Neutral Citation Number: [2022] EWFC 38

Case No: NE21P00484 & NE21P07404

IN THE FAMILY COURT
SITTING AT NEWCASTLE-UPON-TYNE
IN THE MATTER OF SECTION 55A FAMILY LAW ACT 1986

Sitting remotely as if from
Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2022

Before:

THE HONOURABLE MR JUSTICE COBB

- -

In the matter of:

Ms L **Applicant**

And in the matter of:

Ms M **Applicant**

- -

Re Ms L; Re Ms M (Declaration of Parentage)

- -

In the matter of Ms L

Deirdre Fottrell QC & Olivia Magennis (instructed by **Goodman Ray**) for Ms L, Applicant
Ms T (Executrix of the Estate of Mr D, deceased), Respondent, was neither present nor represented
Simon Murray (instructed by the Government Legal Department) for the Attorney General as Advocate to the Court

In the matter of Ms M

Deirdre Fottrell QC & Olivia Magennis (instructed by **Goodman Ray**) for Ms M, Applicant
Simon Murray (instructed by the Government Legal Department) for the Attorney General as Advocate to the Court

Hearing dates: 28 March 2022

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cobb:

1. Sir James Munby P in *In the matter of HFEA 2008 (Cases A, B, C, D, E, F, G and H Declaration of Parentage)* [2015] EWHC 2602 (Fam) at §3 rightly asked, in my view, whether there can be a more important question – emotionally, psychologically, socially and legally – than 'who is my parent?'.

2. That question of fundamental identity lies close to the centre of two separate applications which are before the court, brought by unrelated applicants under the provisions of *section 55A Family Law Act 1986* ('*FLA 1986*'). The applications here raise identical issues, namely:

    a. Whether an adult person, who had been adopted as a child can subsequently (in both cases, many decades later) obtain a declaration of parentage in relation to the identity of their biological[1], father;

    b. Whether, in each case, on the facts, such a declaration is appropriate;

    c. And (following on from the above) whether rectification of the applicants' original birth certificate (so as to add the name of a biological father, or 'birth father' as I shall refer to him) is possible, and compatible with adoption legislation.

[1] For reasons explained later in this judgment, it is necessary to consider carefully the impact of *section 67(1)(3) Adoption and Children Act 2002* below – an adopted child is to be treated in law as if born the child of the *adopters*, and not being the child of any person other than the adopters.

3. These two applications have been brought entirely independently, and in terms of timing coincidentally, by two unrelated applicants. Ms L and Ms M are indeed unaware of each other's identities. The applications were issued by the Family Court sitting in Newcastle Upon Tyne. When I became aware of the applications, I case managed them to hearing on the same day. I dealt with the factual issues in short sequential hearings, and then brought the cases together for a plenary hearing involving both applicants[2] to discuss the legal implications.

4. When the applications first came to my attention, Ms L and Ms M were both unrepresented. These were unusual applications without apparent precedent. I contacted the Attorney General's Office to enquire whether she would be prepared to appoint an advocate to the court. She did so, and I am grateful to Mr Murray for his written advice. At an earlier case management hearing I also advised Ms L and Ms M of the existence of 'Advocate' (formerly Bar Pro Bono Unit), the charity which helps to find free legal assistance from volunteer barristers. Through this, Ms M obtained the services of Ms Fottrell QC and Ms Magennis; in turn, Ms M was supported by Ms Dally of Goodman Ray. That expert legal team then offered similar support to Ms L. I am particularly grateful to the lawyers (all counsel and solicitors) for the applicants who have acted for them most ably, and without fee.

Procedural issues

5. The applications have been made under the *Part 19 FPR 2010* procedure (in accordance with *rule 8.1 FPR 2010*). There is limited assistance, from *Practice Direction 19A* or otherwise, to guide the process of an application such as this; MacDonald J refers to the lack of procedural 'clarity' (my word not his) at §10(i)-(vii) and §11 of *Re H No.2*[3] and has proposed (see §74) consideration of the procedural issues and associated implications by the Family Procedure Rule Committee. I support his proposal.

Ms L's application

6. At an earlier case management hearing, I determined on the facts that, within the meaning of *section 55A(2), (3)* and *(4) FLA 1986*, Ms L is domiciled in England & Wales, and that she has sufficient interest in the determination of this application to justify her in making the application. I joined Ms T to the application; she is the executrix of the estate of the man whom Ms L asserts is her birth father (who I shall refer to as 'PJ'). His estate has not yet been distributed. Ms T has been served with notice of the hearing, but has not attended. Ms L's adoptive parents are both deceased; they would otherwise have been automatic respondents to the application. I considered, but regarded as unnecessary, the joinder of PJ's known children; for reasons which I do not need to discuss here, they did not have any contact with PJ or other members of his family since the early 1970s.

Ms M's application

7. At the same earlier hearing, I determined on the facts that, within the meaning of *section 55A(2), (3)* and *(4) FLA 1986* Ms M is also domiciled in England and Wales, and that

[2] Joining remotely on a video platform; cameras switched off; identities concealed.
[3] For full citation see below.

she too has sufficient interest in the determination of this application to justify her in making the application.

8. I was asked to consider whether Ms M's birth mother should be joined as a party to the application. *Rule 8.20(1)* of the *Family Procedure Rules 2010* ('*FPR 2010*') defines who should be respondents to an application for a declaration of parentage. The respondents "will be":

> i) "The person whose parentage is in issue except where that person is a child;
>
> ii) Any person who is or is alleged to be the parent of the person whose parentage is in issue, except where that person is the applicant or is a child".

It is also incumbent on the applicant to "include in [her] application particulars of every person whose interest may be affected by the proceedings and his relationship to the applicant" (*rule 8.20(2) FPR 2010*).

9. Notwithstanding the clarity of those rules, the *FPR 2010* further allows the court the opportunity to retain general control (in fulfilment of its overriding objective) over the joinder of parties to any proceedings (see *rule 1.4(2)(b) FPR 2010*). Ultimately the question of who should be the respondent to such an application is a matter for the court, and is likely to be fact-sensitive in each and every case.

10. Ms M opposed the joinder of her birth mother as a respondent. She made clear that if her birth mother were to learn of the existence of this application, this would bring to a certain end their fragile relationship. Ms M does not want this; the relationship – albeit not altogether easy – is important to her. She said this:

> "She has been clear that she wants nothing to do with the past. I do not think that she will want to be involved and there is a real risk that by serving her with notice I have made this application will just make her shut down and I fear that my relationship with her will be severed by her. When my mother fell pregnant with me, she told no one. She did not tell her parents or her friends. She had me in secret and when she signed the paperwork for the adoption in 1964 giving me up for adoption, I do not doubt that she thought that was forever. The world has changed, but I believe that my birth mother is entitled to her own space, privacy, freedom and anonymity … if this court were to write to her, I do not think that she would engage in these proceedings and I know that to take this step would emphatically mean the end of our very fragile relationship … I still want to retain, where possible, some semblance of relationship with my birth mother. My mother's name is not being removed from the birth certificate. The application I am making is about my father and I. It will not affect her status on my birth registration."

11. I took the view, encouraged by Ms Fottrell QC and supported by Mr Murray, that there was no obligation on me to join Ms M's birth mother in order to do justice to the case, and, in fulfilment of the overriding objective to that end, I so ruled. In reaching this conclusion I exercised the wide discretion afforded to me to regulate this legal process – this power entitles me to exclude parties from hearings, to withhold information from parties, to discharge parties from the proceedings, and to dispense with the rules altogether. These powers can be, and often are, exercised in accordance with the overriding objective provided that they cohere with the principles of law and justice which have been developed and recognised both at common law and under the *Human Rights Act 1998*. I find that there is no prejudice to Ms M's birth mother by not being a party to the process, but I am satisfied that much potential harm could be done to her and to Ms M by alerting her to, and possibly drawing her into, this litigation.

Ms L: the facts

12. Ms L was born in 1963; her parents were unmarried teenagers. A note in Ms L's adoption records reads as follows:

> "… [the biological mother] would have married the putative father if she had had a chance. But the young man is practicing Roman Catholic as are all his family and the priest was consulted and he advised against it….. "

In a form generated by the relevant Adoption Society in June 1963, setting out the bare facts of the case, against the question: "Why is the child offered for adoption?", the following was recorded: "My parents think I'm too young to keep a baby". And later: "I think adoption is best for the baby" (this last comment was signed by the birth mother).

13. Ms L was accordingly placed for adoption at 6 weeks old, and adopted in 1964; she had a successful adoption. She reports that:

> "My adoptive parents were open with me about the fact that I had been adopted and gave me as much information as they knew about the circumstances surrounding my adoption… My adoptive parents knew about and supported my efforts to locate my birth parents."

Ms L's adoptive parents have now both died.

14. Ms L first made contact with her birth mother in the mid-1980s, and for a period of time they communicated; indeed, it is said that Ms L developed a reasonable relationship with her and her maternal birth family. This ended when Ms L's birth mother indicated that she wished the contact to cease. In 2018 Ms L's birth mother died. In or about 2009, Ms L's birth mother had given Ms L the details of her birth father, PJ. Ms L made contact with him, and he responded to her warmly. They quickly established a mutual acceptance of their probable biological link, and PJ's family welcomed Ms L into their family. Ms L became close with the family, and they remain so. Unexpectedly, PJ died in 2020. He died intestate; his sister, Ms T, who I joined as a respondent to this application (as mentioned above), is administering his affairs.

15. Interestingly, PJ's main hobby was genealogy. He had researched family history for years, particularly on the maternal side. PJ's maternal grandfather (Ms L's great grandfather) was Italian; his family had emigrated from Italy to the North East of England in 1896 and had a large family of ten children. Through researching the family tree, PJ made many connections around the world with the Italian side of the family. PJ published a family history document for the benefit of the Italian family; materially, following his introduction to Ms L, he named Ms L and her children in the publication as members of his own family. It is no great surprise that Ms L has been able to identify very strong personal character traits in herself which she recognises that she shares with members of PJ's Italian family. It is unlikely to be a coincidence that in her chosen career, she has been drawn in many different ways to Italy.

16. I am satisfied that this application is of very real importance to Ms L. She explains this as follows:

> "A Declaration of Parentage is personally a very important step for me as it strongly relates to my identity. My bloodline connection is important in terms of both my long-term psychological and material welfare."

17. In a more recent statement, in which she sets out her detailed and thoughtful reflections of her situation, Ms L says this:

> "Technically, my *locus standi* in relation to my application is not just as applicant, but also adopted child. As such, I am the host of the complex legal and factual situation of adoption; factually, I was born of my birth parents but I am also the legal child of my adoptive parents.
>
> I have grown up knowing I have a foot in both camps, each as formative as the other in terms of formulating my identity for myself. However, having been adopted in the 1960s, I am also part of a model of broken connection, which has in part, been decided upon through statute, decisions of the court and by rules relating to birth registration.
>
> Adoption in the 1960s very often responded to the stigma of illegitimacy and the circumstances meant adoptees were unable to have any voice in this process. Now adoption is far more open and inclusive; birth families are acknowledged through open contact and the child's welfare is paramount (*Adoption and Children Act 2002*).
>
> As an adult, I am no longer considered a child of course, but being an adopted child never ceases; childhood may end, but adoptees continually define themselves by this identity because adoption is a continuous feature of their identity.
>
> …

> Since my adoption, I have been a grateful recipient of a series of legislative rights, that have allowed adoptees to gain more knowledge about their origins, entitling me to information on my original birth certificate, and receiving counselling before accessing that information (*Children Act 1975* and *Adoption Act 1976*).
>
> In pursing the knowledge of my origins, I am hoping to create stability for my identity. The *All Party Parliamentary Group Inquiry into Creating Stable Adoptive Families* (2019) highlights that adoptive stability (and thus welfare) involves the importance of knowing. Having knowledge confirmed may go some way to addressing the loss and pain many adoptees experience, referred to in literature as 'The Primal Wound' or various forms of embodied pre-cognitive trauma that is hidden in the body well into adulthood."

18. Ms L further explains that a practical benefit of a declaration of parentage for her will be her ability to acquire dual citizenship.

19. This takes me to the second issue identified above (§1(b)). Ms L has been able to lay before the court a considerable body of evidence which she maintains demonstrates that PJ is indeed her father:

    i) PJ was explicitly referenced (by name) as the "putative father" in a number of adoption documents generated in 1963/1964;

    ii) Ms L was introduced to PJ by her biological mother, and explicitly identified by her as her birth father;

    iii) PJ identified himself as Ms L's birth father when they first 'met' through social media. In their subsequent correspondence, he was able independently to confirm and verify much factual information about the circumstances of Ms L's conception and adoption which was contained in the adoption file;

    iv) Ms L has been able to produce in support of her application, extensive conversations on social media between herself and her PJ;

    v) As it happens, and most important of all, Ms L and PJ had agreed, before PJ's death, that they would undergo DNA testing. On his death, at post mortem, and with the agreement of PJ's family, samples were taken from PJ, and these have demonstrated (as the expert evidence shows) "very strong support" that PJ is indeed Ms L's birth father.

Ms M: the facts

20. Ms M was born in 1964. Her birth mother was a young woman from an aristocratic family in her early 20s, and was unmarried; it is believed that no one in the birth mother's family knew at the time of the pregnancy, the birth of the baby, and/or the subsequent adoption. Within two months of her birth, Ms M was placed with substitute parents, and was adopted by them in the spring of the following year. Both of Ms M's

adoptive parents are now in fact deceased. Ms M maintains good relations with her adoptive brother and sister with whom she says she is close. As indicated above (§10), Ms M's biological mother is still alive, and they made limited contact with each other over 30 years ago. They resumed contact in writing some five years ago and met again in 2021. Ms M's birth mother rejects, and indeed closes down, any discussion with Ms M about her birth father; she had simply told Ms M that "he was sweet and charming" but little else. All other members of Ms M's birth family have rejected her, and indicated that they want nothing to do with her, since she made herself known to them in recent years. She says:

> "As I expect many adopted children feel, I longed to have information about my birth identity and as soon as I was an adult, with the support of my adoptive parents, I began looking for my birth parents. I had my birth certificate, with my mother's name and I was able to obtain my adoption records, … I found my father's name and his address at the time in these records."

21. Ms M has spent much of the last 40 years trying to trace her birth father. She started understandably with her adoption records; those had documented the father's name as 'BH', although the records noted that there were various versions of the birth father's forename and surname, neither of which are English names. 'BH' is unfortunately, for Ms M's purposes, a very common name in the European country of BH's origin. The Applicant engaged private investigators and tried various other routes to trace her birth father, to no avail. The breakthrough came when Ms M submitted DNA results to a number of genealogy websites searching for matches. In 2020, Ms M was notified that there was indeed a match who could be either a nephew or a half-brother. The man (in fact later identified as a half-brother) named his father on his family tree as 'BE'. After further online searches Ms M found a number of other members of the wider family who were identified as cousins and siblings; they were all quick to accept that Ms M is indeed a member of their family. Ms M was however "devastated" to discover that the man for whom she had been searching for so many years had in fact died in 2010.

22. These researches enabled Ms M to obtain the birth and death certificates of the man she believed to have been her birth father. His full name was recorded 'BHNE' (i.e., including the names of BH as Ms M had originally believed, but with 'E' as the surname as her half-brother had referred). It transpired that BH had married a woman in 1965 (three months after Ms M's birth); fortuitously, his marriage certificate recorded his address at the time. Significantly this is/was the same address held on the Barnardo's adoption file for BH, the man identified in that documentation as Ms M's birth father. It now appears that BH had altogether 11 children from a number of different relationships. Ms M has now discovered a great deal about BH – he was a brilliant academic, fluent in many languages, a womaniser, an alcoholic, and a gambler; he was also said to be a charming man with "a big heart".

23. In most unusual, but extremely fortuitous, circumstances unconnected with this application (the details of which it is unnecessary to rehearse here), in late October 2021 (after this application had been issued), a bone from the body of BH (buried in his home country in Europe) was exhumed, and Ms M was able to persuade the authorities in that country, with support from BH's family, to test her DNA against the bone of the deceased. This DNA test confirmed to a very high degree of probability indeed that the

deceased (BH) is her birth father. Ms M wishes to take citizenship of the country of BH's nationality, and has started to form plans to relocate to live in the country of her birth father and his family.

24. Ms M movingly describes in her statement how 'monumental' finding her birth family has been. In a passage of the evidence which echoes the evidence of Ms L she says this:

> "I have never ever felt so loved or accepted in my whole life. It was like I had never left… the more I find out about him, the more I can see where certain elements of my personality come from."

The legal issues discussed

25. The statutory basis for the grant of a declaration as to parentage is to be found in *Section 55A* of the *FLA 1986* which reads as follows:

> (1) "Subject to the following provisions of this section, any person may apply to the High Court or the family court for a declaration as to whether or not a person named in the application is or was the parent of another person so named.
>
> (2) A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, either of the persons named in it for the purposes of that subsection—
>
> (a) is domiciled in England and Wales on the date of the application, or
>
> (b) has been habitually resident in England and Wales throughout the period of one year ending with that date, or
>
> (c) died before that date and either—
>
> (i) was at death domiciled in England and Wales, or
>
> (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.
>
> (3) Except in a case falling within subsection (4) below, the court shall refuse to hear an application under subsection (1) above unless it considers that the applicant has a sufficient personal interest in the determination of the application (…).

> (4) The excepted cases are where the declaration sought is as to whether or not—
>
> a) the applicant is the parent of a named person;
>
> b) a named person is the parent of the applicant; or
>
> c) a named person is the other parent of a named child of the applicant.
>
> (5) Where an application under subsection (1) above is made and one of the persons named in it for the purposes of that subsection is a child, the court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child.
>
> (6) Where a court refuses to hear an application under subsection (1) above it may order that the applicant may not apply again for the same declaration without leave of the court.
>
> (7) Where a declaration is made by a court on an application under subsection (1) above, the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration." (Emphasis by underlining added).

26. *Section 58* contains clear direction to the court, providing as follows:

> (1) "Where on an application to a court for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.
>
> (2) Any declaration made under this Part shall be binding on Her Majesty and all other persons.
>
> (3) A court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made.
>
> (4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court". (Underlining added for emphasis).

27. The statutory scheme clearly envisages a route by which those in the position of the applicants can apply for a declaration as to parentage which in turn can lead to an amendment of their birth certificate (see *section 55A(1) and (7)*).

28. When I first reviewed these applications, my concern was how the route offered by *section 55A FLA 1986* could fit with the provisions of *section 46(2)* and *section 67* of the *Adoption and Children Act 2002* ('*ACA 2002*') (and its predecessor legislation). *Section 46(2)* reads as follows:

> "(2) The making of an adoption order operates to extinguish—
>
> (a) the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order".

Separately (and located in the 'Status' chapter of the *ACA 2002*) *Section 67* ('Status conferred by adoption') provides that:

> (1) "An adopted person is to be treated in law as if born as the child of the adopters or adopter.
>
> (2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—
>
> (a) a couple, or
>
> (b) one of a couple under section 51(2),
>
> is to be treated as the child of the relationship of the couple in question". (Underlining added for emphasis).

The section goes on to provide (*section 67(3)*) that the adopted person is to be treated "as not being the child of any person other than the adopters or adopter" (emphasis by underlining added). This statutory provision has retrospective effect.

29. *Section 67 ACA 2002* in its previous legislative form was described by Swinton Thomas LJ in *Re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 at 245 as follows:

> "An adoption order has a quite different standing to almost every other order made by a court. It provides the status of the adopted child and of the adoptive parents. The effect of an adoption order is to extinguish any parental responsibility of the natural parents. Once an adoption order has been made, the adoptive parents stand to one another and the child in precisely the same relationship as if they were his legitimate parents, and the child stands in the same relationship to them as to legitimate parents. Once an adoption order has been made the adopted child ceases to be the child of his previous parent and becomes the child for all purposes of the adopters as though he were their legitimate child." (My emphasis by underlining).

Lord Bingham MR (as he then was) in the same case observed at p 251 that:

> "The act of adoption has always been regarded in this country as possessing a peculiar finality. This is partly because it affects the status of the person adopted, and indeed adoption

> modifies the most fundamental of human relationships, that of parent and child. It effects a change intended to be permanent and concerning three parties. The first of these are the natural parents of the adopted person, who by adoption divest themselves of all rights and responsibilities in relation to that person. The second party is the adoptive parents, who assume the rights and responsibilities of parents in relation to the adopted person. And the third party is the subject of the adoption, who ceases in law to be the child of his or her natural parents and becomes the child of the adoptive parents." (Again, my emphasis by underlining).

These passages have resonance in many later judgments including among them *Oxfordshire CC v X and Y and J* [2011] 1 FLR 272; I have in mind in particular the passage cited from the *Oxfordshire* case by MacDonald J in *Re H No.1* at §34 and §35, in which the inviolable nature of the adoptive parents' status as parents of the child is effectively confirmed and the *Article 8 ECHR* rights of the birth parents terminated.

30. At first blush, these passages from caselaw – and the well-established statutory principles which they articulate – did not fit comfortably, indeed appeared to undermine, the applicants' case that they could obtain a declaration of *parental* status in respect of someone who had in law *ceased to be their parent*.

31. This apparent dichotomy (at the heart of the issue identified at §1(a) above) was addressed at some length by both Ms Fottrell QC and separately Mr Murray; they both drew heavily in their arguments on the judgment of MacDonald J in *H v R & An Adoption Agency (Declaration of Parentage Following Adoption)* [2020] EWFC 74 (*Re H No.1)*, given in a case which raised similar (but not identical) issues to those which arise here. In that case the application for a declaration under *section 55A FLA 1986* was made by a birth parent who sought to have his parentage of a child who had since been adopted formally confirmed by the Family Court in this way.

32. In *Re H No. 1*, MacDonald J declared himself (at §5), for the reasons he went on to discuss, to be:

> "…satisfied that the court does have jurisdiction in an appropriate case, pursuant to *section 55A(1)* of the *Family Law Act 1986*, to grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child under *Part 1* of the *Adoption and Children Act 2002*".

MacDonald J declared his further satisfaction (an in so doing rejected the arguments advanced by the Adoption Agency in that case) that:

> "… giving the term 'any person' in *section 55A(1)* of the *Family Law Act 1986* its ordinary meaning does not bring that section into conflict with the term of *section 67* of the *Adoption and Children Act 2002*" (§44).

As will be apparent (see §25 above) the statutory phrase 'any person' is qualified only by reference to 'jurisdiction' and 'standing' in *section 55A(2)/(3)/(4)*. As MacDonald J also said (§44 in *Re H No.1*):

> "The natural and ordinary meaning of the expression "any person" needs no elaboration. *Dicey, Morris & Collins* on the Conflict of Laws, 15th ed (2012), para 20-007 state that the effect of *section 55A* is to widen the range of persons who may seek declarations of parentage."

33. MacDonald J's decision was founded largely on the distinction between parentage as a matter of *law* and parentage as a matter of *fact.* The applicant in his case remained the parent in fact, even though his legal parental status had been expunged by the adoption order. This distinction was further elaborated upon in his later ruling in the same case, namely *H v R & An Adoption Agency (Declaration of Parentage Following Adoption)* [2021] EWHC 1943 (Fam) (*Re H No.2)* (see below). It will be seen that this distinction is also key to my decision in the instant cases.

34. In *Re H No.1*, MacDonald J discussed this issue comprehensively, and it is useful for me to reproduce the key section of his judgment here, as follows:

> "45. *Section 55A(1)* of the *Family Law Act 1986* deals with the identity of a child's parent as a matter of fact. The purpose of *Part III* of the *Family Law 1986* is to make provision for declarations regarding status, dealing as it does with marital status (*section 55*), parentage (*section 55A*), legitimacy and legitimation (*section 56*) and adoptive status under a foreign adoption order (*section 57*). Within this context, *section 58(1)* of the *1986 Act* makes clear that on an application under *Part III* of the *Act* for a declaration of status, the court is concerned with proof of matters of fact. A declaration as to status made under *Part III* of the *Family Law Act 1986* is intended to be an authoritative statement of the fact so declared. Within this context, the term "parent" in *section 55A(1)* of the *Family Law Act 1986* refers to someone who is a parent of the child as a matter of fact".
>
> "46. By contrast, *section 67* of the *Adoption and Children Act 2002* deals with the identity of a child's parent or parents as a matter of law. Pursuant to *sections 67(1), 67(2)* and *67(3)* of the *Adoption and Children Act 2002*, once a person is made the subject of an adoption order, as a matter of law that person ceases to be the child of his or her birth parents and is to be treated in law as not being the child of any person other than the adoptive parents, the child being treated in law as if born as the child of the adopters and the legitimate child of the adopters. *Section 67* has effect from the date of the adoption, but is retrospective in its effect on the legal status of the child and the adoptive parents. Save for the matters dealt with by *sections 67(3), 67(4)* and *74* of the *2002 Act* (which are of no application in this case), there are no exceptions to the

operation of *section 67* of the *Adoption and Children Act 2002*".

"47. Within this context, *section 67* of the *Adoption and Children Act 2002* concerns the question of who are the parents of the child as a matter of law and not wider questions of fact such as the child's biological parentage. This is made clear in the Explanatory Notes attached to the *Adoption and Children Act 2002* that deal with the operation of *section 67* of the Act:

> "193. The provisions in this section are intended only to clarify how an adopted child should be treated in law. They do not touch on the biological or emotional ties of an adopted child, nor are they intended to."

48. In *re G (Children) (Residence: Same-sex Partner)* [2006] 1 WLR 2305 the House of Lords recognised that it is possible to be a be a parent as a matter of fact but not as a matter of law and vice versa. In *In re G (Children) (Residence: Same-sex Partner)* at para 32 Baroness Hale of Richmond stated as follows:

> "So what is the significance of the fact of parenthood? It is worthwhile picking apart what we mean by 'natural parent' in this context. There is a difference between natural and legal parents. Thus, the father of a child born to unmarried parents was not legally a 'parent' until the *Family Law Reform Act 1987* but he was always a natural parent. The anonymous donor who donates his sperm or her egg under the terms of the *Human Fertilisation and Embryology Act 1990* is the natural progenitor of the child but not his legal parent: see the *1990 Act, sections 27* and *28*. The husband or unmarried partner of a mother who gives birth as a result of donor insemination in a licensed clinic in this country is for virtually all purposes a legal parent, but may not be any kind of natural parent: see the *1990 Act, section 28* . To be the legal parent of a child gives a person legal standing to bring and defend proceedings about the child and makes the child a member of that person's family, but it does not necessarily tell us much about the importance of that person to the child's welfare".

49. A further example of the dichotomy Baroness Hale sought to illustrate in para 32 of *In re G (Children) (Residence: Same-sex Partner)* is provided by adoption. Namely, the birth parent of the adopted child remains as a matter of fact the child's biological, or natural, parent but is not the child's legal parent by reason of the retrospective and

> prospective operation of *sections 67(1)* and *67(3)* of the *Adoption and Children Act 2002*.
>
> 50. Within the foregoing context I am satisfied that it is possible to read the words "any person" in *section 55A(1)* of the *Family Law Act 1986* as encompassing a birth parent in the position of Mr H whose child has been made the subject of an adoption order pursuant to *section 46* of the *Adoption and Children Act 2002* without the risk of conflicting decisions being arrived at due to the terms of *section 67* of the *2002 Act*. Within the context of these two statutory frameworks, it remains possible for a birth parent to establish the truth of the proposition contended for, namely that he or she is as a matter of fact the parent of the adopted child, without that factual determination coming into conflict with the status *in law* of the child and the adoptive parents under *section 67* of the *Adoption and Children Act 2002*. Within this context, a declaration as to status under *section 55A(1)* of the *1986 Act* does not conflict with the question of legal status established by the operation of *section 67(1)* of the *2002 Act*. This conclusion is, of course, entirely separate from the question of whether such a declaration should be made following the adoption of a child." (The words underlined above are emphasised in the original).

35. The nub of MacDonald J's decision is his conclusion that within the context of two statutory frameworks (*FLA 1986* and *ACA 2002*), it remains possible for a birth parent to establish the truth of the proposition contended for, namely that he or she is as a matter of fact the parent of the adopted child, without that factual determination coming into conflict with the status in law of the child and the adoptive parents.

36. Macdonald J found some support for his conclusions (see §52/53 of *Re H No.1*) in the decision of Hogg J in *M v W (Declaration of Parentage)* [2007] 2 FLR 270. In that case the applicant, an adopted person, sought a declaration as to his biological parentage in order that he could seek an amendment to his original birth certificate to include his natural father's name. No party in fact argued against the grant of the application. However, in a short reasoned judgment, Hogg J observed:

> "[14] The petitioner seeks the declaration because he wishes for recognition by the state of the historical truth of his natural origins and that it is a matter deeply important to his self perception and sense of identity. He feels that officially and currently his natural father has been labelled as unknown and that there is some stigma attached to that. He wishes to pass on to his children and grandchildren an accurate and recognised account of his ancestry and, in my terms, bloodline".

And at [18]

> "The declaration sought would not alter or affect the validity of the adoption order made in May 1965. That is a forever order by which the petitioner became a legal member of the adoptive family and the adopters his legal parents." (Emphasis by underlining added).

37. In *H v An Adoption Agency (No.2) (Declaration of Parentage)* [2021] EWHC 1943 (Fam) ("*Re H No.2*"), MacDonald J considered the *merits* of the application. At [48] he emphasised the formal, public, solemnity of the declaration and the process; he pointed out that:

> "Issues of status, such as parentage, can be expected to be approached with some formality in circumstances where they concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records."

38. MacDonald J proceeded in his judgment to discuss the process by which the register of births can be amended. At §49 (*Re H No.2*) he discussed the fact that *section 14A* of the *Births and Deaths Registration Act 1953* ('*BDRA 1953*') conferred a discretion on the Registrar General to authorise the re-registration of birth following the making of a declaration; he pointed further to *FPR 2010 r.8.22(1)* which requires a name other than that which appears in the person's birth certificate to be stated on the declaration of parentage. On the facts of that case, MacDonald J dismissed the birth father's application; in doing so, he made the following observations (at §59) which resonate with the instant facts:

> "…
>
> (iii) The adopted person should be entitled to determine whether they wish to have information about their birth relatives or not and, if they choose to seek that information, should be provided with it after they have been offered counselling and intermediary support services.
>
> (iv) An adopted child should, where possible and appropriate, know his or her biological parentage and other cardinal matters relating to his or her origins, including cultural and genetic information.
>
> (v) The legal status of an individual in society should be spelled out accurately and in clear terms and recorded in properly maintained records". (Underlining added for emphasis).

39. Mr Murray in his helpful advice to the Court set out the legal issues comprehensively and opined (in line with MacDonald J's analysis above) that:

> "In principle … it is clear that there is authority for the proposition that the court has jurisdiction under *section*

> *55A(1)* of the *Family Law Act 1986* and in an appropriate case, to grant to a birth parent in the position of the applicant a declaration of parentage in respect of a child following the lawful adoption of that child under the *Part 1* of the *Adoption and Children Act 2002*."

40. He further advised that to rule otherwise would be to infringe the Human Rights of the applicants. He raised the persuasive point that while it is settled law that, both domestically and in Strasbourg, an adoption order will act to terminate the birth parents' *article 8 ECHR* rights it not established that the child's rights are similarly curtailed.

41. He added:

> "It is arguable that the adoption order does not have the effect of generating an absolute termination of *article 8* rights from the perspective of the child. This is particularly true in the present two applicants' cases because of the issues which arise in respect of their potential for entitlement to a different nationality as a result of the grant of the declaration sought. There would be a coherent case to suggest in particular that an entitlement to share nationality with other members of one's family (as is the case both for H and C) is part of one's private and family life and therefore it is likely to be entitled to protection under the convention."

42. Ms Fottrell and Mr Murray considered whether in the circumstances obtaining here application can/should be made to the Registrar to amend the birth certificates of the applicants – per *section 55A(7) FLA 1986.*

43. *Section 55A(7)* of the *FLA 1986* imposes a mandatory requirement upon an officer of the court to notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of a declaration under *section 55A(1)* of the *FLA 1986*. The prescribed period is now set out in *rule 8.22* of the *FPR 2010* i.e., 21 days beginning with the date on which the declaration was made (see *Re H No.1* at §27).

44. *Section 14A* of the *BDRA 1953* confers a discretion on the Registrar General as follows:

> "(1) Where, in the case of a person whose birth has been registered in England and Wales—
>
> (a) the Registrar General receives, by virtue of *section 55A(7)* or *56(4)* of the *Family Law Act 1986*, a notification of the making of a declaration of parentage in respect of that person; and
>
> (b) it appears to him that the birth of that person should be re–registered,
>
> he shall authorise the re–registration of that person's birth, and the re–registration shall be effected in such manner and at such place as may be prescribed.

> (2) This section shall apply with the prescribed modifications in relation to births at sea of which a return is sent to the Registrar General."

45. The *Registration of Births and Deaths Regulations 1987* provide the mechanism by which re-registration can be achieved. Every form of re-registration involves an amendment to the original birth certificate without erasing the original entry. The amendment either takes the form of additional words included on the certificate or a note in the margin; importantly the entry will include both the names of the father and the fact that the subject child (now an adult) has been adopted. This will be stamped on the birth certificate.

Conclusion

46. Ms Fottrell and Ms Magennis, in their written and oral submissions, have made clear that neither applicant seeks to disrupt or set aside their adoption; there are neither legal grounds nor factual reasons for doing so in either case. Indeed, both applicants had generally positive experiences of adoption and have no wish to expunge that important aspect of their lives. What each seeks to do, through their applications, is to correct the historical record on their original birth certificates, so as to add to that document the name and identity of their *birth* father and thus formally complete their *birth* history. The bloodline connection is important to them both "in terms of both [their] long-term psychological and material welfare" (see §16 above). Materially both applicants have been able, through their researches, to identify shared personality characteristics with their birth fathers and families, and wish this now to be validated.

47. I have no doubt that for both of these applicants, it is a matter of very considerable personal importance that they are able to achieve legal recognition of their birth parentage. Such a declaration would represent both an acknowledgment of their true identity, and a degree of stability in that identity; I accept the case for Ms L and Ms M that such an order would permit and encourage the nurturing of family relationships with their newly found paternal families and would go some way – as Ms L explained – to:

> "… remedy the 'broken connection' of being an adopted child without a named birth father."

48. With regard to the important issue identified at §1(a) above, I am satisfied that Ms L and Ms M have properly made this application under *section 55A FLA 1986* and that the grant of the declaration which they seek is not contra-indicated by the fact that they had been adopted as infants, even though by that process they assumed a *legal* status so clearly defined by statute and explained by the judges to whom I have earlier made reference (§29 above). I am satisfied that the applications here, brought by adult adoptees, where no question of breach of confidentiality of a current adoptive placement arises, can be distinguished from that which obtained in *Re H No.1 & 2* where the confidentiality of the placement would have been imperilled by the process of determining the application; there is therefore no public policy argument engaged here, as there was before MacDonald J. I am further satisfied that there is nothing in *section 55A* of the *FLA 1986* (nor in *Schedule 1* of the *ACA 2002*) which contra-indicates a declaration of parentage *after* an adoption order has been granted. I am

equally clear that re-registration of a birth in these circumstances is permitted under the *BDRA 1953*.

49. With regard to §1(b) above, in each case (see §19 above for Ms L and §22-23 for Ms M) I can confirm that it has been "proved to the satisfaction of the court" (*section 58 FLA 1986*) that the man identified as the birth father, respectively PJ for Ms L and BH for Ms M, is indeed their birth father. In those circumstances, I am enjoined to "make that declaration unless to do so would manifestly be contrary to public policy". As earlier indicated, there is no public policy reason for not making that declaration in in the instant cases.

50. I shall make the declaration of parentage in each case accordingly.

51. Finally, with regard to §1(c), it follows that the ground is now properly laid for the Registrar General to be notified of these declarations so that the original birth certificates can, as appropriate, be amended to include the name of the birth fathers. This can be done, I am satisfied, without negating or otherwise affecting the adoptive status of each applicant. The original birth certificates will again be annotated with the reference to the fact that the subject child (in each case the applicant) was indeed adopted. I am satisfied that these orders do not have the effect of controverting or undermining the validity or integrity of the later adoption certificates which will continue to exist unamended; in short, the adoption certificates continue to confirm the *legal* status of parentage many years ago, whereas the original birth certificates relate to the *factual* and biological evidence of the applicants' parentage.

Orders

52. I shall therefore order that a copy of this declaration, and in each case the application, shall be sent to the Registrar General for Births and Deaths within 21 days so that consideration may be given to the re-registration of their original birth certificates as provided for herein under the *BDRA 1953, section 14A*.

53. That is my judgment.