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Case No: **ZC25P01096; ZC25P01637; ZC25P01062; ZC25P01733; ZC25P01737; ZC25P01764; ZC25P01766; ZC25P01629**

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/04/2026

Before:

MR JUSTICE WILLIAMS

- -

Between:

A & B	**Applicants**
- and -	
C + D	**Respondents**

- -
- -

Natalie Gamble (instructed by NGA Law) for the Applicants in ZC25PO1062
Kate Tompkins (instructed by DMH Stallard**)** Applicants in Z25P01766
Colin Rogerson (instructed by Keystone Law) Applicants ZC25P01764
Marisa Allman (instructed by Hanne & Co) Applicants ZC15P01096
Dr Bianca Jackson (instructed by Surrogacy Lawyers) Applicants ZC25P01636 & ZC25P01637

Hearing dates: March 10th, 11th,24th & 25th 2026

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Approved Judgment

This judgment was handed down remotely on 27 April 20265 by circulation to the parties or their representatives by e-mail.

The judge has given leave for this version of the judgment to be published. Notwithstanding anything contained in this judgment the anonymity of the parties and the children must be maintained. It may amount to a contempt of court to publish the name of any party or child.

Williams J:

1. On 10 and 11 March 2026 I heard applications for Parental Orders in respect of 3 children, and heard further applications on 24, 25, 26 and 30 March 2026. A number of cases had to be adjourned to allow further evidence to be filed, but in 9 cases I was able to hear the applications and reserved my decision.

2. My decision in respect of the applications was to grant Parental Orders in respect of each of the children and this was communicated to the parties on 1 April 2026. The reasons for those decisions are set out in the Appendix to this judgment. Those Appendices will not be published.

3. In the course of those hearings, I considered a number of issues relating to the application of Section 54 Human Fertilisation and Embryology Act 2008 (HFEA 2008), including in particular:

    i) The time limit set by Section 54(3);

    ii) Domicile within Section 54(4);

    iii) The authorisation of money or other benefits pursuant to Section 54(8);

    iv) What alternative orders existed were the Court unable to make, or were to decline to make, a Parental Order.

4. I have received invaluable assistance from the legal teams, including:

    i) Mr Osborne of Cafcass Legal appointed as an Advocate to the Court;

    ii) Ms Allman, Ms Tompkins, Dr Jackson of counsel;

    iii) Ms Gamble and Mr Rogerson solicitors.

5. I am publishing this judgment because I am conscious that the approach I have taken to the issue of the authorisation of money or other benefits, and the role public policy plays in the decision on whether to authorise, differs in a material respect to that taken by other Judges of the Family Division over the years.

The Legal Framework: Parental Orders

6. The legal framework is made up of Section 54 HFEA 2008, which outlines a set of criteria for the making of Parental Orders, and the Human Fertilisation and Embryology (Parental Order) Regulations 2018 (HFE(PO)R 2018), which apply various provisions of the Adoption and Children Act 2002 (ACA 2002) to Parental Orders, with modifications.

Section 54 Human Fertilisation and Embryology Act 2008

7. Section 54(1) HFEA 2008 defines a Parental Order as "*an order providing for a child to be treated in law as the child of the applicants*".

8. The statutory criteria for the making of a Parental Order are then set out as follows:

> *Parental orders: Two applicants.*
>
> *(1) On an application made by two people ("the applicants"), the court may make an order providing for a child to be treated in law as the child of the applicants if –*
>
> *a. the child has been carried by a woman who is not one of the applicants, as a result of the placing in her of an embryo or sperm and eggs or her artificial insemination,*
>
> *b. the gametes of at least one of the applicants were used to bring about the creation of the embryo, and*

c. the conditions in subsections (2) to (8) are satisfied.

(2) The applicants must be –

a. husband and wife

b. civil partners of each other, or

c. two persons who are living as partners in an enduring family relationship and are not within prohibited degrees of relationship in relation to each other.

(3) Except in a case falling within subsection (11), the applicants must apply for the order during the period of 6 months beginning with the day on which the child is born.

(4) At the time of the application and the making of the order –

a. the child's home must be with the applicants, and

b. either or both of the applicants must be domiciled in the United Kingdom or in the Channel Islands or the Isle of Man.

(5) At the time of the making of the order both the applicants must have attained the age of 18.

(6) The court must be satisfied that both –

a. the woman who carried the child, and

b. any other person who is a parent of the child but is not one of the Applicants (including any man who is the father by virtue of section 35 or 36 or any woman who is a parent by virtue of section 42 or 43),

have freely, and with full understanding of what is involved, agreed unconditionally to the making of the order.

(7) Subsection (6) does not require the agreement of a person who cannot be found or is incapable of giving agreement; and the agreement of the woman who carried the child is ineffective for the purpose of that subsection if given by her less than six weeks after the child's birth.

(8) The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants for or in consideration of –

a. the making of the order,
b. any agreement required by subsection (6),
c. the handing over of the child to the applicants, or
d. the making of arrangements with a view to the making of the order, unless authorised by the court.

(9) For the purposes of an application under this section –

(a) in relation to England and Wales, section 92(7) to (10) of, and Part 1 of Schedule 11 to, the Children Act 1989 (c. 41) (jurisdiction of courts) apply for the purposes of this section to determine the meaning of "the court" as they apply for the purposes of that Act and proceedings on the application are to be "family proceedings" for the purposes of that Act,

(b) in relation to Scotland … and

(c) in relation to Northern Ireland …

(10) Subsection (1)(a) applies whether the woman was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or the sperm and eggs or her artificial insemination.

9. In 2018, the HFEA 2008 was amended to insert Section 54A, which allowed single applicants to apply for Parental Orders following the same criteria.

Human Fertilisation and Embryology (Parental Order) Regulations 2018

10. Schedule 1 §7 HFE(PO)R 2018 modifies Section 46 ACA 2002 'Adoption Orders' to read;

"(1) A parental order is an order transferring parental responsibility for a child to whom the order applies to the person or persons (as the case may be) who obtained the order."

11. Schedule 1 §12 HFE(PO)R applies Section 67 ACA 2002 to Parental Orders such that the child is treated in law as the child of the person/s who obtained the Parental Order.

12. The effect of a Parental Order is therefore that it transfers legal parenthood from the surrogate (and her spouse or civil partner) to the individuals who commissioned the surrogacy (the intended parents or "IPs") and legitimises those individuals as the child's parents under the law in this jurisdiction.

13. The effect of Section 33(1) HFEA 2008 is that "…*the woman who has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman… is to be treated as the mother of the child."* However, the effect of Section 33(2) HFEA 2008 and Schedule 4 §23 HFE(PO)R is that Section 33(1) HFEA 2008 does not apply to a child to the extent that they are treated by virtue of adoption or the making of a Parental Order as not being the woman's child.

14. Schedule 4 §10 HFE(PO)R has the effect of applying Section 1(5) of the British Nationality Act to Parental Orders (as it does to Adoption Orders) and so the child becomes a British citizen on the making of the Parental Order if one of the applicants is a British citizen.

15. Schedule 1 Part 20-22 and Part 34 HFE(PO)R applies Sections 77-79 and Schedule 1(1) ACA 2002and creates a 'Parental Order Register' for children subject to Parental Orders. When a Parental Order is made, the registrar general issues a 'Parental Order Certificate' recording the applicants as the child's parents. It is a key UK legal identity document which facilitates UK passport applications, applications for child benefit, nursery entitlement, etc. Unlike Adoption Certificates, Parental Order Certificates are titled 'birth' certificates.

Alternatives to making a Parental Order

16. The above provisions apply to domestic and foreign surrogacies. No provision is made for the recognition of foreign surrogacy arrangements or orders as they are for overseas adoptions as identified in Section 66 and Section 87 ACA 2002 and Section 57 Family Law Act 1986 (FLA 1986). Given the extensive parliamentary (and other) debates around reform of the law relating to surrogacy, the absence of any equivalent '*recognition*' provision would support the Advocate to the Court's submission that the exclusive source of law dealing with surrogacy and Parental Orders is the legislative framework outlined above, and that any role for the inherent jurisdiction or common law is excluded. As it does not arise in these cases I do not ultimately need to determine the point, and so in theory I would not rule out that there might be circumstances where it could be possible to recognise a foreign surrogacy order under the inherent jurisdiction. However, absent an equivalent provision to Section 66 ACA 2002 and Section 57 FLA 1986, it would be questionable whether the Intended Parents would thereafter be treated under English law as the legal parents, and the child as the legal child of the Intended Parents.

17. It is clear from the submissions of counsel referring to the parliamentary debates accompanying the HFEA 2008, from the Hague Network Experts Final Report 'Parentage/Surrogacy', the European Parliament Briefing on Surrogacy of February 2025, and the 2023 Law Commission report 'Building Families Through Surrogacy' that the issues around the international recognition of orders relating to surrogacy is very much a subject of ongoing debate. Article 16 of the 1996 Hague Child Protection Convention is also of little, if any, assistance as it deals only with parental responsibility and its recognition, not the determination of parentage.

18. The only alternative which has almost the same legal consequences as a Parental Order is an Adoption Order. That route may become appropriate where a Parental Order is not available, as in the case of *Re Z* [2025] EWHC 339 (Fam) [2025] 4 WLR 101, where neither applicant was genetically related to the child, so the HFEA 2008 did not apply. Although an Adoption Order can also be made in a case which falls within Section 54(1)(a) & (b) or Section 54A(1)(a) & (b) HFEA 2008 but where (for instance) the other criteria are not met, such an order would not reflect the surrogacy arrangement and the underlying biological reality of a surrogacy, whereby the gametes of at least one of the applicants were used to bring about the creation of the embryo. Nor does it have quite the same legal consequences in other domains, such as how a passport is obtained, the birth certificate, and parental leave rights. The genetic parent may well have acquired the status of a parent and associated parental responsibility, either under the laws of the country of birth, by registration as a parent, or by Court Order. However, for an Intended Parent who cannot achieve the status of parent through any route other than a Parental Order, they would be left with adoption or the acquisition only of parental responsibility

(not the status of parent) through other routes such as a special guardianship order or a lives with order.

19. It is generally accepted that these are inadequate alternatives to Parental Orders, not only because they have different legal consequences, but also because of their impact on the welfare of the child. Parental Orders were created to address the consequences of scientific advancement and the needs of the Intended Parents and child, and so they are best suited to promote the welfare of the child and the needs of the parents. Ms Justice Russell described adoption as a contrivance in a surrogacy situation in *Re A & B (Children) (Surrogacy: Parental orders: time limits)* [2015] EWHC 911 (Fam). I record this to put the consideration of welfare in context.

20. Sir James Munby, President of the Family Division, emphasised the fundamental nature of a Parental Order and its relevance to the identity and welfare of a child in *Re X* (2014) EWHC 3135 (Fam);

"*Section 54 goes to the most fundamental aspects of status and, transcending even status, to the very identity of the child as a human being: who he is and who his parents are. It is central to his being, whether as an individual or as a member of his family. As Ms Isaacs correctly puts it, this case is fundamentally about X's identity and his relationship with the commissioning parents. Fundamental as these matters must be to commissioning parents they are, if anything, even more fundamental to the child. A parental order has, to adopt Theis J's powerful expression, a transformative effect, not just in its effect on the child's legal relationships with the surrogate and commissioning parents but also, to adopt the guardian's words in the present case, in relation to the practical and psychological realities of X's identity. A parental order, like an adoption order, has an effect extending far beyond the merely legal. It has the*

most profound personal, emotional, psychological, social and, it may be in some cases, cultural and religious, consequences."

21. Since its enactment s.54 HFEA 2008 has been subject to much interpretation by the courts. Section 54(2)(a) HFEA 2008 has been 'read-down' by the Courts as a consequence of the drafting of the Schedule 3, Part 1 of the Marriage (Same Sex Couple) Act 2013, which failed to include a provision interpreting references to 'husband and wife' in legislation as including the parties to a same-sex marriage: *Y & Another v V & Others* [2022] EWFC 120 at [24]-[26]. It does not appear that Schedule 3 §5 (which defines husband as including a man married to another man, and wife as including a woman married to another woman) was applied to the HFEA 2008, as it only applied to 'new' legislation. As will become apparent later in this judgment this is only one of many aspects of s.54 HFEA 2008 which the courts have interpreted so that its actual effect is rather different to its apparent meaning.

22. HFE(PO)R 2018 Schedule 1 §1 provides that certain provisions of the ACA 2002 shall; "*have effect in relation to parental orders and applications for parental orders subject to the modifications set out in those paragraphs*."

23. The effect of the amendments in Schedule 1 §2 HFE(PO)R 2018 is that in Parental Order applications Section1 ACA 2002 reads as follows;

Considerations applying to the exercise of powers

(1) Subsections (2) to (4) apply whenever a court is coming to a decision relating to the {making of a parental order in relation to} [adoption of] a child.

(2) The paramount consideration of the court must be the child's welfare, throughout his life.

(3) The court must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

(4) The court must have regard to the following matters (among others)—

(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),

(b) the child's particular needs,

(c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become the subject of a parental order,

(d) the child's age, sex, background and any of the child's characteristics which the court considers relevant,

(e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, with any person with whom the child is placed and with any other person in relation to whom the court considers the relationship to be relevant.

(6) In coming to a decision relating to the making of a parental order in relation to a child, a court must always consider the whole range of powers available to it in the child's case (whether under section 54 or 54A (as the case may be) of the Human Fertilisation and Embryology Act 2008, under this Act as applied with modifications by regulation 2 of and Schedule 1 to the Parental Order Regulations or under the Children Act 1989); and the court must not make any order under either of those sections or this Act as applied unless it considers that making the order would be better for the child than not doing so.

(7) In this section, "coming to a decision relating to the making of a parental order", in relation to a court, includes—

(a) coming to a decision in any proceedings where the orders that might be made by the court include a parental order (or the revocation of such an order),

(b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an individual under this Act,

but does not include coming to a decision about granting leave in any other circumstances.

(8) For the purposes of this section—

(a) references to relationships are not confined to legal relationships,

(b) references to a relative, in relation to a child, include the child's mother and father.

24. One of the questions I have been considering is the definition of *"coming to a decision relating to the making of a Parental Order"* and in particular whether the welfare considerations at Section 1(2) and (4) ACA 2002 (including paramount welfare) apply to all of the Section 54 HFEA 2008 criteria.

25. Curiously Schedule 1 §2(e) of the HFE(PO)R 2018 applies Section 1(4) ACA 2002 in a way which excludes from the welfare checklist the ability of the Intended Parents to provide the child with a secure environment in which the child can develop and otherwise to meet the child's needs. One might infer from this that the legislature intended thereby for the Court not to take these matters into account in

applying the welfare checklist, which would be a somewhat unusual approach. In practice it appears that Cafcass and the Courts do consider the excluded welfare matters under Section 1(4) ACA 2002, but as part of '*among other [matters]*', and by reference to the *'child's particular needs'* and *'any harm which the child has suffered or is at risk of suffering'*.

26. The replacement of the words *'the adoption of'* with the words *'the making of a parental order in relation to'* seems to be intended to be a like-for-like replacement rather than an amendment that alters the substance of the content, although I accept that an argument could be made to different effect. As a matter of language, 'adoption' seems to mean 'the making of an adoption order in relation to', and it is hard to think of the word in surrogacy which would be the equivalent. If that is right, then the jurisprudence under the ACA 2002 that addresses preliminaries to the making of the Adoption Order, such as leave under Section 24(2) or Section 42(6) ACA, would also potentially be relevant to similar issues arising under the HFEA 2008.

27. However, although the provisions of Section1(7) ACA 2002 apply and set out the meaning of '*coming to a decision'* and how this includes some 'leave' issues and not other 'leave' issues, much of this is redundant in the context of HFEA 2008, as there are no provisions within that Act which are akin to or mirror the ACA 2002 'leave' provisions. The only provision of the ACA 2002 which contains a 'leave' requirement which applies to Parental Orders is that under Section 37(a) ACA 2002, which allows "…*a person who has the court's leave*" to remove a child from a person with whom the child has his home and who has applied for a Parental Order. There is no other provision in the HFEA environment which requires the Court to

consider granting leave as features frequently in the ACA 2002 (Sections 24(2)(a), 26(3)(f), 28(2), 29(5)(b), 30(2), 42(6), 47(3) & (5)).

28. The Court of Appeal has considered the meaning of *"coming to a decision"* under Section 1(7) ACA 2002 within the adoption context in *M-v-Warwickshire CC* [2008] 1 FLR 1093 (Wilson LJ) and in *Re P (Adoption: Leave Provisions)* [2007] 2 FLR 1069 **(**Wall LJ). The Court of Appeal in *Re P* (above) said that they considered Section 1(7) ACA 2002 to be poorly drafted and unnecessarily obscure, and the outcome of that case does not shed much light on what it might mean in the context of Parental Orders.

29. Clearly *"coming to a decision"* covers the making of the Parental Order itself. It also probably covers the possible removal of a child by a person granted leave under Section 37(a) ACA 2002 (as applied), as that would be "*leave in respect of an action which may be taken by an individual".* The wording "*coming to* ***a decision*** *in any proceedings where the orders that might be made by the court include a parental order"* would be wide enough potentially to cover **all** decisions taken in the application for a Parental Order, whether they were case management decisions or decisions on other Section 54 conditions such as domicile. That interpretation would be somewhat surprising, although not inconsistent with *Re X (A Child) Surrogacy Time Limit)* [2014] EWHC 3135, where Sir James Munby said at [54], *"the court considering an application for a parental order is required to treat the child's welfare throughout his life as paramount*", and found that that the proper interpretation of Section 54(3) HFEA 2008 ("*... the applicants must apply for the order during the period of 6 months beginning on the day on which the child was born"*) was that the Court retained a jurisdiction to make a Parental Order on an

application issued more than 6 months after the birth of the child. That conclusion was reached on 'pure' statutory interpretation grounds, but also on ECHR grounds to ensure that the essence of the protected right to family and private life was not impaired.

30. The meaning of "*coming to a decision*" within Section 1(7) ACA 2002 as applied by the HFE(PO)R 2018 does not appear (so far as counsel and my own researches have been able to uncover) to have been considered in the authorities on surrogacy in any context and so has not been the subject of consideration where the application of the Court's power under Section 54(8) HFEA 2008 to authorise money paid above reasonable expenses has been in issue.

Section 54(8) HFEA 2008 on authorisation of reasonable expenses

31. Section 54(8) HFEA 2008 provides that *"The court must be satisfied that no money or other benefit (other than for expenses reasonably incurred) has been given or received by either of the applicants ... unless authorised by the court."* The term '*authorise*' self-evidently does not appear in Section 1(7) ACA 2002 as applied.

32. Substituting the term 'granting leave' in Section 1(7)(b) ACA 2002 (as applied) with 'authorise' does not shed much light, as the wording would be, "***"coming to a decision relating to the making of a parental order", in relation to a court, includes … (b) coming to a decision about granting [authorising] in respect of any action … which may be taken by an individual under this Act".*** The payment of monies is not an action which might be taken by an individual under that Act (the ACA 2002).

33. It was submitted by counsel that as the decision on the authorisation of monies is a discretionary decision, rather than a determination of whether a condition is met, it fits more readily within the broad definition of 'coming to a decision' in Section 1(7)(a) ACA 2002, and given that the consequence of refusal to authorise would be to prevent a Parental Order being made even if the welfare of the child supported it, then a purposive interpretation of the sections, as well as one which best protected the essence of the Article 8 rights, would be one which applied paramount welfare.

34. The alternative interpretation would be to align authorisation under Section 54(8) HFEA 2008 with the approach to other 'procedural' type decisions, including those for leave about the initiation of proceedings (leave to apply to revoke a placement order, for instance). That would result in authorisation being determined in an environment where welfare was not the paramount consideration but was instead either **the** primary consideration or **a** primary consideration.

35. In other areas of family law where 'gateway' conditions apply before the Court can make a substantive welfare order the role that the child's welfare plays is more commonly that of a primary consideration. That may be seen in applications for leave to apply for a Children Act 1989 order (see *M-v-Warwickshire CC* 2008 1 FLR 1093 and *Re A and W (Minors)* [1992] 2 FLR 154) but also leave to apply to revoke a placement order.

36. In *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166 the Supreme Court considered the effect of Article 3.1 UNCRC and confirmed that in any decision affecting a child (but not determining its upbringing, being adopted or removed from parents) the welfare of the child would be a primary consideration. The Supreme Court explored and explained the distinction between decisions

directly affecting the child's upbringing, where welfare is the paramount consideration, and decisions which affect the child more indirectly, where welfare is a primary consideration, and what *'a primary consideration'* meant. Baroness Hale said;

"[25] .... Of course, despite the looseness with which these terms are sometimes used, a primary consideration is not the same as the primary consideration still less as the paramount consideration….

[26] .... As the Federal Court of Australia further explained in Wan v Minister for Immigration and Multicultural Affairs (2001) 107FCR 133, para 32:

> *"[The tribunal] was required to identify what the best interests of Mr Wan's children required with respect to the exercise of its discretion and then to assess whether the strength of any other consideration, or the cumulative effect of other considerations, outweighed the consideration of the best interests of the children understood as a primary consideration."*

This did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first."

37. The 'primary welfare' environment is one where the Court may readily weigh in the balance the child's welfare alongside other matters, such as public policy

considerations. As explained by the Supreme Court, in such an environment the child's welfare might be outweighed by other considerations, which in the context of Section 54(8) HFEA 2008 would draw in matters of public policy. That is the approach which was applied by the courts prior to 2010.

38. Prior to the enactment of the HFEA 2008, Parental Orders were made under Section 30 HFEA 1990, to which applied the Parental Orders (Human Fertilisation and Embryology) Regulations 1994 (the 1994 Regulations). Schedule 1(1) of the 1994 Regulations applied Section 6 of the Adoption Act 1976 as follows:

"*Duty to promote welfare of child.*

In reaching any decision relating to an application for a parental order a court shall have regard to all the circumstances, ***first consideration*** *being given to the need to safeguard and promote the welfare of the child throughout his childhood."* [emphasis added]

39. In cases such as *Re X & Y (Foreign Surrogacy)* [2008] EWHC 3030 (Fam), Hedley J referred to the test for authorising payments (then under Section 30(7) HFEA 1990) in this way;

"[20] On the other hand, given that there is a wholly valid public policy justification lying behind Section 30(7), ***welfare considerations cannot be paramount but, of course, are important****. That approach accords with that adopted in the previous cases and also accords with the approach adopted towards the authorising of breaches of the adoption legislation…. There the court was concerned in particular with serious (and indeed dishonest) breaches of Section 29 of the Adoption Act 1976 yet in the final striking of the balance between public policy considerations and the*

welfare of the child concerned the judge nevertheless made an interim adoption order.

[21] In relation to the public policy issues, the cases in effect suggest (and I agree) that the court pose itself three questions:

i) *was the sum paid disproportionate to reasonable expenses?*

ii) *were the applicants acting in good faith and without 'moral taint' in their dealings with the surrogate mother?*

iii) *were the applicants party to any attempt to defraud the authorities?*"

[emphasis added]

40. He also identified at [24] that, even then, with welfare as a first consideration, the statutory scheme created a dilemma for the Courts;

"I feel bound to observe that I find this process of authorisation most uncomfortable. What the court is required to do is to balance two competing and potentially irreconcilably conflicting concepts. Parliament is clearly entitled to legislate against commercial surrogacy and is clearly entitled to expect that the courts should implement that policy consideration in its decisions. Yet it is also recognised that as the full rigour of that policy consideration will bear on one wholly unequipped to comprehend it let alone deal with its consequences (i.e. the child concerned) that rigour must be mitigated by the application of a consideration of that child's welfare. That approach is both humane and intellectually coherent. The difficulty is that it is almost impossible to imagine a set of circumstances in which by the time the case comes to court, the welfare of any child (particularly a foreign child) would not be

gravely compromised (at the very least) by a refusal to make an order. Bracewell J's decision in Re AW (supra) is but a vivid illustration of the problem. If public policy is truly to be upheld, it would need to be enforced at a much earlier stage than the final hearing of a Section 30 application."

41. He built on this line of approach in *Re S* (2009) EWHC 2977, saying at [7];

"This clearly raises matters of public policy and those matters really relate to, as it seems to me, three things:

(1) To ensuring that commercial surrogacy agreements are not used to circumvent childcare laws in this country, so as to result in the approval of arrangements in favour of people who would not have been approved as parents under any set of existing arrangements in this country.

(2) The court should be astute not to be involved in anything that looks like the simple payment for effectively buying children overseas. That has been ruled out in this country, and the court should not be party to any arrangements which effectively allow that.

(3) The court should be astute to ensure that sums of money which might look modest in themselves are not in fact of such a substance that they overbear the will of a surrogate."

42. The law changed when the HFEA 2008, and the accompanying Human Fertilisation and Embryology (Parental Orders) Regulations 2010 (the 2010 Regulations), came into force on 6 April 2010. By this time, the ACA 2002 had been enacted and the

welfare of the child in adoption had moved from being the Court's first consideration to being the *paramount* consideration. In the Government's prior 'Consultation on a review of Parental Order Regulations' document dated September 2009, the Government set out its intention to elevate the welfare of the child to become the Court's paramount consideration, stating at paragraph 44;

"*The welfare principles in the new adoption legislation in Scotland and England and Wales reflect the Children Act 1989, making the welfare of the child the paramount consideration of the court in deciding whether to grant an adoption order. The Draft Regulations therefore enact this provision in relation to Parental Orders granted in England, Wales and Scotland. This is in line with wider Government policy about child welfare."*

43. During the debate on the 2010 Regulations, the Parliamentary Under-Secretary of State, Department of Health (Baroness Thornton) said;

"*As I have already outlined, the 2010 parental orders order applies current adoption legislation, with modifications, to parental orders.* ***The order makes the welfare of the child the paramount consideration of the court when deciding whether to grant a parental order.*** *This emphasises the value of the child's interests and is in line with the approach in adoption cases. The welfare checklist set out in the Adoption and Children Act 2002 is also applied, with modifications, to parental orders. This is designed to support the courts in specifying the matters they should take into account when considering, for example, the particular needs of the child. The order was subject to a three-month public consultation in the autumn of 2009, and the responses received demonstrated broad agreement with the approach taken*." [emphasis added]

44. Similar statements were made by the Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) when the 2018 HFE(PO)R were being debated.

45. It is self-evident that welfare was to be paramount when considering whether to make a Parental Order – the ultimate decision – but the parliamentary debates shed no light at all on whether the authorisation of payments was considered to be part and parcel of the ultimate decision, or whether it was in a different category.

46. Absent any indication from the legislature in its discussions, and absent any direction from Section 1(7) ACA 2002 as how 'authorisation' was to be approached in the hierarchy of decisions, it is perhaps no surprise that when the legislation was first considered by the Court, Hedley J identified that authorisation was now to be approached from the paramount welfare perspective. He considered a case issued on the very day the 2010 Regulations (and therefore the paramount welfare principle in the ACA 2002) came into effect, in <u>*Re L (A Child) (Parental Order: Foreign Surrogacy)*</u> [2010] EWHC 3146 (Fam) [2011] 2 WLR 1006. In that case, the provisions of Section 1(7) ACA 2002 and the meaning of *"coming to a decision"* was not (seemingly) canvassed. He said at [9];

"*The significant change in the new Act other than the enlargement of the scope of applicants relates to the welfare test. The effect of the 2010 Regulations (SI 2010/986) is to import into Section 54 applications the provisions of Section 1 of the Adoption and Children Act 2002. In fact, in Re X and Y (supra) the court had adopted in its welfare consideration the perspective of the 2002 Act.* ***What has changed, however, is that welfare is no longer merely the court's first consideration but becomes its paramount consideration****."*

"The effect of that must be to weight the balance between public policy considerations and welfare (as considered in Re X and Y) decisively in favour of welfare. It must follow that it will only be in the clearest case of the abuse of public policy that the court will be able to withhold an order if otherwise welfare considerations supports its making... ***I think it important to emphasise that, notwithstanding the paramountcy of welfare, the court should continue carefully to scrutinise applications for authorisation under Section 54(8) with a view to policing the public policy matters identified in Re S (supra) and that it should be known that that will be so****."* [emphasis added]

47. The approach taken by Hedley J has been consistently followed in the very many cases which have been determined since, summarised in *Re WT (a child)* [2014] EWHC 1303 by Theis J at [35];

"*When considering whether to authorise the payments made in this case the relevant principles are firmly established by the cases*

(1) The question whether a sum paid is disproportionate to "reasonable expenses" is a question of fact in each case. What the court will be considering is whether the sum is so low that it may unfairly exploit the surrogate mother, or so high that it may place undue pressure on her with the risk, in either scenario, that it may overbear her free will;

(2) the principles underpinning section 54 (8), which must be respected by the court, is that it is contrary to public policy to sanction excessive payments that effectively amount to buying children from overseas.

(3) however, as a result of the changes brought about by the Human Fertilisation and Embryology (Parental Orders) Regulations 2010, the decision whether to authorise payments retrospectively is a decision relating to a parental order and in making that decision, the court must regard the child's welfare as the paramount consideration.

(4) as a consequence it is difficult to imagine a set of circumstances in which, by the time an application for a parental order comes to court, the welfare of any child, particularly a foreign child, would not be gravely compromised by a refusal to make the order: As a result: "it will only be in the clearest case of the abuse of public policy that the court will be able to withhold an order if otherwise welfare considerations support its making", per Hedley J in Re L (Commercial Surrogacy) [2010] EWHC 3146 (Fam), [2011] 2WLR 1006, at paragraph 10.

(5) where the applicants for a parental order are acting in good faith and without 'moral taint' in their dealings with the surrogate mother, with no attempt to defraud the authorities, and the payments are not so disproportionate that the granting of parental orders would be an affront to public policy, it will ordinarily be appropriate for the court to exercise its discretion to give retrospective authorisation, having regard to the paramountcy of the child's lifelong welfare."

48. This approach was endorsed by Munby P in *Re X (Time Limits)* (supra), and the ongoing relevance of public policy appears in many cases since;

(i) *K v Z* [2025] EWHC 927 where the judge said, *"There has been no abuse of public policy with respect to the payments received by the surrogate; she has received the monies owed to her and those sums were, in a Californian*

context, not so great as to distort her agency within not only the surrogacy process but also within these legal proceedings."

(ii) A-v-X (Foreign Surrogacy) [2025] 4 WLR 73, "*I have carefully considered the questions of public policy. I am mindful of the need to have in mind the lifelong welfare needs of the child and to consider public policy issues in the context of whether such issues reach the threshold set out by Hedley J in Re L (ibid) as being the 'clearest case'."*

49. As has been noted by the Supreme Court, the Law Commission, and as is noted by the advocates in this case, there has not been a single case where the Court has not authorised the payment of monies made in excess of reasonable expenses. Given the wording of Section 54(8) HFEA 2008 is that *"the court must be satisfied that no money or other benefit has been given by either of the applicants for or in consideration of ... the making of the arrangements with a view to the making of the order unless authorised by the court,"* it might seem something of a surprise that a provision which reflected a public policy of discouragement of commercial surrogacy has in practice in commercial foreign surrogacy cases never had the presumably desired effect, and in 100% of cases where monies have been paid in excess of reasonable expenses they have always been authorised.

50. When one considers that the interpretation of an apparently absolute time limit bar in Section 54(3) HFEA 2008 now in effect has the words "*unless an extension of time is granted by the court*" inserted, and the words of Section 54(8) HFEA 2008 now in practice read "*where the court is satisfied that money or other benefit has been given by the applicants in consideration of the making of arrangements with a view to the making of the order the court shall authorise them if the welfare of the child*

supports the making of a parental order", the statutory scheme is applied somewhat differently to its appearance. However, the Law Commission paper of 2023 identified these issues and given that their recommendations are not being taken forward, it seems that the legislature does not regard this situation as a matter requiring action.

51. Drawing together the points relating to the proper interpretation of Section 1(7) ACA 2002 as applied by the HFE(PO)R 2018, and how the courts have applied Section 1(1) ACA 2002 since 2010, I accept – contrary to my initial inclination – that the issue of authorisation of money or benefit under Section 54(8) HFEA 2008 is to be approached by the application of a paramount – not a primary – welfare test.

52. That inevitably (if somewhat inversely) means that in determining whether to grant a Parental Order the Court determines the paramount welfare of the child in order to determine whether a condition is satisfied to allow it to make a Parental Order. The fact that no application has ever been refused – even in egregious cases – suggests that the ongoing reference to public policy as a possible bar to the making of a Parental Order may be something of a fig-leaf.

What is the meaning of Paramount Welfare?

53. This may seem an unusual question to pose given it is the test deployed throughout child law for determining substantive decisions under the Children Act 1989 or the ACA 2002, but I have been troubled by how it is approached in these applications if the test is (as I have found it to be) that the Court should authorise the payments if the paramount welfare of the child requires it. In each of the applications relating to

Section 54(8) HFEA 2008, I have been invited to consider the following three issues to determine whether I should authorise the money paid:

(i) Was the sum paid disproportionate to reasonable expenses?

(ii) Were the applicants acting in good faith and without 'moral taint' in their dealings with the surrogate mother?

(iii) Were the applicants party to any attempt to defraud the authorities?

54. In each of the cases I have asked the question of how these issues relate to the welfare of the child concerned. If I were to record that the respective advocates found it easier to identify how they were relevant to public policy than to welfare I hope I do not do them a disservice. The answer which emerges in effect is that the authorities (commencing with *Re X and Y (Foreign Surrogacy)* [2008] EWHC 3030 and continuing ever since) have required the Court to consider these points to answer the authorisation question, even though it is paramount welfare that ultimately applies.

55. The roots of these 3 questions are found in the decision Hedley J in *Re X and Y (Foreign Surrogacy)* [2009] Fam 71 which are recorded above at #40 & 42. In that case he identified that there was a public policy consideration underpinning the prohibition of the payment of monies beyond reasonable expenses, and that the issue of authorisation involved a balancing of public policy with welfare; but not welfare as a paramount consideration. It is plain from the language that Hedley J used in outlining the 3 questions (outlined above) that he regarded these as 'pure' public policy issues, discrete from welfare.

56. In *Re S* (2009) EWHC 2977 (above) Hedley J identified the 3 further public policy points set out at #42 above.

57. The first question and the third point of public policy would seem to be 'pure' public policy, but in fact might find a connection with the consent, as the question of whether the will of the surrogate is overborne would bear upon whether the Court was satisfied that the surrogate was *"**freely** and with full understanding unconditionally [agreeing]"* to the making of the Parental Order. The second question and the first point of public policy would seem to find a connection with welfare in the 'suitability' of the intended parents. The third question would seem to be pure public policy although acts of fraud might sound in suitability also. The second point would seem to be 'pure' public policy.

58. When the legislation changed in 2010 to make welfare the paramount consideration Hedley J made the point that the decision making had moved decisively in favour of welfare albeit he said that clear cases of abuse of public policy might justify withholding a Parental Order. He said:

*I think it important to emphasise that, notwithstanding the paramountcy of welfare, **the court should continue carefully to scrutinise applications for authorisation under Section 54(8) with a view to policing the public policy matters identified** in Re S (supra) and that it should be known that that will be so."*

59. In the course of the hearings in these cases it was submitted that public policy in relation to commercial surrogacy has changed and that the decision of the Supreme Court in *XX v Whittington Hospital NHS Trust* [2021] AC 275 confirmed that a commercial surrogacy arrangement entered into overseas is not contrary to public policy merely by reason of its commerciality, or by reason of the sums paid pursuant

to the surrogacy agreement. This submission was based on the outcome of that case, where the Court held that "*it is no longer contrary to public policy to award damages for the costs of a foreign commercial surrogacy".* The Supreme Court set out the extensive material which they relied on in reaching that conclusion, which I shall not recite here and also acknowledged that commercial surrogacy might be exploitative.

60. In *Re Z (Foreign Surrogacy)* [2025] 1 FLR 900, the President made Adoption Orders where a Parental Order was not available because the Intended Parents were not genetically linked to the children. The circumstances were as far removed from being best practice and child-focused as the Court encounters – not dissimilar to the *A-v-X* (above). The Government, through the Home Office and the Department for Health and Social Care, made representations which said;

    a. *The issues raised in this case give rise to significant legal and public policy considerations.*

    b. *The Home Office is concerned there may be elements of exploitation … with the circumstances surrounding the surrogacy agreements suggesting very strongly this was in all but name a commercial surrogacy agreement resulting in two children being rendered stateless.*

    c. *Where the Home Office or HMG is on notice in similar cases in future… [they] may seek findings in respect of commercial surrogacy and/or exploitation.*

d. *The Home Office has significant concerns on grounds of public policy … In appropriate cases the Home Office will consider an adoption order ought to be opposed on public policy grounds in any event.*

e. *UK citizens travelling overseas for a surrogacy may be at risk of being involved in arrangements that use exploitation and could be exploited themselves. The Government has published guidance on surrogacy overseas that is available online and specialist legal advice is always recommended when considering having a child through surrogacy.*

61. The President said at [34];

"…the fact that the court felt obliged to make adoption orders in the present case, should not be taken as any precedent that, in any future case on similar facts, an adoption order will be made. The publication of this judgment, and the clear indication that the Government may, in any future case, oppose the making of adoption orders, should put would-be parents (of any age) who are contemplating entering into a commercial foreign surrogacy arrangement on notice that the courts in England and Wales may refuse to grant an adoption order (or if HFEA 2008, section 54(1)(b) or section 54A(1)(b) is satisfied, a parental order), with the result that the child that they have caused to be born may be permanently state-less and legally parent-less. Put bluntly, anyone seeking to achieve the introduction of a child into their family by following in the footsteps of these applicants should think again."

62. I also note that in the 2023 Law Commission report they described the Court's being in the *"invidious position"* of having to retrospectively authorise monies paid in excess of reasonable expenses, and there being no consequences arising from the breach. The Law Commission report was considered by the APPG on Surrogacy in a

parliamentary debate on 21 January 2020. They confirmed that their position was that altruistic surrogacy should be maintained in the UK, and they wanted to *"avoid the commercial arrangements that exists elsewhere*", and 71% of surrogates surveyed agreed that a surrogate should only be able to claim expenses. Thus whilst public attitudes to surrogacy have moved and continue to move, I would not be confident – particularly having regard to the Home Office submissions to the President – that one could say that public policy in relation to commercial surrogacy is no longer an issue. I also note that in other applications for parental orders the Home Office has granted leave to children to enter outside the rules for the specific purpose of obtaining a UK parental order.

63. Whatever the position in public policy terms, the caselaw shows that public policy, and the 3 questions identified by Hedley J some 15 years ago as bearing upon the issue of authorisation, have endured as a 'test' to be applied by the Courts. That clearly represent a continuous thread by which public policy has continued to feature as a component of the authorisation decision under Section 54(8) HFEA 2008.

The Current State of the Law: Paramount Welfare and Public Policy

64. The classic formulation of the meaning and effect of "paramount welfare" can be found in the formulation of Lord MacDermott in *J v C* [1970] AC 668 at [710]-[711], [1969] 1 All ER 788 at 821, HL;

"[the words first and paramount] must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question… they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the

child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon and determines the course to be followed."

65. In *Re D (An Infant) (Adoption: Parent's Consent)* [1977] AC 602 at p 638, Lord Simon of Glaisdale said, in reference to the equivalent section in the Children Act 1975;

"In adoption proceedings the welfare of the child is not the ***paramount consideration (ie outweighing all others)*** *as with custody or guardianship; but it is the first consideration (ie outweighing any other)…*" [emphasis added]

66. Paramount welfare incorporates a wide range of issues and circumstances. Section 1(2) and (4) ACA 2002 requires the Court to consider various matters '*among other*s'. Section 1(1) and (3)ACA 2002 do not explicitly refer to other matters, but the Court's approach to what is relevant to welfare has been approached very widely.

67. In *Re G* (*Education*: *Religious Upbringing*) [2012] EWCA Civ 1233, 2013 1 FLR 677, Sir James Munby reviewed the meaning of welfare and referred to the following:

i) *Evaluating a child's best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations, everything that is conducive to a child's welfare and happiness or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment. The child's social, cultural, ethnic and religious community is potentially relevant and has, where*

appropriate, to be taken into account. The judge must adopt a holistic approach.

ii) *Welfare in this context is synonymous with wellbeing and interests.*

iii) *Depending on the nature of the application, the judge must consider the child's welfare now, throughout the remainder of the child's minority, and into and through adulthood, taking a medium to long-term view and avoiding according excessive weight to what may be short-term or transient problems.*

68. It is clear that what Lord MacDermott and Sir James Munby are referring to are matters which are relevant to or inform an evaluation of this particular child's welfare. Public policy when it relates to children as a concept within the law is generally taken into account in order to protect children in general, rather than because it protects the subject child but very often the public policy is largely or entirely separate from anything to do with child welfare. Acknowledging that fundamental distinction makes it hard to see how public policy can legitimately feature in the evaluation of the paramount welfare of the subject child. That is in sharp contradistinction to the position in a primary welfare situation, where public policy is readily placed in the scales of justice on the one side, whilst the welfare of the individual child is placed in the other side.

69. In *Re An Adoption Application* [1992] 1 FLR 341, which also considered the issue of authorisation of unlawful payments, Hollings J confirmed that the Court could authorise payments weighing all the circumstances of the case, balancing the welfare of the child as the first consideration against the degree to which the payments were undesirable as a matter of public policy. The adoption legislation at that time (which found its way into the early HFEA legislation) of course provided that the welfare of

the child was not the paramount consideration (outweighing all others), as with custody or guardianship; but it was the first consideration. Hollings J identified matters which emerged from breaches of the law as being relevant to welfare as distinct from matters which were purely related to public policy.

70. In *FAS v Secretary of State for the Home Department and Another* [2016] 2 FLR 1035 the Court was concerned with the potential misuse of an adoption application to circumvent immigration rules. Sales LJ considered previous authorities which had considered the interplay of welfare and immigration issues when the test for adoption was 'first consideration', and confirmed that the effect of the changes effected by Section 1(2) ACA 2002 was to give welfare of the child very much more weight. He said;

> *[42] The result of this is that if, after taking account of the practical benefits of adoption for a child throughout his life, it can be seen that it best promotes the child's welfare that he be adopted by a British citizen so as automatically to acquire British citizenship under s 1(5) of the 1981 Act, the court should ordinarily make the adoption order which is sought. Just as for the first of the periods considered by Lord Hoffmann in the context of applying s 6 of the 1976 Act in Re B, the state's interest in maintaining effective immigration controls will have very little significance**. It will not be appropriate for a court to refuse to make the order as some sort of indirect means of reinforcing immigration controls.***

[43] ***I can readily see that the Secretary of State for the Home Department might be concerned at this result. But if she wishes the courts to have the ability to give***

greater weight to considerations of immigration policy in the context of deciding whether an adoption order should be made, she will need to persuade Parliament to change s 1 of the 2002 Act to allow that to happen.

71. Sir James Munby considered the interplay of welfare and public policy (immigration) in the matter of N (A Child) [2016] EWHC 3085 (Fam). He said this;

"*For present purposes the key point is that the Secretary of State (or the FTT judge) and the family court are performing different functions; that they are applying different tests arising under different legal regimes; and that* ***the perspective of the family court is a narrow focus on the welfare of the individual child****, whereas the perspective of the Secretary of State is different and much wider, having to balance the child's private interest against the public interest in a proper system of immigration control, so that the child's interests whilst a "primary consideration" in the immigration context are not, as in the family court, "paramount": ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, [2011] 2 AC 166. 177. Plainly, as I said in Re A, paras 66, 71, although the family court "does not act as a policeman for the Secretary of State", it must be alert to the possibility that in cases such as this it is "being used by desperate parents for ulterior purposes." And where the proceedings are being used for some impermissible purpose amounting to an abuse of process they will be struck out: S v S [2008] EWHC 2288 (Fam), [2009] 1 FLR 241. But that is simply not this case."*

72. Prior to the changes made by the ACA 2002, the approach to public policy in the determination of whether to authorise payments and to make a Parental Order was broadly akin to that which would apply where welfare is the primary consideration,

mirroring the approach articulated by the Supreme Court in *ZH-Tanzania* and the continuing approach to leave applications.

73. However since welfare became paramount in Parental Order applications, and certainly as our approach to paramount welfare has developed through the authorities outlined above, it seems to me they make clear that 'public policy' can play no part in a paramount welfare determination, and that if one were to weigh public policy issues in the decision-making it would be wrong as a matter of law. The paramount welfare environment is dramatically different and in my view goes much further than to weigh the balance between welfare and public policy decisively in favour of welfare; rather, pure public policy matters are not a legitimate part of the balance at all. The suggestion that egregious examples of breaches of public policy might still outweigh welfare considerations, and could tilt the balance against the making of a Parental Order, are in my view wrong as a matter of law. It seems that this legal reality is reflected by the fact that in no reported case has even the most egregious breach led the Court to decline to make a Parental Order. Dr Jackson identified that this situation has been identified as a '*legal fiction*' by some commentators. One can readily understand why state authorities would wish to hold a public policy line against commercial surrogacy in the UK, in order to prevent the exploitation of vulnerable women, or the purchase of children, or even the development of a competitive overseas commercial market. The SSHD's position in *Re Z* (above) suggests that these remain live issues. Hedley J identified nearly 2 decades ago that the Family Court and the Parental Order legal framework was not well suited to considering the public policy issues; I myself would go further and say that it is not one in which pure public policy issues can in my view legally be addressed.

74. The maintenance of the formulation that in considering the authorisation of monies the Court should consider the components identified by Hedley J has, in my view, become something akin to the "Emperor's new clothes" where we maintain that Parental Order applications are clothed with public policy garments when both in law and in practice the birthday suit of paramount welfare is all there is to see.

75. As Sales LJ said in relation to adoption, if Parliament wants the Court to look at public policy it should consider giving the Courts the tools to do so by amending HFE(PO)R 2018 and how Section 1(2) or 1(7) ACA 2002 is applied to make clear that in relation to the authorisation of monies we are to take account of public policy. That could be achieved by an amendment to Section 1(7) to include at the end of the last sentence the words "*or the authorisation provided for in s.54(8) HFEA 2008"*.

76. If 'public policy' cannot sound in the authorisation decision because it is a paramount welfare decision, that reasoning would also potentially apply even to the situation contemplated by Sir James Munby in *Re A* (above) where the Court considers that the application is in itself brought for a collateral purpose, or is otherwise an abuse of the Court process, as arguably a decision to strike out an application would also fall within the parameters of "*coming to a decision in any proceedings where ... a parental order might be made."* It is hard to envisage a collateral purpose in surrogacy as opposed to adoption, but one can never rule out the ingenuity of humans to come up with new situations where public policy in preventing an abuse of the process of the Court might lead to an application being summarily dismissed. However, as the issue does not arise in any of the applications before me, I do not need to decide it.

77. If public policy can play no role, if it has no traction, or does not sound within a welfare issue, this would mean:

a. Pure breaches of legal requirements could not on their own even be taken into consideration by the Court.

b. The payment of sums which are significantly disproportionate – even grossly disproportionate – to the expenses could not on their own be taken into account. 'Indecent Proposal' levels of payments might potentially sound in suitability, or whether the surrogate had 'freely' consented. If her will was overborn by payments in being induced into an arrangement it would arguably sound in whether she freely consented to the making of the parental order. Having been induced by a sum sufficiently large (in relative not absolute terms) to sign a contract, it would be a brave surrogate who had the strength of will to break that contract and potentially face proceedings for return of the monies paid. The circumstances of the country of origin of the surrogate, and their domestic position, and the relationship the sums bear to their situation, might be relevant to this separate condition but all of this sounds in Section 54(6) HFEA 2008, not 54(8).

c. Whether the intended parents acted in good faith or bad faith and took advantage of the surrogate would be irrelevant unless it sounded in Section 54(6) or sounded in the capability of the Intended Parents to meet the child's needs, or placed her at risk of harm.

78. Having said that public policy cannot be taken into consideration, I would emphasise that what I am referring to is 'pure' public policy, rather than behaviour of the

Intended Parents, which might fall foul of public policy, and which also sounds in the welfare of the child. Ms Allman submitted (and I agree with her) that;

"In reality, the most egregious abuses of public policy are likely to be factors that militate against a parental order being in the best interests of the child(ren). In a case involving clear exploitation of a surrogate or commodification of a child by the applicants in bad faith, this would not only be an egregious abuse of public policy, but also those same factors must be relevant to the welfare exercise that the court is required to undertake."

79. Although for reasons I am unclear about the implementation of Section 1(4) ACA 2002 by the HFE(PO)R 2018 removed the *'ability and willingness of the intended parents to provide the child with a secure environment in which the child can develop and otherwise to meet her needs'* as matters to which the Court must have regard, I have no doubt that the capability of the Intended Parents to meet the child's needs must be a component of the determination of paramount welfare. To not include it would be a strange approach to welfare. As referred to above, in practice capability is drawn in through the consideration of the child's needs and the risk of harm and so, although somewhat tangential, those clearly enable the Court to consider factors relevant to the Intended Parents' capability. The Court is required to have regard to the 'matters' set out in the welfare checklist. It can take account of other matters as it refers to the welfare checklist matter as being '(*among others*)' and so one of those other matters might potentially be public policy matters. But it is clear that those matters must sound within the 'paramount welfare of the child'.

80. In recent years judges – in particular Theis J but also the President and Knowles J – have identified a non-exhaustive list of matters which those wishing to explore

surrogacy should address. The composite list is as follows;

a. What is the relevant legal framework in the country where the surrogacy arrangement is due to take place and where the child is to be born? Put simply, is such an arrangement permitted in that country?

b. When the child is born will the Intended Parents be recognised as parents in that country, if so, how? By operation of law or are the intended parents required to take some positive step and, if so, what steps need to be taken and when (pre or post birth)?

c. What is the surrogate's legal status regarding the child at birth?

d. If the surrogate is married at the time of the embryo transfer and/or the child's birth what is the surrogate's spouse's legal status regarding the child at birth?

e. If an agency is involved, what role do they play in matching the surrogate with the intended parents?

f. What information, preparation or support has the surrogate had about any proposed surrogacy arrangement?

g. Does the surrogate speak and/or read English? If not, what arrangements are in place to enable her to understand any agreement signed?

h. Will the intended parents and the surrogate meet and/or have contact before deciding whether to proceed with a surrogacy arrangement?

i. When will the agreement between the intended parents and surrogate be made, before or after the embryo transfer, and what are the reasons for it

being at that time?

j. What arrangements are proposed for contact between the intended parents and the surrogate during the pregnancy and/or after the birth? For example, is it only via the agency or can there be direct contact between the intended parents and the surrogate.

k. Which jurisdiction will the embryo transfer take place and which jurisdiction will the surrogate live in during any pregnancy?

l. Can the jurisdiction where the child is to be born be changed at any stage and, if so, by whom and in what circumstances?

m. What nationality will the child have at birth?

n. Following the birth of the child what steps need to be taken for the child to travel to the United Kingdom, what steps need to be taken to secure any necessary travel documentation for the child and how long does that take?

o. Will the Intended Parents need to take any separate immigration advice to secure the child's travel to the United Kingdom and what is the child's status once the child has arrived in this jurisdiction.

p. Finally, keeping a clear and chronological account of events and relevant documents is not only important for the purposes of a parental order application but also, importantly, retains key information regarding the child's background and identity.

q. What steps have been taken by the Intended Parents in relation to estate planning (before and after a Parental Order is made) in respect of the child’s

future welfare;

r. What steps have been taken by the Intended Parents in respect of future care and financial arrangements for the child in the event of the incapacity of one (or both) of the Intended Parents;

s. What steps have been taken in respect of future care and financial arrangements for the child in the event of the death of one (or both) of the Intended Parents.

t. Parties should consider early and meaningful engagement with either or all of the Home Office (HD), Dept of Education (DfE) and/or Dept for Health and Social Care (DHSC); and

u. If proceedings were issued in the Family Court early then consideration should be given to the addition of either or all of HD, DfE and DHSC (depending on the particular issues) being joined as a party.

81. The approach of Intended Parents to most if not all of the matters identified above will potentially shed light on their ability to meet the needs of the child and any risks that the child might face in the future with the Intended Parents. Intended Parents who have undertaken careful due diligence in relation to those matters, made appropriate arrangements in a country where the regulatory and legal frameworks are clear, have kept clear records of all matters, in particular payments made, and where the sums which have been paid to the surrogate and/or agencies are in line with the 'going rate', demonstrate by such compliance that they are focussed on the welfare of the child and the surrogate and this would, along with the other evidence

available to the Court, support a conclusion that they were suitable and able to meet the child's needs, and that harm or risks of harm were minimal if they existed at all.

82. A failure to pay attention to the matters identified by Theis J, Knowles J and the President would potentially raise question marks about the suitability of the Intended Parents and their ability to meet the child's needs, and might have led to the child suffering harm. An obvious example would be where the Intended Parents' failure to deal with the issue of the child's immigration status leads to the child being stranded in the country of birth and having to be left in the care of a family member whilst the Intended Parents return to the UK. Intended Parents who fail to undertake due diligence and who fail to make arrangements which are clear and compliant with local laws, which fail to promote the welfare of the surrogate and the child, or which are potentially or actually exploitative of the surrogate, may well find that the Court questions their suitability as parents, their ability to meet the child's needs, or be concerned about harm that the child has suffered or is at risk of suffering. Intended Parents whose failure to heed the guidance suggests they are self-centred and focussed on their own needs at the expense of the child's welfare, and at the risk of the exploitation of the surrogate, are likely to face a much more rigorous testing of the evidence to enable the Court to evaluate the paramount welfare of the child. As Booth J said many years ago in *Re C (A Minor) (Adoption Application)* [1993] 1 FLR 87

But there must be very grave concern indeed as the suitability as adoptive parents of a couple who are prepared to go to the lengths of deception that Mr and Mrs S have gone*. It is quite clear from the evidence that they wanted this child to meet their own needs – they were not there to meet the needs of the child."*

83. It may well not be in a child's best interests – broadly evaluated – to have a Parental Order made if the evidence supports the conclusion that his Intended Parents are not able to meet his needs or are prepared to put the child at risk of harm by demonstrable dishonesty, where the evidence shows they are prepared to exploit a woman to suit their own purposes, and who are heedless of laws designed to protect surrogates and children, or other laws of a country where surrogacy is pursued. Would a child when she comes of age feel it was right for the Court to have removed her mother's rights on the back of such conduct? Intended Parents who choose to seek surrogacy in countries where the case-law of this Court or publicly available information shows there are serious risks of unlawful or unethical practices take a serious risk with the welfare of the child and can expect that an application for a Parental Order will face appropriate and proper scrutiny of their suitability to become the legal parents of the child and any risks to the child that they pose.

84. Drawing all of this together it seems to me that if the correct test for the determination of whether to authorise money or benefits other than reasonable expenses is a paramount welfare one that means that the child's welfare *rules upon and determines the course to be followed.* In practice, a refusal to authorise monies or benefits will mean a Section 54 condition has not been met and thus that a Parental Order cannot be made. Thus, if the child's welfare supports the making of a Parental Order the Court will have to authorise the payments. In undertaking that paramount welfare evaluation the Court may well continue to scrutinise the issues identified by Hedley J, such as the proportionality of the compensation to the expenses, the good faith of Intended Parents to the surrogate, and whether the Intended Parents were guilty of unlawful conduct or an attempt to defraud the authorities, along with many other aspects of their conduct. However, in my view

this is because and only because those issues could inform the evaluation of what decision will best promote the welfare of the subject child, NOT because they have some standing as matters relevant to public policy.

85. In applications which come before me I would expect the evidence from the applicants to address either explicitly or in general terms the issues identified by Theis J, Knowles J and the President, because that will assist me in determining whether the applicants are capable of meeting the child's needs and whether the child has suffered or is at risk of suffering harm by the Intended Parents' actions. In all of the subject cases the Intended Parents have undertaken due diligence, have paid sums in line with going rates and are all supported by Parental Order reports which show that, on the ground, the Intended Parents are meeting all the welfare needs of the child. The evidence shows they have put the welfare of their intended child and the surrogate at the centre of their arrangements, have undertaken careful inquiries before entering the surrogacy arrangement, have complied with local laws and have paid sums for expenses, fees and compensation which are in line with going rates for those jurisdictions. The evidence supports the conclusion that they are suitable parents, capable of meeting the needs of their child and who have not harmed and pose no risk to their child.

Expenses and money or benefit

86. Having established that paramount welfare applies to the authorisation of monies paid in excess of reasonable expenses, to the exclusion of pure public policy considerations, it is necessary to determine what expenses have been reasonably incurred and what monies have been paid in excess of them. There is no statutory definition of 'expenses reasonably incurred', but it does not exclusively relate to

expenses reasonably incurred by the surrogate or on her behalf. As Mrs Justice Theis noted in the case of *Re P-M* [2013] EWHC 2328, the section refers to payments made by the applicants, without specifying to whom the payments are made. There are frequently expenses incurred for medical procedures, for insurance and for legal expenses, which are not payments to the surrogate, but are reasonable expenses. The Court should not limit itself to looking at payments made to the surrogate mother when considering what are the expenses reasonably incurred. I agree with that approach.

87. The Courts have consistently approached the question of what expenses have been reasonably incurred as a factual matter determinable on a case-by-case basis since the decision in *Re L (a child) (parental order: foreign surrogacy)* [2011] Fam 106. However, the reality is that in many cases the information available as to exactly what payments the surrogate has received, what payments the agency has received, what the agency profit element is, and what payments are for other expenses (whether paid to the surrogate or a third party) is often opaque, incomplete or inadequate. In many instances an overseas agency will set a global amount and not provide a breakdown. Examples are the cases of *RS v T (Surrogacy: Service, Consent and Payments)* [2015] EWFC 22, *WT (a child)* [2014] EWHC 1303, *W and X and Y and Z* [2022] EWFC 18, and *Re Z (Foreign Surrogacy)* [2024] EWFC. In each case the Court has considered the information it has available to it and not treated the absence of specific information as rendering the Court unable to approve the Parental Order.

88. In the case of *Re C* [2013] EWHC 2408 Mrs Justice Theis identified that some payments are not caught by Section 54(8) HFEA 2008 at all – in that case the sum

paid to the egg donor since *"It is quite clear the egg donor is not involved in any way with the matters listed in s.54(8)"*. Similarly, the costs of medical treatment were excluded on the basis that, had the medical treatment costs been incurred in this country, they would have been permitted expenses. I am not sure that I align myself with this approach. The payment to a woman or a donor agency for an egg could clearly be a payment made in consideration of the making of arrangements with a view to the making of a parental order if one adopts a broad approach to the term 'arrangements'. Part of any payment would almost always amount to an expense related to the processes around retrieving and storing the egg and some part would probably represent compensation to the egg donor and profit to the agency and so as for the fees paid to a surrogacy agency there would be elements of such payments which were 'expenses reasonably incurred' and an element in addition to that which would need authorisation. Differentiating between these may be even harder than for the surrogacy agency fees.

89. However the Court is required by Section 54(8) HFEA 2008 to be satisfied that no other money or other benefit (other than for expenses reasonably incurred) has been given unless authorised by the Court and thus if it appears to the Court that money or benefit has been given which exceeds reasonable expenses the applicants must adduce the best evidence they can which identifies what is not caught, what is reasonable expenses, and what amounts to money or benefit given for, or in consideration of, the making of arrangements with a view to the making of the Order. Accurate record-keeping and the presentation of the information in the statement of the applicants in tabular form identifying which category a payment is said to fall into will enable the Court to accurately identify the sums that needs to be authorised.

90. I note that the standard form of 'Agreement to the making of a parental order in respect of my child' Form A101A which the FPR identify for proving the surrogate mothers consent for the purposes of S.54(6) contains a standard form of words as follows

"*I have not received any payment or reward from any person making arrangements for the parental order for my child"*

In most, albeit not all, foreign surrogacy arrangements the surrogate will have received payment from the intended parents or an agency who have or are making arrangements for the parental order and so the signing of such a statement would be inaccurate. It seems clear that the statement is intended to reflect the s.54(8) HFEA 2008 condition although the wording is not identical and it seems to me inappropriate that a surrogate should be invited to sign a form which appears probably not to reflect the reality. Whilst it may be explained to her that it doesn't really mean what it says or that it only relates to a payment being made now for the consent to the parental order, given it is a legal document which forms part of a court process I would have thought it preferable for the words to be crossed our entirely or for a form of words to be inserted which reflects the fact that payments were made and the courts authorisation will be sought for them.

Time Limits

91. A number of the subject cases raised the issue of compliance with the Section 54(3) HFEA 2008 time limit of the application being issued within 6 months of the child's birth. Interestingly prior to the decision of Sir James Munby in *Re X (A Child: Surrogacy: Time-limit)* [2014] EWHC 3135 (Fam) all judges who had grappled with

Section 54(3) HFEA 2008 took the view that it was an absolute bar to the bringing of an application more than 6 months after the child was born.

92. However, that approach underwent a complete reversal when the then President Sir James Munby heard the case of *Re X*. The President's reasoning in allowing the application was twofold: firstly, he emphasised that when interpreting Section 54(3) HFEA 20008, the Court must consider the principles laid down by Lord Penzance in *Howard v Bodington* (1877) 2 PD 203, "*having regard to and in the light of the statutory subject matter, the background, the purpose of the requirement (if known), its importance, its relation to the general object intended to be secured by the Act, and the actual or possible impact of non-compliance by the parties*" (at [52]). In doing so, he concluded that departure from the *"precise letter of the statute"* was not fatal to the purpose of the Act and, indeed, it produced the *"sensible"* result that Parliament must have intended. Secondly (or in the alternative), Sir James Munby stated that the statute should be "read down" in order to ensure that it was compatible with the parties' Article 8 rights to respect for family life, pursuant to Section 3 Human Rights Act 1998 (HRA 1998), and that interpreting Section 54(3) as setting an absolute bar could lead to a disproportionate infringement on the applicant and child's right to respect for their private and family life. The President considered the Parliamentary debates in so far as they shed light on the purpose of the bar and was unable to identify any clear statement of the purpose. He opined at [55] that Eleanor King J's (as she then was) observation in *JP v LP and others* [2014] EWHC 595 (Fam) was *"little more than speculation"*. She had said at [30];

"It was recognised by the parties that the policy and purpose of parental orders is to provide for the speedy consensual regularisation of the legal parental status of a

child's carers following a birth resulting from a surrogacy arrangement. Such a policy does not fit comfortably with extensions of time which inevitably result in the continued involvement over a protracted period of the surrogate mother in the lives of the commissioning couple and their child."

93. The approach to the decision on whether to extend the time limit was considered by the President as follows;

"[64] But principle demands that I have regard to the statutory subject matter, the background, and the potential impact on the parties if I allow section 54(3) to bar the application. I repeat in this context what I have already said in paragraphs 54-56 above. There are, without labouring the point, three aspects of a parental order which very obviously and very fundamentally distinguish it from the kind of case which the court was concerned with in Adesina. The first is that a parental order goes not just status but to identity as a human being. The second is that the court is looking, indeed is required by statute to look, to a future stretching many, many decades into the future. The third is that the court is concerned not just with the impact on the applicant whose default in meeting the time limit is being scrutinised but also with the impact on the innocent child, whose welfare is the court's paramount concern. In these circumstances the court is entitled, indeed in my judgment it is bound, to adopt a more liberal and relaxed approach than was appropriate in Adesina. After all, as Maurice Kay LJ recognised in Adesina, what the court is required to do, albeit it is required to do no more, is to secure compliance with the Convention. I would not be doing that if I were to deny the commissioning parents and X access to the court.

[65] I intend to lay down no principle beyond that which appears from the authorities. Every case will, to a greater or lesser degree, be fact specific. In the circumstances of this case the application should be allowed to proceed. No one – not the surrogate parents, not the commissioning parents, not the child – will suffer any prejudice if the application is allowed to proceed. On the other hand, the commissioning parents and the child stand to suffer immense and irremediable prejudice if the application is halted in its tracks."

94. That decision has been consistently followed thereafter in surrogacy cases and has been adopted in other contexts by other Family Division judges, for instance in relation to the time limits in Section 44(3) ACA 2002: *Re TY (Preliminaries to Intercountry Adoption)* [2019] EWHC 2979 (Fam) and *Re A (A Child: Adoption Time Limits s44(3))*[2020] EWHC 3296 (Fam). Interestingly in the latter case Keehan J referred to the child's welfare as clearly outweighing any public policy argument in favour of a strict application, which would suggest a 'primary' welfare approach to the extension of the time limit, rather than a paramount welfare approach. However, the theme that emerges strongly from *Re X* itself, as well as the authorities on which the President relied in his approach, is paramount welfare. These cases were ultimately founded on the prejudice to the child – in Article 8 welfare terms – of the Court being unable to make a Parental Order, and so it seems that 'paramount welfare' (albeit interpreted through the lens of Article 8 rights) is the determining factor.

95. Given that the HFE(PO)R 2018 applies Section 1(3) ACA 2002, which identifies delay in coming to a decision as likely being prejudicial to the welfare of the child, I would tend to agree with King LJ's view that speedy consensual resolution was the

purpose of the provision because that would promote the child's welfare. The further in time one gets from the child's birth the more likely it is that issues will arise in the satisfaction of the Section 54 HFEA 2008 conditions – in particular the proof that the surrogate agrees unconditionally to the making of the Order and the ability of the Court to ensure FPR 13.11 is complied with.

96. In the subject cases – even in ZC25P01636 – the surrogate is still engaged with the family and readily consents to the order, so the delay in making the application (which is explained by the family's move from another jurisdiction to England) has led to no prejudice to the process in that sense. Were a delay to result in an evidential handicap in determining whether the surrogate consented to the order, a different situation might arise and the Court would have to consider whether the possible need to move into Section 54(7) HFEA 2008 because of the delay justified a refusal to extend time. That does not arise in any of the subject cases.

Domicile

97. The starting point for domicile can usefully be taken as what Baroness Hale said in *Mark v Mark* [2005] UKHL 42, [2006] 1 AC 98, at [39]:

"[39] …An adult can acquire a domicile of choice by the combination and coincidence of residence in a country and an intention to make his home in that country permanently or indefinitely…

"[46] As a matter of principle, that connection is established by the coincidence of residence and the animus manendi. If a person has chosen to make his home in a new country for an indefinite period of time, it is appropriate that he should be connected to that country's system of law for the kind of purposes for which domicile is relevant.

[47] ...English law requires only that the intention be bona fide, in the sense of being genuine and not pretended for some other purpose, such as getting a divorce to which one would not be entitled by the law of the true domicile."

98. The Court of Appeal has considered the issue comprehensively in *Sekhri v Ray* [2014] EWCA Civ 119 (Rimer, McFarlane and Vos LJJ). The Court adopted the following summary of the law given by Arden LJ in *Barlow Clowes International Ltd v Henwood* [2008] EWCA Civ 577;

"[8] Relevant principles of the law of domicile

General principles

The following principles of law, which are derived from Dicey, Morris and Collins on The Conflict of Laws (2006) are not in issue:

(i) A person is, in general, domiciled in the country in which he is considered by English law to have his permanent home. A person may sometimes be domiciled in a country although he does not have his permanent home in it (Dicey, pages 122 to126).

(ii) No person can be without a domicile (Dicey, page 126).

(iii) No person can at the same time for the same purpose have more than one domicile (Dicey, pages 126 to128).

(iv) An existing domicile is presumed to continue until it is proved that a new domicile has been acquired (Dicey, pages 128 to 129).

(v) Every person receives at birth a domicile of origin (Dicey, pages 130 to 133). [A child born to married parents acquires the domicile of his father at the time of his birth. A child born to an unmarried mother has a domicile of origin in the country of the domicile of his mother at the time of his birth.]

(vi) Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise (Dicey, pages 133 to138).

(vii) Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice (Dicey, pages 138 to143).

(viii) In determining whether a person intends to reside permanently or indefinitely, the court may have regard to the motive for which residence was taken up, the fact that residence was not freely chosen, and the fact that residence was precarious (Dicey, pages 144 to151).

(ix) A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently, or indefinitely, and not otherwise (Dicey, pages 151 to153).

(x) When a domicile of choice is abandoned, a new domicile of choice may be acquired, but, if it is not acquired, the domicile of origin revives (Dicey, pages 151 to 153)."

99. The onus of proving the acquisition of a domicile of choice by proving the issues of residence and the required intention, as questions of fact, lies on the party asserting the change and must be proved by cogent evidence to a high standard. I do not consider that this means anything other than that it must be proved on the balance of probabilities, but in determining whether the balance is established that it is more likely than not, the Court is acknowledging that a person's domicile of origin as a matter of legal status carries with it a significant weight which requires the Court to apply a degree of rigour to the evidence and what can properly be inferred from it to

generate the weight which, on balance of probabilities, displaces the domicile of origin in favour of the domicile of choice.

100. In the interconnected world we live in in 2026 the boundary between habitual residence and domicile may be a rather blurred one, in particular in cases where one is considering 'indefinite' intentions rather than permanent intentions. As some of the subject cases demonstrate, families comprised of parents of different nationalities who have made their lives sequentially in different countries may at different times in their lives reside in, and have the intention to reside indefinitely in, a series of countries where the nature of the indefinite is that if the situation suits them they will remain indefinitely and might see out their days there, but if a better opportunity arises for the family they may move on. It seems to me that that situation can create a domicile of choice which may arise very rapidly, and before it might be said that habitual residence had been established; intention being central to domicile and of less significance in habitual residence.

101. In the subject cases, having considered the written evidence and having heard from the applicants in ZC25P01636 and ZC25P01637, I am satisfied that they have abandoned their domiciles of origin and established a domicile of choice in England. The evidence of their intentions to make London their home, the acquisition of family homes, the intention to educate the children in England in primary and secondary schools, and the absence of retained roots in the domiciles of origin, are all sufficient to demonstrate on balance that domicile of choice has been established here.

Conclusion

102. Having considered the individual facts in each case and applied the law as I set out above, I am satisfied in respect of each of the applications before me that the Section 54 HFEA 2008 conditions which do not rest on best interests have been met, that it is in the children's best interests for me to make a Parental Order and that consequently that I should (where required) extend the time limit for making the applications and in each case authorise the payment of monies in excess of reasonable expenses. I will therefore make a Parental Order in each case. The details relating to each are set out in the Appendix to this judgment and will not be published.

103. Having considered these applications together, it is apparent that the applications fall into 3 broad categories

a. Those where the Intended Parents have undertaken due diligence prior to embarking on the process and have selected a jurisdiction with a strong regulatory framework which protects the interests of the surrogate mother, the child, and the Intended Parents, and where there is no real issue over the satisfaction of the conditions under Sections 54 or 54A HFEA 2008, and the welfare of the child.

b. Those where the Intended Parents have undertaken due diligence (as above) but where there may be some issue over the satisfaction of a Section 54 HFEA 2008 condition (for instance domicile, compliance with the time limit, or similar), but where the welfare of the child clearly supports the making of the Parental Order.

c. Those where the Intended Parents have either not undertaken due diligence at all or have disregarded guidance and, as a consequence, the application raises

significant issues relating to the satisfaction of the Section 54 HFEA 2008 conditions, whether in terms of time limits, the authorisation of money, domicile, the home the child has, or the suitability of the Intended Parents to meet the child's needs or any harm or risk of harm she faces with them which raises questions around welfare. None of the subject cases fall into this category – although a number of cases before me recently have and they are not the subject of this judgment.

104. For my part (and I am conscious that different judges may take different positions) I would consider that in the first category of cases the Court may well be able to make a Parental Order on the first hearing. In the second category (depending on the nature of the issue) the Court may or may not be able to make an Order at the first hearing. If there are questions over domicile it may (depending on the nature of the written evidence) be necessary for the Intended Parents to give oral evidence in support of their contention that a domicile of origin has been surrendered and a domicile of choice acquired by residence with the intention that it should be permanent or indefinite. That may require a longer hearing than the 1 hour usually allocated. In the third category of cases the Court at the first directions hearing may well wish to join the child as a party to the proceedings and give directions to ensure that the necessary evidence is before the Court to enable it both to determine the Section 54 HFEA 2008 conditions and the welfare of the child.

105. The extent to which Section 54 HFEA 2008 has had to be read down or applied by the Courts in the 18 years since its introduction has transformed it. The 6 month time limit no longer applies; an application can be made for a Parental Order in respect of an adult where the welfare considered is not that of a child but of an adult (*X v Z*

[2022] EWFC 26); 'husband and wife' includes 'husband and husband' and 'wife and wife'; the child need not have his home with both applicants (*A and B (No 2 - Parental order)* [2015] EWHC 2080 (Fam)); and the Court always authorises the payments of money other than for reasonable expenses if welfare requires it. Whilst this situation may not present a problem to specialist lawyers familiar with the area, for the lay person who might do their own research and come across Section 54 HFEA 2008 they would be entirely mislead by its wording as to its actual application by the Court, and might as a result not make an application. That it seems to me is a most unsatisfactory position in terms of 'access to law' and potentially to access to justice.

106. That is my judgment.