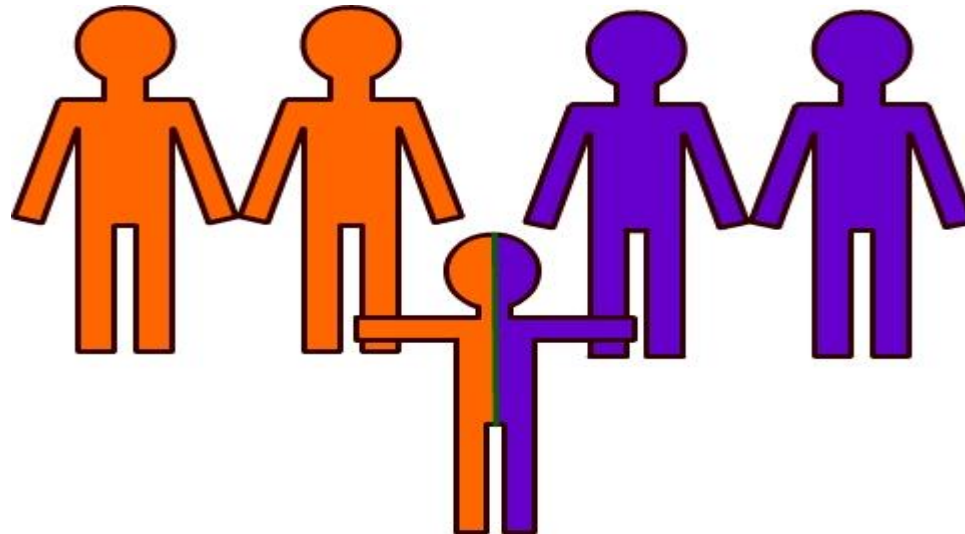
## \* Effects of an adoption





# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- **Who can adopt?**



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- \* **Minimum standards**

- \* **A baseline of normative minimum standards**
- \* **Predictability in cross-border movements of families**



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- \* Promote “best interests” of the child to the status of “paramount consideration”



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- \* **Assessment Report**
- \* **Child Referral**
- \* **Placement Approval Notice**
- \* **Immigration Clearance Letter**
- \* **Certificate of Compliance**

# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

## \* Matching process



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

## \* Consents



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

## \* Principle of subsidiarity



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## Habitual Residence

- \* Habitual residence ought to be adopted on a voluntary basis and the main test ought to be whether residence in a particular place has been adopted for settled purposes as part of the regular order of a person's life.
- \* *Mercredi v Chaffe* [2011] EWCA Civ 272
- \* In considering whether residence in a particular place has been adopted for settled purposes and whether habitual residence has been established, the following factors might be considered:
  1. Duration (for example, physical presence in the relevant state for a reasonable period of time); and
  2. Conditions and reasons for the stay in the relevant state in respect of which habitual residence is claimed; and
  3. Stability or regularity of residence; and
  4. The social connections with the relevant state (for example, a dwelling within the relevant state in respect of which habitual residence is claimed).



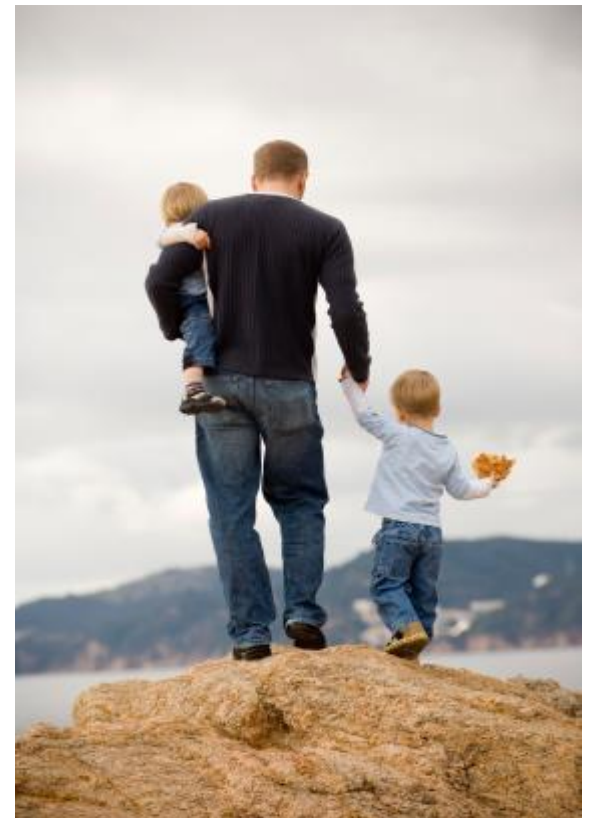
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## \* Consultation of the child



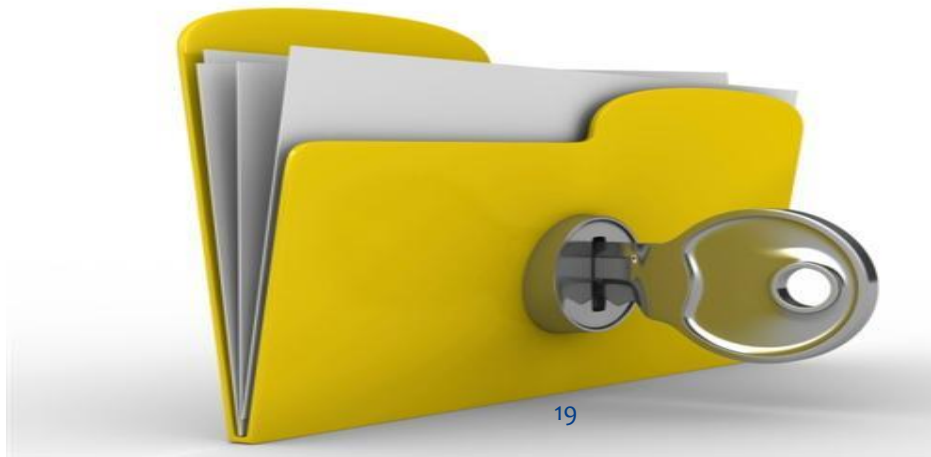
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## \* Unmarried father's position



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- \* **Access to and disclosure of information**
- \* **Preservation and access to information relating to the child's origin**



# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- Adoption and the ECHR
- No right to adopt or to *found* a family
- ECtHR – Article 8 of the Convention does not guarantee a right to adoption

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## \* **Uncertainty**

- \* The single biggest issue facing applicants and families concerns the level of uncertainty that they endure.
  - \* Uncertainty about
    1. Will I receive a referral?
    2. Will I bond with the child?
    3. Will he/she be healthy?
    4. Will he/she bond with me/us?
    5. Will the adoption be recognised?
    6. How long will it take?
    7. What is happening to him/her now when I am here and am not allowed travel yet?
- \* While some questions are natural and normal for expectant parents, some are peculiar to adoption.

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- \* **Uncertainty cannot be eradicated, but the challenge can be mitigated by:**
  - \* Transparency
  - \* Building better information and education programmes
  - \* On-going research and dissemination of findings
  - \* EU Wide project to bench-mark / define and encourage best practices
  - \* Promoting innovation of services
  - \* EU instrument to implement greater unity in adoption principles, procedures and legal consequences following an adoption order between countries.

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## \* **Independence and Objectivity**

- \* Regulators and policy makers have correctly identified that applicants cannot be expected, and may be temporarily incapable of, acting independently and objectively during such a stressful process.
- \* This is no reflection on them as individuals, but a recognition of the incredible stresses they may be under at crucial stages in the process, and therefore potentially vulnerable to unethical actors.
- \* Therefore, we need trusted and properly trained accredited bodies and experts to guide applicants, and to protect the ethos and elements of acceptable child adoption.
- \* This involves managing expectations of applicants, so that they will engage fully with the appropriate mechanisms and actors – which itself is a protection.

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## \* **Choosing a Country - Where and How?**

- \* Changing profile of children in need - this means that applicants face difficulties choosing Countries of Origin to apply to.
- \* This process is complicated by the differing requirements of Countries, and requires capable accredited intermediaries to guide and inform applicants.
- \* This also requires an understanding of the medical issues which may be relevant in the Country of Origin, and also how these are understood within, and by the relevant matching bodies.
  - \* What constitutes a healthy child in Country A?
  - \* Does my Country have the same understanding?



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## \* **Language and Culture**

- \* Given the age of some children referred for intercountry adoption, adopters may face challenges communicating with the child.
- \* Suitable preparation and opportunity for, and indeed evidence of, second language acquisition may be worthy of further consideration.
- \* In addition, cultural awareness should be promoted.

## \* **Transracial Adoption**

- \* Transracial families are increasingly common.
- \* Racism continues to be an issue, but hopefully its prevalence will continue to recede.

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## \* **Money in adoption is challenging**

- \* Improved education about the challenge associated with “free-cash” in the system is required.
- \* Adopters should be aware of the risks and this must be enforced through accredited bodies, which are properly regulated.
- \* Applicants are potentially vulnerable to pressure for “donations” at crucial stages in the process. Requiring accredited bodies to manage all funds transfers and payments, and therefore to be able to report on same should be part of the regulation system.

## \* **Humanitarian Aid cannot be ignored**

- \* On the other hand, valid development programmes are crucial for developing child protection systems.
- \* Suitable regulation should enable safe philanthropy and dispersal in a fully recorded manner.

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## \* **Registering the Adoption**

## \* **Emerging Issues**

- \* Mainly health issues, including Foetal Alcohol Syndrome and Foetal Alcohol Spectrum Disorder, which need greater recognition.

## \* **Open Adoption**

- \* Adopters continue to shift towards embracing open adoption, and this should be encouraged, and facilitated through appropriate accreditation and capacity building.

## \* **Information and Tracing**

- \* Emerging challenges include unregulated use of Social Media (Facebook), potentially creating vulnerabilities for regulators, and more importantly for families and adoptees.
- \* Innovation could include considering the use of DNA information banks.

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- \* **The future**
- \* **Permanency**

# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- Reunification
- Relative care
- Foster care
- Guardianship
- Residential care
- Adoption

# FAMILIES AND CHILDREN: AN INTERNATIONAL PERSPECTIVE ON ADOPTION

- Surrogacy





**THANK YOU**  
*for listening!*