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Case No: CA-2025-000413
and CA-2025-001115
and CA-2025-001294

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/03/2026

CA-2025-000413

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Ms Debra Powell KC
[2025] EWHC 102 (Fam)

Before :

RT HON SIR ANDREW MCFARLANE PRESIDENT OF THE FAMILY DIVISION
LADY JUSTICE KING
and
LORD JUSTICE STUART-SMITH

Re J (Loss of Parental Responsibility)

Between
‘Father’
And
‘Mother’

Appellant
Respondent

Intervenors:

- 1. THE SECRETARY OF STATE FOR JUSTICE**
- 2. REUNITE INTERNATIONAL CHILD ABDUCTION CENTRE**
- 3. ASSOCIATION OF LAWYERS FOR CHILDREN**
- 4. REGISTRAR GENERAL OF ENGLAND AND WALES**

Laura Briggs KC, Liz Andrews and Emma Colebatch (instructed by **International Family Law Group**) for the **Appellant**
Timothy Bowe KC and Tom Wilson (instructed by **RWK Goodman**) for the **Respondent**

Joanne Clement KC and Alexander Laing (instructed by **Government Legal Department**)
for **Intervenor 1 and 4**

Michael Gration KC and Andrew Powell (instructed by **Mills and Reeve Solicitors LLP**) for
Intervenor 2

Deirdre Fottrell KC, Lorraine Cavanagh KC and Lucy Bennett (instructed by ITN
solicitors) for **Intervenor 3**

CA-2025-001115

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING IN BIRMINGHAM
Her Honour Judge Tucker sitting as a Judge of the High Court pursuant to s.9(1) of the
Senior Courts Act 1981)
[2025] EWFC 211

Before :

RT HON SIR ANDREW MCFARLANE PRESIDENT OF THE FAMILY DIVISION
LADY JUSTICE KING
and
LORD JUSTICE STUART-SMITH

Re M (Loss of Parental Responsibility)

Between
‘Father’

Appellant

And
‘Mother’

Respondent 1

And
‘LA’

Respondent 2

And
‘Child’

Respondent 3

And
‘Y’

Respondent 4

Intervenors:

- 1. THE SECRETARY OF STATE FOR JUSTICE**
- 2. REUNITE INTERNATIONAL CHILD ABDUCTION CENTRE**
- 3. ASSOCIATION OF LAWYERS FOR CHILDREN**
- 4. REGISTRAR GENERAL OF ENGLAND AND WALES**

Sam Momtaz KC, Emma Gatland and Alana Hughes (instructed by **HRS Family Law**
Solicitors) for the **Appellant**

Shiva Ancliffe KC, William Horwood, Daniel Taylor and Lauren Starmer (instructed by Greens Solicitors) for Respondent 1

Andrew Norton KC, Patrick Paisley and Roseanna Cawthray Stern (instructed by the local authority) for Respondent 2

Karl Rowley KC and Matthew Maynard (instructed by Anthony Collins Solicitors and Bailey Wright and Co) for Respondent 3

Respondent 4 did not appear and was not represented

Joanne Clement KC and Alexander Laing (instructed by Government Legal Department) for Intervenor 1 and 4

Michael Gration KC and Andrew Powell (instructed by Mills and Reeve Solicitors LLP) for Intervenor 2

Deirdre Fottrell KC, Lorraine Cavanagh KC and Lucy Bennett (instructed by ITN solicitors) for Intervenor 3

Case no: CA-2025-001294

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING IN EAST LONDON
HER HONOUR JUDGE REARDON
ZE22P00939

Before :

RT HON SIR ANDREW MCFARLANE PRESIDENT OF THE FAMILY DIVISION
LADY JUSTICE KING
and
LORD JUSTICE STUART-SMITH

Re P (Loss of Parental Responsibility)

Between	
‘Father 2’	Appellant 1
‘Guardian’	Appellant 2
And	
‘Mother’	Respondent 1
And	
‘Father 1’	Respondent 2

Intervenors:

1. THE SECRETARY OF STATE FOR JUSTICE
2. REUNITE INTERNATIONAL CHILD ABDUCTION CENTRE
3. ASSOCIATION OF LAWYERS FOR CHILDREN
4. REGISTRAR GENERAL OF ENGLAND AND WALES

Hannah Markham KC and Madeleine Whelan (instructed by **Judge & Priestley LLP**) for
Appellant 1

Andrew Bagchi KC, Emma Hudson, Luke Eaton and Sylvie Armstrong (instructed by **GT
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Anna McKenna KC, Naomi Wiseman and Joseph Landman (instructed by **Creighton &
Partners**) for **Respondent 1**

Janet Bazley KC, Karen Kabweru-Namulemu and Melissa Elsworth (instructed by **Charles
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Joanne Clement KC and Alexander Laing (instructed by **Government Legal Department**)
for **Intervenor 1 and 4**

Michael Gration KC and Andrew Powell (instructed by **Mills and Reeve Solicitors LLP**) for
Intervenor 2

Deirdre Fottrell KC, Lorraine Cavanagh KC and Lucy Bennett (instructed by **ITN
solicitors**) for **Intervenor 3**

Hearing dates : 25 - 27 November 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 20/03/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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This judgment was delivered in private [and a reporting restrictions order OR transparency order is in force]. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Sir Andrew McFarlane P:

1. Over the course of three days, the court heard three separate appeals, each relating to the attribution of parental responsibility and the status of ‘father’ with respect to a child. In two of the cases, the status of an individual who had been registered as ‘father’ in a child’s birth register entry was subsequently challenged. In one case the genuine assumption that the individual was the biological father of the child was found to be wrong, in the other it had always been known that he was not the biological father, but in both cases the individuals had acted as a psychological or social father to the child and both did so believing that they shared parental responsibility with the child’s mother as a result of being registered as ‘father’ on the birth register entry.
2. The two cases raised the following basic questions:
 - i) Is the definition of ‘father’ for the purposes of Children Act 1989 [‘CA 1989’] limited to a child’s biological/genetic father, or may it extend to others who have acted as the child’s psychological/social father?
 - ii) Where an individual is registered as a child’s ‘father’ in their birth register entry, does parental responsibility attributed by such registration attach to a ‘father’ who is not, in fact, the biological/genetic father of that child?
 - iii) If, in response to (ii), parental responsibility is afforded to a non-biological father, is it automatically terminated upon the making of a declaration that the individual is not the child’s father under Family Law Act 1986, s 55A [‘FLA 1986’], or does the attribution of parental

responsibility continue unless and until it is terminated by a separate CA 1989 court order?

iv) If, in response to (iii), a separate court order is required to terminate parental responsibility in such circumstances, is this a decision to be determined by affording paramount consideration to the child's welfare, or on some other basis?

3. The third case, which, in common with the first two, raised the question of parental responsibility attributed following the naming of an individual as 'father' in a birth register entry, had an additional level of complexity arising from the fact that the mother had engaged in sexual intercourse with each of two identical male twins in the course of one week at the time that conception must have occurred. As a result, whilst DNA testing establishes that the child's biological father is one of these twins, it is not possible to say which of them it is. The unchallenged finding of HH Judge Reardon, in the Family Court, on the basis of the evidence of the parties in addition to the DNA evidence, held that each had a 50% chance of being the father, but neither was proved to be so on the balance of probabilities. In that third case, one of the twins is named as 'father' in the child's birth register entry. Whilst, on the evidence, it cannot be proved that he is the father, it is argued that, equally, it cannot be proved that he is not the father. The question that therefore arises in that case over the consequence of his registration as 'father' in the birth register entry raises additional issues to those in the first two cases.

4. During the appeal hearing, the appellants, who had been asserting that the definition of the term 'father' in CA 1989 was not limited to the

biological/genetic father, abandoned that assertion. There was, therefore, an acceptance by all those before the court that the common law definition of ‘father’ applied, so that only the individual whose sperm has fertilised an ovum so as to create the embryo from which the living child has developed can be regarded, in law, as that child’s father [‘the genetic father’].

5. The live issues common to the three appeals therefore related to the legal consequences where an individual who is not, in law, a child’s father is, nevertheless, registered as such in the child’s birth register entry.

The Legal Context

(1) Common law definition of ‘father’

6. Before considering the statutory scheme for the attribution of parental responsibility to the ‘father’ of a child, it is necessary to consider the definition of a ‘father’ at common law. Courts have consistently applied the principle of law that a child’s legal parents are the gestational mother and the genetic (also known as biological) father. The principle is well settled and it is not necessary to do more in this judgment than refer to examples of its application.
7. A useful starting point is to consider the Law Commission’s Report [number 118] of 1982 into ‘Illegitimacy’. In that report, the Law Commission referred to the father of an illegitimate child as the child’s ‘natural father’ (for example 3.25).
8. Part 10 of the 1982 report, which concerns ‘the establishment of parentage’, is written on the basis that ‘parentage is a question of fact’ and much of the text is taken up with issues around proof of paternity if, as turned out to be the case,

the law were amended to permit applications for a declaration of parentage. Part of the focus of the Commission was on the use of blood tests, and the likelihood that they would become more sophisticated over time to move from the position as it was in 1982 when they were (largely) used to exclude an individual from being held to be a child's father.

9. Later in the report, where consideration was given to a child conceived through artificial insemination, again it is clear that any reference to a child's father was to their genetic father:

‘The relevance of artificial insemination to this Report

12.1 A child conceived as a result of artificial insemination of the mother with sperm provided by a third party donor (A.I.D.) is, as the law now stands, illegitimate; it is immaterial that the mother's husband has consented to the insemination. The status of the child is in law the same as that of a child conceived in adultery. Likewise the donor, not the mother's husband, is the legal father of an A.I.D. child.’

10. In the Family Law Reform Act 1987, which followed the Law Commission report, Parliament recognised in statute, for the first time, that the father of a child born outside marriage was the child's father as a matter of law. The 1987 Act made provision (s 4 – which is now repealed) regarding the parental rights and duties of an unmarried father:

Parental rights and duties of father

(1) Where the father and mother of a child were not married to each other at the time of his birth, the court may, on the application of the father, order that he shall have all the parental rights and duties with respect to the child.

11. Where a child is born during a marriage there is an evidential presumption that the mother's husband is the child's father unless the contrary is proved. Where

it is proved that another individual is the father, then, under common law, he will be regarded as the child's legal father.

12. In the context of the Child Support Act 1991, in *Re M (Child Support Act: Parentage)* [1997] 2 FLR 90, Bracewell J held:

‘In my judgment a father is a parent if he is either the biological father or he becomes the father by operation of law. That may involve the common law doctrine of displacement of the presumption of legitimacy within a marriage or it may be by Act of Parliament such as the Adoption Act or the Human Fertilisation and Embryology Act. In my judgment there is no other way in which ... [the respondent] ... can be held to be the parent within the meaning of the Child Support Act.’

13. Moving on, and following the Human Fertilisation and Embryology Act 1990, in *Re B (Parentage)* [1996] 2 FLR 15 at 21, Bracewell J observed:

‘I find that if Parliament had intended to alter or amend general principles as to parenthood, specific enactment would have been made in the 1990 Act, particularly as certain gamete donors are specifically excluded from being treated as fathers under s 28(6). ***I find fatherhood concerns genetics and the provision of sperm which results in the birth of a child***, unless either there is a presumption of legitimacy which affects the situation or there is statutory intervention such as, for example, the change of status afforded by adoption or freeing for adoption.’ [emphasis added]

14. Another example of the court clearly stating the principle can be found in *Re D (IVF: Paternity of Child)* [2005] 2 AC 621 in which it was concluded that, where the mother and her husband received treatment under the terms of the HFEA 1990, her husband was to be treated as the legal father unless he did not consent to the treatment. If the mother was not married at the time of treatment, then a man could be treated as the father if the treatment services were provided to him and her together in a licenced clinic at the time of conception. Lord Hope of Craighead commented at paragraph 7 as follows on s.27 of the FLRA 1987:

‘Section 27 was sufficiently controversial in itself. As Professor Michael Freeman observed in his comment on this section in his annotations to the 1987 Act in Current Law Statutes, it was inconsistent with the rest of the Act which was informed by a desire *to recognise the true father as the lawful father of the child*. What section 27 did was to recognise as the father of the child someone who, because the semen was not his, was not the child's genetic father. But it did so only in the case of married couples.’ [emphasis added]

15. A recent statement of the settled position was made by Peter Jackson LJ in *P v Q and F* [2024] EWCA Civ 878, at paragraph 16:

‘[16] The baseline position is the common law principle that a child’s legal parents are the gestational mother and the genetic (also known as biological) father. This is a principle of law and not a rule of evidence or a presumption. However, the common law modifies the principle in relation to a married man, who will benefit from a rebuttable presumption of parenthood in respect of a child born to his wife during the marriage, whether or not he is the genetic father. That presumption of legitimacy has been extended by statute to apply to a male civil partner: Legitimacy Act 1976, section A1(2). There is no such presumption in respect of a child born during the marriage of two women: Marriage (Same Sex Couples) Act 2013, Sch 4, para 2.’

16. It is, thus, clear that the definition of a ‘father’ at common law is confined to the natural/genetic/biological father of a child.
17. The term ‘father’ has been expanded by statute in certain circumstances, for example by the human fertilisation and embryology legislation, by providing that certain individuals, who are not the biological father of a child shall be ‘treated as the father of the child’ (for example Human Fertilisation and Embryology Act 2008, s 35(1)). Under the Adoption and Children Act 2002, s 67(1), an adopted person ‘is to be treated in law as if born as the child of the adopters’. These bespoke statutory extensions of to ‘treat’ an individual as ‘father’ do not, however, undermine or alter the common law definition which, as Bracewell J held, concerns gametes and the provision of sperm.

18. Finally, before leaving the question of legal paternity, reference was made to *Re G (Children)* [2006] UKHL 43 in which the House of Lords (Baroness Hale, with whom the other members agreed) considered the weight to be attached to the differing roles of two parental figures in the life of a child who had been born to a couple who were, at that time, living in a stable lesbian relationship. One of the couple was the child's mother, the other, whilst not genetically related, had become a social and psychological parent to the child. In the course of her speech, Baroness Hale [paragraphs 33 to 38] described:

‘three ways in which a person may be or become a natural parent of a child, each of which may be very a significant factor in the child's welfare, depending upon the circumstances of the particular case’.

Those three ‘ways’ were, firstly, genetic parenthood: the provision of the gametes which produce the child. The second was gestational parenthood, by a mother carrying the pregnancy and giving birth, and the third was social and psychological parenthood.

19. Although Lady Hale used the term ‘natural parent’ as encompassing all three of these ‘ways’, it is clear that the focus of this extensive passage was entirely in the context of the attribution of weight to the nexus that a parental figure may have with the individual child in each of these differing circumstances when considering a child's future welfare. There is no indication in those paragraphs, or in the judgment as a whole, that Lady Hale was describing legal parentage or seeking to depart from the well-established common law meaning of ‘father’. Although reference to *Re G* was made in some of the skeleton arguments in the present appeal, no party sought to rely upon it in their oral submissions.

(2) Definition of ‘father’ in Children Act 1989

20. When using the term 'father' in CA 1989, there is no indication that Parliament intended it to have a meaning that was in any way different from that under common law.

(3) The Acquisition of Parental Responsibility

21. The concept of ‘parental responsibility’ was introduced by the CA 1989 and is defined by s 3(1) as meaning ‘all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’.
22. CA 1989, s 2 makes provision for the attribution of parental responsibility for a child to the child’s mother, to their father, and to those who are parents by virtue of the Human Fertilisation and Embryology Act 2008 [‘HFEA 2008’].

‘2 Parental responsibility for children.

(1) Where a child’s father and mother were married to, or civil partners of, each other at the time of his birth, they shall each have parental responsibility for the child.

(1A) ...

(1) Where a child’s father and mother were not married to, or civil partners of, each other at the time of his birth—

(a) the mother shall have parental responsibility for the child;

(b) the father shall have parental responsibility for the child if he has acquired it (and has not ceased to have it) in accordance with the provisions of this Act.

(2A) ...

(2) References in this Act to a child whose father and mother were, or (as the case may be) were not, married to, or civil partners of, each other at the time of his birth must be read with section 1 of the Family Law Reform Act 1987 (which extends their meaning).

(4) ...

(5) More than one person may have parental responsibility for the same child at the same time.

(6) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(8) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Act.

(9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

(10) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(11) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child concerned.'

23. By CA 1989, s 3(5), a person who does not have parental responsibility for a particular child but has care of the child may (subject to the provisions of the Act) 'do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare'.

24. CA 1989, s 4 provides for the acquisition of parental responsibility by a father.

'4. Acquisition of parental responsibility by father.'

(1) Where a child's father and mother were not married to, or civil partners of, each other at the time of his birth, the father shall acquire parental responsibility for the child if—

(a) he becomes registered as the child's father under any of the enactments specified in subsection (1A);

(b) he and the child's mother make an agreement (a "parental responsibility agreement") providing for him to have parental responsibility for the child; or

(c) the court, on his application, orders that he shall have parental responsibility for the child.

(1A) The enactments referred to in subsection (1)(a) are—

(a) paragraphs (a), (b) and (c) of section 10(1) and of section 10A(1) of the Births and Deaths Registration Act 1953;

(b) paragraphs (a), (b)(i) and (c) of section 18(1), and sections 18(2)(b) and 20(1)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and

(c) sub-paragraphs (a), (b) and (c) of Article 14(3) of the Births and Deaths Registration (Northern Ireland) Order 1976.

(1B) The Secretary of State may by order amend subsection (1A) so as to add further enactments to the list in that subsection.

(2) No parental responsibility agreement shall have effect for the purposes of this Act unless—

(a) it is made in the form prescribed by regulations made by the Lord Chancellor; and

(b) where regulations are made by the Lord Chancellor prescribing the manner in which such agreements must be recorded, it is recorded in the prescribed manner.

(2A) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.

(3) The court may make an order under subsection (2A) on the application—

(a) of any person who has parental responsibility for the child; or

(b) with the leave of the court, of the child himself, subject, in the case of parental responsibility acquired under subsection (1)(c), to section 12(4).

(3) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.'

25. In the context of these appeals, it is s 4(1) which is of primary importance. The term 'father' in s 4(1), in accordance with the common law, can only mean the child's genetic or biological father.

26. CA 1989, s 4(2A) is also of relevance as it provides that ‘a person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders’. Part of the appellants’ case in each of the three cases was that if the definition of ‘father’ extended to those registered in the birth register entries of the respective children, then the resulting parental responsibility can only be terminated by a court order under s 4(2A). Whilst, in the first two cases, as I will explain, that argument fell away with the concession that if the individual is not the genetic father he could never have been a ‘father’ under s 4 and therefore never gained parental responsibility in the first place, it still falls to be considered in the third case.
27. Additional provision is made in CA 1989 for the acquisition of parental responsibility by a second female parent (under HFEA 2008, s 43) and by a step-parent (ss 4ZA and 4A). No issue arises in the present appeals from these provisions.
28. By a separate route, an individual, who is neither the parent nor guardian of a child, and who does not otherwise hold parental responsibility for the child, may be granted parental responsibility where the court makes a child arrangements order under CA 1989, s 8. By s 12(2) and (2A) of the Act:
- ‘(2) Where the court makes a child arrangements order and a person who is not a parent or guardian of the child concerned is named in the order as a person with whom the child is to live, that person shall have parental responsibility for the child while the order remains in force so far as providing for the child to live with that person.
- (2A) Where the court makes a child arrangements order and—
- (a) a person who is not the parent or guardian of the child concerned is named in the order as a person with whom the child is to spend time or otherwise have contact, but

(b) the person is not named in the order as a person with whom the child is to live,

the court may provide in the order for the person to have parental responsibility for the child while paragraphs (a) and (b) continue to be met in the person's case.'

Thus, where a child arrangements order provides for a child to 'live with' a person who is not a parent or guardian, the court must provide for that person to have parental responsibility. If, however, the order is solely for the child to 'spend time or otherwise have contact' with, the court has discretion whether to grant parental responsibility or not.

Nomenclature

29. In order to reduce the potential for confusion between the cases, I will refer to the mother in each case as 'M' followed by the initial letter that has been used for each case. Thus, in the first case the mother is MJ, in the second MM and in the third MP. The individual who is registered as 'father' in the birth register entry in the first two cases is the appellant and they will be 'AJ' for the first case and 'AM' for the second. In the third case I will refer to the twin ['T'] candidates for paternity as 'TP1' and 'TP2', with TP1 being the twin who is named as father in the birth register entry.

Re J: the factual context

30. In the first case, AJ and MJ had been in a relationship for some months when MJ became pregnant. The child, J, was born in 2020 and the couple duly registered the birth together recording that AJ was J's father in the birth register entry. AJ believed that he was J's biological father. Two years later, after the relationship had ended, MJ informed AJ that he might not be J's father.

Subsequent DNA testing established that another man was J's father. That individual has decided not to take any active part in these proceedings, or in J's life at this time. AJ had always considered himself to be J's father and, notwithstanding acceptance of the DNA test results, wishes to continue in a parental relationship with J for the future.

31. In November 2023, AJ brought the matter before the court by issuing an application for a parental responsibility order. Matters were delayed by the absence of the mother and child abroad, but in November 2024 MJ issued an application for a declaration of non-paternity under FLA 1986, s 55A. The matter came before Debra Powell KC, as a deputy High Court judge, in December 2024. AJ conceded that a declaration of non-paternity should be made. The judge heard argument on the various issues relating to what, if any, parental responsibility AJ had had, and should for the future hold, with respect to J. The judge delivered a reserved judgment on 27 January 2025 – [2025] EWHC 102 (Fam).
32. AJ's case before the judge was that, irrespective of the fact that it was subsequently established that AJ was not J's father, upon his registration as 'father' in J's birth register entry AJ held parental responsibility for the child pursuant to CA 1989, s 4(1)(a). The discovery that he was not, in fact, J's father did not render his acquisition of parental responsibility as void *ab initio*. He submitted that his status as a holder of parental responsibility could only be removed by an order of the court under s 4(2A). He further argued that, in determining whether to make an order under s 4(2A), the court was required to afford paramount consideration to the welfare of J (pursuant to CA 1989, s 1(1)).

33. In response, MJ submitted that, as AJ was not the father of J, he never acquired parental responsibility under s 4(1)(a) and the understanding that he had done so had never been a valid one.
34. In a full and impressively clear judgment, the judge concluded that:
- a) When interpreting CA 1989, s 4(1)(a), there was no reason to depart from the natural and ordinary meaning, under common law, of ‘father’;
 - b) As AJ was not J’s father, he was not eligible to be registered as ‘father’ in J’s birth register entry;
 - c) No legal or practical difficulty had been identified in holding that a false, but genuine, understanding that an individual had held parental responsibility was void *ab initio*. In particular, any parental acts undertaken by such an individual would legitimately come within the authorisation provided by CA 1989, s 3(5);
 - d) AJ did not, therefore, acquire parental responsibility upon being named as J’s father in the birth register entry and, consequently, he has never held parental responsibility for J;
 - e) Accordingly no order was required to remove parental responsibility from him.
35. Any issues as to the future arrangements for J’s care were remitted to the local Family Court.

Re M: the factual context

36. In the second case, the child M was conceived after MM and AM purchased sperm over the internet from an anonymous donor. AM claimed that he had not realised that by not going through the channel of using a licensed fertility clinic, he may not have legal status in relation to any child born as a result of conception using donor sperm. AM contended that it was always intended that he should be M's father. M was born in 2019 and AM was named in M's birth register entry as her father. AM and MM were married in 2021. DNA testing subsequently confirmed that AM is not M's biological father. The judge held that AM had been dishonest over a prolonged period by holding himself out as M's genetic father.
37. M's circumstances were brought before the court after their local authority issued applications for care orders with respect to M and her three half-siblings. Within the care proceedings, the Local Authority sought a declaration from the court that AM was not M's father. The Local Authority also sought an order terminating any parental responsibility that AM may have due to the risks that AM was alleged to pose to children.
38. In a comprehensive and clear judgment handed down on 7 April 2025, HH Judge Tucker, sitting as a deputy High Court judge, made a declaration that AM was not the father of M. She held that the term 'father' in CA 1989, s 4 is to be given its ordinary and natural meaning and was therefore limited to a child's natural or legal father (for example by adoption). She therefore held that, as a result of the declaration of non-paternity, any parental responsibility that AM had held for M would be lost. In the alternative, on the facts and applying the

welfare principle, if an order under s 4(2A) removing parental responsibility was required, she would have made such an order.

Re P: the factual context

39. In the third case, P was the elder of two children before the court in private law proceedings. TP1 is accepted to be the father of the younger child, but, despite a full hearing and consideration of the DNA evidence, it was not possible to establish the paternity of P, other than to say that the father is one or other of the two identical twin brothers. The judge, HH Judge Reardon, described the position:

‘P’s father is either TP1 or his identical twin brother, TP2. It has not been possible to establish P’s paternity either by DNA testing or by an examination of the circumstances of her conception. At a fact finding hearing last year I found that both brothers had had sex with MP within 4 days of each other in the month when P was conceived. ... It is equally likely that each of the brothers is P’s father.’

[initials substituted to conform with this judgment]

40. At a hearing in April 2025, the court was invited to decide upon the arrangements for the children’s future care, but also to determine whether a declaration of paternity should be made holding that one or other brother is P’s father, whether TP1, who is currently named as ‘father’ in the birth register entry, has parental responsibility for P, and whether it is possible to confer parental responsibility on either TP1 or TP2.
41. By the time of the final hearing before the judge, MP had distanced herself from TP1 and was in a closer relationship with TP2. Together MP and TP2 sought a declaration that TP2 was P’s father and that any parental responsibility that TP1 may have had for P arising from registration in the birth register entry should

be terminated. They also asked for parental responsibility to be conferred on TP2. TP1 sought to retain his registration as ‘father’ in the birth register entry and to be treated in law and for all purposes as P’s father. The children’s guardian sought a declaration that neither twin was established to be P’s father, that any parental responsibility afforded to TP1 should be terminated and that parental responsibility should be afforded to TP2 through the making of a child arrangements order.

42. In the course of a thorough and well-constructed judgment, HHJ Reardon rehearsed the complex evidence and submissions that the court had received, together with a recital of the extant case law, before moving to her conclusions. On the potential for the court to make a declaration of paternity or non-paternity, she held that, in circumstances where the probability of either brother being P’s father was ‘exactly 50%’, ‘no party is able to discharge the burden of [proving] that either [TP1 or TP2] is or is not [P’s] father’. She rejected a submission from the guardian that there should be a declaration that ‘either TP1 or TP2’ is the father, as it was not clear that the court had jurisdiction to make such a declaration and that, in any event, it was doubtful that, if made, it would cause the Registrar General to alter the birth registration entry. The judge therefore held that, as the court was not able to make a finding as to P’s paternity, all applications for a declaration under s 55A were refused.
43. The judge acknowledged that the court’s inability to make a declaration would leave P’s birth certificate unchanged. She accepted that, on one view, that may perpetuate an untruth, but, on another view, it may be true and the registration is not necessarily wrong.

44. The judge then determined future arrangements for the children which provided for them to spend significant time with all three adults, albeit that their primary base was to be with MP.
45. With respect to parental responsibility, the judge expressly declined to make an order engaging s 12(2) or exercise powers under s 12(2A), attributing parental responsibility to one or both of TP1 and TP2 under a child arrangements order. Instead, partly to afford clarity for the three adults as to the ground rules (my phrase) for parenting from the time of the hearing going forward, the judge provided that MP should be free to make all parental decisions regarding P other than in relation to four specified areas of high-level decision making (for example change of school or leaving the jurisdiction). Both TP1 and TP2 were, however, to be empowered to do what is reasonable for the care of either child when in their care under CA 1989, s 3(5).
46. TP2, the appellant in the P case, seeks a declaration that he is the child's (P's) father. In the alternative he seeks a declaration that TP1 is not the father. He also challenges the judge's decision to do nothing to remove TP1 from the birth certificate and/or revoke such parental responsibility as TP1 may hold. The appeal is supported by MP, but opposed by TP1. Separately there is an appeal on behalf of the child seeking greater clarity of the position as to paternity.

Relevant caselaw

47. The parties were largely agreed in identifying the small body of relevant previous decisions. Those recording the endeavours of other judges at High Court level who have grappled with these issues are:

- i) *RQ v PA* [2018] EWFC 68 (Theis J)
- ii) *Re G* [2018] EWHC 3360 (Fam) (Williams J)
- iii) *Re SB* [2022] EWFC 111 and *Re SB (No 2)* [2023] EWFC 58 (HHJ Case)
- iv) *Re C (Children)* [2023] EWHC 516 (Fam) (HHJ Moradifar)
- v) *ED v MG* [2025] EWHC 1876 (Fam) (McKendrick J)
- vi) *Re X (A Child) (Husband of Child's Mother: Declaration of No Parental Responsibility)* [2025] EWHC 2542 (Fam) (Harrison J)

48. Without being disrespectful to the judges in those cases, or indeed the judges in the three instant appeals, it is not necessary, in the course of this judgment, to tease out the nuanced differences of approach, such as they are, between these various first instance decisions. We were genuinely assisted by following the interpretative journey which is clearly laid out by each of our predecessors at first instance, but, having now heard full argument, there is no need to recite matters which are now, hopefully, of historical interest.

49. One authority which is, however, of central relevance is the decision of this court in *P v Q and F* [2024] EWCA Civ 878. In that case, the Court of Appeal [Peter Jackson, Nicola Davies and Arnold LJJ] was primarily concerned with a declaration of parentage application in circumstances which are not relevant to the present appeals. The relevance of *P v Q and F* arises from the court's observations on the status of registration of a person as a parent on a child's birth certificate in the leading judgment of Peter Jackson LJ, with whom the other members of the constitution agreed:

‘19. The registration of a birth under the Births and Deaths Registration Act 1953 will, for important practical purposes, identify a child’s legal parents. A birth certificate is perhaps the most fundamental of all documents concerning personal status. However, the registration process depends on the accuracy and completeness of what the registrar is told by the informant(s), and many genetic parents do not appear on birth certificates. Registration is therefore practical evidence of legal parentage, but the legal status of parentage does not spring from registration. In a case where a child’s parentage is called into question, the court may make declarations under the FLA 1986, which may or may not confirm the details that appear in the register. It is for that reason that section 14A of the 1953 Act provides for re-registration after a declaration of parentage and notification by the court to the Registrar General under section 55A(7) of the FLA 1986.

20. Registration has been said to constitute prima facie evidence of parentage, but it is not conclusive: *Brierley v Brierley* [1918] P 257, relying on the forerunner to section 34(2) of the 1953 Act. Registration of birth is certainly evidence of parentage upon which the outside world, including a court, is entitled to rely, but where there is an issue about parentage it does not create a legal presumption.’

50. In the present appeals, the validity of Peter Jackson LJ’s description of the important, but limited, status that follows from registration as a parent on a birth certificate was rightly accepted. It follows that the registration of the three individual ‘fathers’ on the respective children’s birth registers does not establish parentage and does not, itself, endow those named with the status of fatherhood.

The Appellants’ case: *Re J*

51. In the first case, Laura Briggs KC for AJ, leading Liz Andrews and Emma Colebatch, accepted that the definition of ‘father’ in CA 1989, s 4 was limited to the genetic/biological father and that, whilst her client was psychologically ‘father’ to J, this was not a sufficient status to come within s 4(1). AJ does not challenge the declaration of non-parentage that was made by the judge in his case. Ms Briggs does, however, submit that, in amending the CA 1989 by extending the provision of parental responsibility to unmarried fathers who are named on a child’s birth certificate (by amendment introduced by Adoption and

Children Act 2002, s 111), Parliament had introduced an accessible scheme for the attribution of parental responsibility, without the need for DNA testing or a court order. Ms Briggs submitted that, in order to achieve ease and accessibility in the scheme, Parliament must have accepted that there would be a degree of error, with some individuals being registered as ‘father’ when they were not in fact the father of the child as a matter of law. AJ’s case is that in such circumstances, and despite the underlying error, registration as ‘father’ nevertheless triggers the attribution of parental responsibility to that individual. At the time of registration, in J’s case, both parents were acknowledging that AJ was ‘father’ and wanted him to have parental responsibility; AJ’s case, therefore, is that Parliament intended those circumstances to be sufficient for him to have acquired parental responsibility.

52. In support of that submission, Ms Briggs relied upon the House of Lords decision in *Ghaidan v Godin-Mendoza* [2004] UKHL 30, holding that, pursuant to the Human Rights Act 1998, legislation should be given a meaning which is compliant with the ECHR wherever possible. In the present case AJ had lived as a family with J and had established ECHR, Art 8 rights to family life with respect to J. Ms Briggs submitted that CA 1989, s 4 should therefore be interpreted so as to include AJ in the category of ‘father’ sufficient to trigger the attribution of parental responsibility for J from the moment of the birth registration, notwithstanding AJ’s inability to come within the definition of ‘father’ as a matter of law.
53. Following *P v Q and F*, Ms Briggs did not suggest that naming a person on a birth certificate as ‘father’ established that individual was the child’s biological

or legal father. She sought, however, to distinguish *P v Q and F* on the basis that it did not relate directly to CA 1989, s 4. It is AJ's case that, separately to the fact of legal fatherhood, s 4 makes specific provision for registration on the birth certificate as the trigger for acquisition of parental responsibility, and bypassing the need for DNA testing. The parental responsibility acquired by registration persists, it is argued, until it is brought to an end by order of the court.

Responding to the appeal in J, Mr Timothy Bowe KC, leading Tom Wilson, supported the analysis of the judge, Ms Debra Powell KC. In his submission, nothing in the appellant's submissions dislodged the core reasoning in the judgment.

The Appellants' case: *Re M*

54. For AM, Mr Sam Momtaz KC, leading Emma Gatland and Alana Hughes, whilst accepting that Parliament must have intended the definition of 'father' to be limited to a child's genetic father, submitted that Parliament determined how genetic paternity was to be evidenced. Mr Momtaz submitted that being named on the birth certificate is, on the terms of s 4(1), sufficient evidence that the named individual is the child's father and this will remain the case until, if it be the case, a subsequent declaration of paternity to the contrary is made and/or an order terminating parental responsibility is made under s 4(2A). To hold otherwise would, it was submitted, require every putative father to be advised of the need to obtain DNA testing prior to registration in the birth register entry.
55. Mr Momtaz drew attention to the three routes by which an unmarried putative father might acquire parental responsibility. If one of these routes is pursued

then parental responsibility will be held unless and until it is terminated by an order under s 4(2A). Mr Momtaz described this as a simple and coherent scheme, with paternity being established by the act of registration as ‘father’ in the birth register entry.

56. Dealing with the underlying facts in the M case, where it is clear that neither parent believed that AM was M’s father at the time of registration, Mr Momtaz submitted that the welfare of the child should trump any issue of conduct or dishonesty, and that his submission as to the attribution of parental responsibility applied despite the fact that both parents knew that the registration was false.

The Appellant’s case: *Re P*

57. For TP2, who is the first appellant in *Re P*, Hannah Markham KC, leading Madeleine Whelan, aligned herself with the submissions of the Secretary of State. She was, however, critical of the judge for not making orders that would be likely to lead to TP1 being removed from the birth certificate. Ms Markham said that the judge should have made a declaration that the court could not identify which of the two twins was the genetic father of the child. Finally, Ms Markham submitted that the judge should have clarified whether any current parental responsibility was held by TP1 as a result of registration by making a discharge order under s 4, for the avoidance of doubt. The judge could then have looked at the child’s needs with regard to those who should hold parental responsibility for the future and, if required, make orders to give one or other or both of TP1 and TP2 parental responsibility under s 12.

58. In *Re P*, the children's guardian is the second appellant. For the child, Andrew Bagchi KC, leading Emma Hudson, Luke Eaton and Sylvie Armstrong, held to the common law meaning of 'father' and submitted that an individual who was not the genetic father of a child could not acquire parental responsibility under CA 1989, s 4. Mr Bagchi had submitted to the judge that she should make a declaration that the biological father of P is either TP1 or TP2, but neither has established to the requisite standard that they are the father and, accordingly, as between TP1 and TP2 the parentage of P is not established. Permission was granted for the child to appeal against the judge's refusal to make a declaration in those terms. By the time of the appeal, the position on behalf of the child had changed, to a degree, so that a declaration was now being sought stating that neither TP1 nor TP2 is the legal parent of P. The aim of the suggested declaration was to trigger a referral to the Registrar General so as to remove TP1 from being named as 'father' in the birth register entry. It was submitted that a statutory declaration should also be made, as required by Births and Deaths Registration Act 1953, s 29(3) and s 29A, stating that TP1 had been wrongly shown as 'father' in the birth register entry.
59. For MP, Anna McKenna KC, leading Naomi Wiseman and Joseph Landman, submitted that, as no one person can be identified as the child's father, the birth certificate was in error, was misleading and the statement in it was wrong as a matter of fact and law. MP therefore seeks an outcome which will lead to a correction of the certificate. Ms McKenna submitted that the appropriate declaration was that 'the court has not found TP1 to be the child's father', or that 'TP1 is not proved to be the father'.

60. For TP1 Janet Bazley KC, leading Karen Kabweru-Namulemu and Melissa Elsworth, aligned her client's case with the appellant's case in J on the common issues. Ms Bazley submitted that the factual matrix was such that it was not currently possible to make a declaration which would remove TP1 as father in the birth register entry. In those circumstances, any issues between TP1, TP2 and MP could be dealt with under s 8 and the attribution of parental responsibility under s 12, as the judge had purported to do.

The case for the Secretary of State

61. The Secretary of State for Justice, who has policy responsibility for the relevant parts of the CA 1989, was granted permission to intervene in the appeal by King LJ. The court is very grateful to Joanne Clement KC and Alex Laing for their clear and persuasive submissions on behalf of the Secretary of State which, to a large extent, were accepted by all parties. I shall therefore set out their central submissions in some detail.
62. On the basis that the term 'father' in CA 1989, ss 2 and 4 reflect the common law principle that a child's father is their genetic father, the Secretary of State submits that a person has to be the child's genetic father before they can acquire parental responsibility for a child under ss 2 or 4. The fact that a person, who is not the genetic father, is named in the birth register entry as 'father' does not make them the father of the child in law, and that person does not thereby acquire parental responsibility.
63. Ms Clement referred to the amendments made to CA 1989 by ACA 2002, Part 2 which, amongst other changes, extended the routes by which a father may acquire parental responsibility for his child. She submitted that there is no

indication in any of the admissible background material that Parliament intended to change the meaning of the term ‘father’ when introducing these amendments. The statutory extension related to the routes for the acquisition of parental responsibility and not to the central definition of ‘father’.

64. A number of written submissions by parties to the appeal drew attention to the fact that in s 4(2A), as introduced by the 2002 Act, it is provided that ‘a person’ who has acquired parental responsibility shall cease to have it only if the court so orders. Those who argued that they acquired parental responsibility simply by registration in the birth register, relied on the use of the word ‘person’, as opposed to ‘father’, as, in some way, broadening the definition of ‘father’ in ss 2 and 4. In the event, no party advanced this argument orally at the hearing, but, for completeness, I will record Ms Clement’s submission that that interpretation was wrong for the following reasons:

- i) CA 1989, s 4(2A) is concerned only with the termination of parental responsibility by someone who has acquired it under s 4(1). It says nothing about how parental responsibility is acquired in the first place;
- ii) S 4(2A) was not included in the CA 1989 as originally enacted. Its subsequent addition cannot therefore change the meaning of ‘father’ in s 2(2) or s 4(1);
- iii) In any event, it seems likely that the phrase ‘a person’ was deployed in s 4(2A) because s 4(3) refers to ‘any person’ who has parental responsibility, which allows the other ‘person’ who has parental responsibility (for example the mother) to apply to remove the unmarried father’s parental responsibility.

65. Moving on, Ms Clement drew attention to the revised scheme, introduced by the 2002 Act, by which parental responsibility may be granted to individuals when a ‘child arrangements order’ is made under CA 1989, s 8. In particular orders made under s 12(2) and (2A) affording parental responsibility to individuals apply to ‘a person who is not a parent ... of the child’. These are not orders made under s 4, but provide for a time-limited and subject-matter limited parental responsibility to be made to non-parents.
66. With respect to the legal issues that were agreed to be common to the three appeals, Ms Clement firstly stressed that the importance of a child knowing the identity of their legal parents (and vice versa) has long been established (for example *Re R (IVF: Paternity of Child)* [2005] 2 AC 621 at paragraph 42).
67. Secondly, she set out detailed reasons in support of the term ‘father’ in CA 1989 meaning what it means at common law and no more, so that the definition is therefore confined to the genetic father, save where Parliament has provided for a different meaning in other legislation (for example through adoption). This point is now, rightly, conceded and it is not necessary to set out the compelling submissions that were made on behalf of the Secretary of State in support of it.
68. On the question of whether a declaration of non-parentage in circumstances such as these three cases renders any parental responsibility acquired by registration in the birth register as ‘void ab initio’, the Secretary of State suggested that concepts such as ‘void ab initio’ or ‘voidable’ were not helpful, as the real issue is one of statutory interpretation. The key question for the court is whether the person ever acquired parental responsibility under CA 1989, s 2(2)(b) and s 4(1)(a) in the first place. Ms Clement submitted that the correct

interpretation was that, if the person in question is not the father of the child, then they will not acquire parental responsibility at any stage under s 4 by registration in the birth register. Where, as in the first case, both parties mistakenly believe that the person registered as father does acquire parental responsibility, if he is subsequently found not to be the father then, as a matter of law, parental responsibility was never acquired in the first place. Thus, under s 4(1) and (1A) a person will only acquire parental responsibility if they are both:

- a) The child's father; and
- b) Registered as 'father' in the birth register.

69. Ms Clement considered the position where parental responsibility may (wrongly) be conferred, by a court order under CA 1989, s 4(1)(c), on a person who is not the child's father. In such a case the order will have been made without jurisdiction, but will, like all court orders, be valid and enforceable until a court subsequently sets it aside. If the order has been made without jurisdiction, then the court must set it aside, without consideration of the child's welfare (by analogy see *Somerset County Council v NHS Somerset CCG* [2021] EWHC 3004 (Fam)).

70. A focus of concern raised by parties to the appeals is the potential for there to be an 'abduction gap' where a child is removed from the jurisdiction of England and Wales, or retained outside the jurisdiction, such circumstances would be 'wrongful' under the 1980 Hague Convention if they are in breach of rights of custody. But if the left-behind parent, whilst registered as the child's father in the birth register entry, turns out not to be the father, he never had parental

responsibility and the removal/retention may, therefore, be said not to be ‘wrongful’ because it was not in breach of his custody rights. For the same reason, there is concern about there being a ‘jurisdictional gap’ under the 1996 Hague Convention.

71. Although neither of these potential ‘gaps’ arose in the three appeals, the Secretary of State engaged with the point. Ms Clement agreed that where the left-behind individual was registered as the father in the birth register entry but was not in fact the father, then (unless he had parental responsibility by another route) no right of custody would be breached. In such a case, depending on the circumstances, it may not be possible for the court in this jurisdiction to grant parental responsibility after the event so as to then render the removal/retention wrongful. Whilst a ‘gap’ of the category identified may occur, that was not a breach of the 1980 Convention which is aimed squarely at protecting ‘rights of custody’. Further nothing in either convention provides a basis for promoting a wider interpretation of ‘father’ in CA 1989. In these, and other circumstances to which reference was made, there could be real concern about the future relationship of the left-behind individual and the child, but that concern could not alter the statutory interpretation of ‘father’ in the CA 1989.
72. Finally, Ms Clement submitted that no party could establish a breach of ECHR, Art 8 rights to family life in the circumstances of these appeals once consideration is given to the court’s jurisdiction to make orders granting parental responsibility under CA 1989, s 12 in favour of a psychological or social parent, who is not the legal father.

The position of the Registrar General

73. Ms Clement and Mr Laing also represented the Registrar General. Their skeleton argument traversed the statutory scheme which underpins the powers of the Registrar General and the process of registration. Nothing in the three appeals turns on the precise wording of the Births and Deaths Registration Act 1953 and the associated 1987 Regulations and there is, thus, no need to set out details of the provisions here.
74. With respect to the particular form of declaration put forward by Mr Bagchi on behalf of child P, Ms Clement submitted that, whilst the Registrar General would give careful consideration to any s 55A declaration as to the parentage of P, if re-registration creates a risk of the register being inaccurate, then it would not appear to the Registrar General that the birth should be re-registered under s 14A of the 1953 Act. Ms Clement advised the court that it was unlikely that the declaration proposed by Mr Bagchi would be sufficiently clear to satisfy the Registrar General that there should be a re-registration as there would not be a clear statement that a named person is or is not the father of P. If, however, there were a declaration that neither TP1 nor TP2 are the father of P then it is anticipated that the Registrar General would authorise re-registration to remove TP1 from the birth register.

Association of Lawyers for Children

75. Permission was given to the Association of Lawyers for Children to intervene to make written and oral submissions. The court is very grateful to Deirdre Fottrell KC, Lorraine Cavanagh KC and Lucy Bennett for their very helpful skeleton argument and oral contribution to the hearing.

76. In summary, the ALC supports the interpretation of ‘father’ based on the common law definition, which is confined to the genetic father of a child. The ALC submissions are based on the centrality of a child’s right to know the truth, insofar as this is possible, about their identity. If an individual is not the ‘father’ of a child, then they do not come within s 4 and will not acquire parental responsibility even if registered as ‘father’ in the birth register entry. In those circumstances, the ALC submits that there would be no need for a court order to terminate or remove parental responsibility from that individual as they had never acquired it in the first place. The attribution, or otherwise, of parental responsibility is a key aspect of the private law scheme established by CA 1989; to use Ms Fottrell’s word, it is the ‘fulcrum’ around which the scheme of the Act is designed. That scheme is finely calibrated and the court should be cautious in expanding the meaning of ‘father’ so as to expand the group of individuals who may acquire parental responsibility under s 4. To do so would, it was submitted, lead to uncertainty. The current scheme is not uncertain, it is clear. Any call for ‘flexibility’, for example to bring a social or psychological parent into s 4 would be an adult-centred approach, and one which would not meet a child’s need for clarity, truth and certainty as to their paternity.

Reunite

77. Reunite, the international child abduction charity, was also invited to intervene orally and in writing. The court is grateful to Michael Gration KC and Andrew Powell for their measured and helpful submissions which, understandably, focussed on the impact in cases of international child abduction if an individual, who thought that they were a child’s father and was named as such in the birth

register entry, turned out not to be in circumstances which would otherwise amount to a wrongful removal or retention under the Hague Convention – thereby creating a perceived ‘gap’ in the ordinary protective arrangements.

78. Mr Gration, whose skeleton argument had supported a wider definition of ‘father’, accepted in his oral submissions that the meaning was confined to that of the genetic father. As the central jurisdictional concept in the Hague Convention is that of ‘rights of custody’, where a party does not have parental responsibility at the relevant date, and there is thus no wrongful removal or retention, the most that this court may do is to draw attention to this situation as a possible issue and to spell out the need for judges to consider what orders should be made for the child’s future welfare. Mr Gration urged this court to give guidance and, in particular, invited the court to focus on the circumstances that may follow the making of a declaration of non-paternity, where there is a risk of subsequent wrongful removal or retention. In such cases it is suggested that a framework of orders – a form of “protective legal scaffolding” – should be put in place to ensure that, prior to any fuller welfare evaluation being undertaken, the child continues to have the benefit of their psychological (but not genetic) parent’s involvement in their lives.

Analysis and general conclusions

79. I have set out the core submissions for the Secretary of State in some detail because they are, in my view, entirely correct. In the light of the concession which was correctly made that the meaning of ‘father’ in CA 1989, ss 2 and 4 is confined to the common law definition and therefore limited to the

genetic/biological father of a child, it is possible to state my conclusions on the central legal issues shortly and with a significant degree of confidence.

80. Referring to the list of questions posed in paragraph 2 above:

- i) The definition of 'father' for the purposes of CA 1989 is the common law definition and is limited to a child's biological/genetic father. The definition does not, and cannot, extend to others who have acted as the child's psychological/social father.
- ii) Where an individual is registered as a child's 'father' in their birth register entry, the parental responsibility attributed by such registration does not attach to that individual if they are not, in fact, the biological/genetic father of the child. In order for parental responsibility to be acquired by registration on a birth certificate under CA 1989, s 4, two conditions must each be fulfilled:
 - a) The person must be the genetic/biological father of the child; and
 - b) That person must be registered as 'father' in the child's birth register entry;
- iii + iv) Although the parties may believe otherwise, no parental responsibility is acquired at any stage by an individual who is wrongly registered as 'father' in a birth register entry. In consequence the question of whether parental responsibility in such circumstances is automatically terminated on the making of a declaration of non-parentage under FLA 1986, s 55A, or requires a bespoke order, simply does not arise.

81. On that basis, it is clear that the decision of Debra Powell KC in the case of J was entirely correct for the reasons that she gave (save that, rather than any parental responsibility being ‘void ab initio’, the correct understanding is that it never arose in the first place as the registrant was not the father). Once Ms Briggs KC had conceded, as she had to do, that the legal definition of ‘father’ was confined to the common law definition, and once she had accepted that *P v Q and F* established that mere registration did not prove fatherhood, the appellant’s position in the first case became unarguable. There is no basis for holding to the common law definition and the strict wording of the statutory scheme, on the one hand, whilst contemplating that Parliament, in some way, expressly tolerated a wider definition of ‘father’ that is triggered by registration on the other. The two propositions are simply not compatible with each other.
82. In the case of M, the central analysis of HHJ Tucker is also to be upheld. Mr Momtaz’s attempt to argue that, despite his inevitable acceptance that the definition of ‘father’ was limited to the common law meaning, the naming of an individual in a birth register entry as ‘father’ is sufficient evidence that the named individual is the child’s father is not sustainable in the light of this court’s decision as to the limit of the consequences of registration in *P v Q and F*. In most cases there will be no dissonance between the parties’ understanding of who a child’s biological father is and the underlying genetic truth of that understanding. There is no basis for holding that Parliament intended that registration would establish a form of working assumption that the individual is, indeed, the biological father unless or until proved otherwise. There will inevitably be some cases, such as the first case, where a genuine belief in biological paternity will turn out to be wrong. In such cases, although there will

have been an assumption of parental responsibility during the interim period, which may well have been exercised, once that assumption evaporates on confirmation of the true position, its mistaken existence may be of limited consequence, not least because of the existence of the powers arising under s 3(5).

83. Where, as here, an individual who is not the legal father, and has not acquired parental responsibility through registration on a child's birth certificate, but where that person has become a psychological or social parent to the child, their role in the child's life may be reflected by the making of a s 8 child arrangements order, together with the attribution of parental responsibility by an order under s 12.

84. Before leaving the issues that were common to all three appeals, it is right to make some further observations:

- i) The question of the validity of a parental responsibility order made under CA 1989, s 4(1)(c) did not arise in these appeals, but the Secretary of State is likely to be correct in the submission that, where such an order is made with respect to an individual who is not the child's genetic father, the order will, in common with all court orders, be valid whilst it is in force but, where the issue is raised and non-paternity is established, the court must discharge it on the basis that it was made without jurisdiction;
- ii) The Secretary of State and Registrar General are invited to consider having a simple statement of the definition of 'father' on display at each Register Office;

- iii) Where there is a risk of child abduction and there is any uncertainty as to paternity, an individual registered as 'father' in a child's birth register entry would be well advised to apply to the court for orders under s 8 controlling the child's departure from the jurisdiction and, if justified on the facts, for parental responsibility under CA 1989, s 12;
- iv) Where a court makes a declaration of non-parentage under s 55A, in a case where, hitherto the non-father had assumed that they had parental responsibility, the court should consider making interim orders as in (iii) above to hold the situation and avoid the consequences of the abduction 'gap' that has been identified in this case;
- v) Where a child has been removed or retained abroad in circumstances that would be wrongful under the Hague Convention if the left-behind 'parent' did have parental responsibility, but where that person had thought that they had parental responsibility but, in reality, they do not do so on subsequent proof of non-paternity, the court should look to other remedies either under the CA 1989, or by treating the circumstances as a non-Convention abduction case.
- vi) The court is very grateful to counsel for Reunite who have prepared suggested guidance for cases where there is, or may be, an international element and where the issues covered in these appeals may arise. The draft guidance was not the subject of submissions or other consideration during the oral hearing, and the issues raised do not directly arise from any of the three appeal cases. In the circumstances, it would not be appropriate for this court to do more than to encourage Reunite to

publish the draft as a thoughtful and useful source document for future consideration.

Re P: Conclusions

85. Conclusions on the unusual facts of Re P must, necessarily, be more detailed, but, equally, must be based upon the law as it applies to all other cases.
86. On the basis that the father of a child, for the purposes of CA 1989, is limited to the common law definition of someone who is proved to be the genetic/biological father, neither TP1 nor TP2 is, as a matter of law, P's father.
87. It follows that TP1 was not entitled to be registered as 'father' in the child's birth register entry.
88. But, TP1 was registered as 'father' in P's birth register entry and, if he is actually the father, he will have acquired parental responsibility for P by the act of registration under s 4(1).
89. The factual findings of HHJ Reardon have not been challenged, and the position is that it is equally likely that TP1 or TP2 is P's father, but the court is unable to say which. The ALC are right to stress the need for a child to understand the truth of their parentage and core identity, in so far as this is possible. Currently the truth of P's paternity is that their father is one or other of these two identical twins, but it is not possible to say which. It is possible, indeed likely, that by the time P reaches maturity it may be possible for science to identify one father and exclude the other twin, but, for the coming time that cannot be done without very significant cost, and so her 'truth' is binary and not a single man. It is for MP to determine how P is introduced to this truth over time. It is to be hoped

that she has the wise words of HHJ Reardon about ‘narrative’ at paragraphs 137 to 139 very much in mind.

90. The aim of the guardian’s submissions is laudable, namely to achieve the removal of TP1 from being named as ‘father’ in the birth register entry, and, thereby, removing the otherwise continuing ambiguity over a registration which may, or may not, be true. I am, however, fully persuaded by the submissions made on behalf of the Registrar General that, in circumstances where the court is simply not able to declare that TP1 is not P’s father, no alternatively formulated declaration under s 55A will be sufficiently clear to cause the Registrar General to remove TP1 from the certificate.
91. Despite fully understanding the laudable aim of his submissions, I should record that I was wholly unpersuaded by Mr Bagchi’s argument that, as TP1 could not be proved to be P’s father, the court should declare that he was not her father.
92. As Ms Clement submitted, the failure to prove a fact means that that fact is not proved, it does not mean that the contrary is proved. There is a distinction between something being not proven, and making a positive declaration that the fact asserted is not true. To adopt the approach urged on the court by Mr Bagchi would, on the evidence in this case, ignore the ‘fact’ that TP1 may well be P’s father. By the same account, the court might be invited to declare that neither TP1 nor TP2 is P’s father, whereas the truth is that her father can only be one or other of these men.
93. FLA 1986, s 58(1) requires proof that an individual is not the child’s father. On the basis of the court’s findings, it is simply not possible to hold that TP1 is not P’s father, indeed, there is a 50% chance that he is. Thus, a route out of the

current situation by divining some well-formulated declaration does not arise and the judge was right not to make any declaration in the case of P.

94. Whilst the position that has been reached means that TP1 will remain as ‘father’ in the birth register entry, the question of the continuation of parental responsibility is a separate issue. The court retains the power to terminate any parental responsibility that has been acquired, or in this case may have been acquired, by s 4(1), by making an order discharging parental responsibility under s 4(2A).
95. It is, as the appeal has demonstrated, unhelpful for there to be ambiguity over the question of whether or not TP1 has parental responsibility under s 4(1). The judge described the situation at paragraph 130:

‘Whether or not [TP1] has [parental responsibility for P] depends on the answer to the question whether a man who is equally likely to be and not to be the father, and who is named on the birth certificate, has parental responsibility for the child. That is a question which adds an additional layer of complexity to the issue which the Court of Appeal is due to determine later this year, namely whether a man who is on the birth certificate but subsequently established not to be the father retains parental responsibility.’

The judge therefore left such matters to be determined in the light of this court’s decision on the overarching legal issue. She took the alternative course of directing how specific aspects of parental responsibility for P were to be decided as between the three adults.

96. The situation resulting from the judge’s order and this court’s determination on the principal issue is that if TP1 is the legal father he has parental responsibility, but if he is not he does not, yet it cannot be said whether he is or is not the legal father. That outcome is not in P’s best interests and is contrary to her overall welfare. It is understandable that the judge left the disentanglement of the legal

issue to this court (when it was known that the other appeals were to be heard). With the benefit of the hindsight now achieved as to the definition of father, in my view it was wrong for the court not to achieve clarity by discharging any parental responsibility that TP1 may have had by making an order under CA 1989, s 4(2A). The basis for discharging parental responsibility is, firstly, that, as he is not proved to be the father, TP1 should not have been registered as ‘father’ and he is not a candidate for the acquisition of parental responsibility under s 4(1). Secondly, it is plainly not in P’s welfare interests for this ambiguity as to parental responsibility to continue.

97. At the oral hearing we indicated our intention to remit to the lower court the question of whether either, both or neither of the twins should now be granted parental responsibility. As a result, we did not invite counsel in *Re P* to make submissions on the welfare element of that case. During the course of preparing this judgment I have had cause to reconsider the position. I am concerned that, unless this court concludes that HHJ Reardon was ‘wrong’ in the decision that she made, then the appeal should not be allowed. If My Lady and My Lord agree, it is now appropriate for this court to receive submissions from the parties on the ‘welfare’ issues. Unless the parties wish the court to consider setting up a further oral hearing, the remaining issues will be dealt by additional written submissions.

Outcome

98. It follows that each of the appeals fails, save that, in the case of P, if My Lady and My Lord agree, an order will be made under CA 1989, s 4(2A) that any parental responsibility that TP1 may have acquired under s 4(1) by registration

as ‘father’ in P’s birth register entry shall cease from the date of this court’s order and any further order that may be made following additional submissions in that case relating to ‘welfare’.

99. Before passing from this case, I wish to record again my appreciation for the high quality of the judgments of each of the three judges who heard these cases at first instance.

Lady Justice King:

100. I agree.

Lord Justice Stuart-Smith:

101. I also agree.