

ENGLAND AND WALES / JUDGMENT

J (A child) (Surrogacy: Adoption Order), Re

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[2025] EWHC 2960 (Fam) IN THE HIGH COURT OF JUSTICE FAMILY DIVISION Case No:
SD23P20230/SD15/25 Royal Courts of Justice Strand London WC2A 2LL Date: 27/10/25
Before : MS JUSTICE HENKE

- ----- Re: J (A child) (Surrogacy: Adoption Order)
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 - ----- Louise MacLynn KC leading Melissa Elsworth (instructed by Edward Cooke Family Law) for the Applicants The First Respondent appeared as a Litigant in Person Sharon Segal KC leading Niamh Daly (instructed by Russel-Cooke LLP) for the Second Respondent Pauline Troy instructed by and for the Third Respondent Edward Flood (instructed by Osbornes Law) for the Intervenor Hearing dates: 22-23 September 2025
 - ----- Approved Judgment This judgment is handed down at 2pm on 27 October 2025 by circulation to the parties or their representatives by e-mail and release to the National Archives. MS JUSTICE HENKE This judgment was given in private. The judge gives permission 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 this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court. Introduction and Background 1. I am concerned for the life-long welfare of a child I shall refer to within this judgment as J. J is the second respondent in the proceedings before me and is represented by their Guardian. They are now 2 ½ years old.
2. The application before me is an application for an adoption order. The applicants, for the purposes of his judgment are referred to as Mr and Mrs P. Mr P is now 41 years old, and Mrs P is 38 years old.
 3. Mr and Mrs P met in 2015 and began to cohabit in 2017. They married in August

2019. Mr and Mrs P very much wanted children. They began to try for a family in 2018. 4. In 2021, Mr and Mrs P met the first respondent, who I shall refer to as Ms T, in a Facebook group for surrogacy. Subsequently Ms T agreed to be a surrogate for Mr and Mrs P. Ms T was not the first surrogate they had approached, and they were grateful that she agreed to be a surrogate for them.
5. On 25 June 2021 Mr and Mrs P and Ms T entered into a surrogacy agreement. Ms T agreed, amongst other clauses, that she would not consider the child born of the arrangement as her child and that the intended child would reside with the intended parents, Mr and Mrs P. Clause 8.1 of the agreement stated that: The surrogate must abstain from sexual intercourse from time of agreement until pregnancy is confirmed. Dates to be agreed depending on transfer dates. It was agreed that Mr and Mrs P would pay Ms T pregnancy expenses of £16,000. Payments were to be made on the first day of the month after the 8-12 week scan.
 6. By August 2021, the applicants and Ms T had started trying to conceive by home insemination, using Mr P's sperm and a syringe to inseminate Ms T.
 7. Between August 2021 and end of May 2022, there were eight attempts at conception, each of which failed.
 8. On 8 December 2021 an analysis of Mr P's semen returned a normal range.
 9. Throughout March, April, May 2022 (and into August 2023) the parties were discussing and liaising with a fertility clinic regarding egg and sperm collection, for embryo creation with Ms T. The clinic was not told that Ms T was going to act as a surrogate. All their paperwork shows Mr P as a sperm donor and Ms T as single parent. Ms T was not only preserving her own eggs; she was creating embryos for Mr and Mrs P to use in the future.
 10. On 31 May 2022, Ms T told the applicants that she was ovulating and asked them if they wanted to try again. They did.
 11. Ms T inseminated herself. It is the applicant's case that just after insemination, Ms T had penetrative sexual intercourse without a condom with a third-party male.
 12. On 16 June 2022, Ms T told Mr and Mrs P that she was pregnant.
 13. On 7 December 2022 the applicants attended a 4D scan. This, they say, was the first time they questioned the child's paternity. They asked Ms T to undertake a DNA test. She did but provided insufficient sample to determine the issue and refused to take a second test. By this stage Mr P's mother stated she would not help financially unless she knew J's paternity for certain. The sample from Ms T was insufficient. It is common ground that Ms T refused to give a second sample.

14. J was born in February 2023. Mr and Mrs P were present at their birth. On discharge from hospital, J went to live with Mr and Mrs P where they remain. They are a most wanted and loved child. J may read this judgment when they are older. J should know that she was born into love and is a product of love.
15. On 22 February 2023 J's birth was registered. Mr P was named as J's father on the birth certificate.
16. On 29 May 2023 the applicants applied for a Parental Order. Mr P was named as J's biological father. According to the applicants' statement by this time, the paternal grandmother had begun to express doubts about J's paternity. The applicants say that they had noted J's skin darkening but preferred to consider that reflected Mr P's olive skin than doubt J's paternity.
17. On 9 June 2023 Ms T signed the Acknowledgement of Service and consented to a Parental Order being made.
18. In July 2023 Mrs P conceived a child naturally. K was born in April 2024.
19. On 11 July 2023 the Parental Order Reporter advised the applicants during a video call that a DNA test would be required to establish paternity and provided a list of providers.
20. The applicants chose a "Peace of Mind" test from NorthGene. The Peace of Mind report was not on the list of approved reports for court purposes.
21. On 26 July 2023 NorthGene, the "Peace of Mind" provider, reported. The report stated that there was a greater than 99.999% probability that Mr P was J's biological father. The report specifically stated that it was not to be used for legal purposes.
22. On 31 July 2023, the Parental Order Reporter met with the Applicants and J.
23. On 7 September 2023 the Parental Order Report was filed. There were no concerns about the welfare of J who by then was 6 months old. The Reporter had sight of the DNA certificate from NorthGene. The version of the report the reporter had sight of omitted the wording "Peace of Mind" and that "This Report can NOT be used for legal purposes" although I note from paragraph 11 of the report that the reporter was aware that it was a Peace of Mind report. At paragraph 26 of the report, it says this: Unfortunately the Applicants chose the peace of mind test rather than a court approved professionally verified test. This subsequently has been addressed with the Applicants, who have against guidance, chosen not to complete court-approved testing, citing they are unable to fund it. The Parental reporter recommended a short adjournment allowing the results of a court approved DNA test being submitted, using third party collection of samples which would evidence without any doubt that J is Mr P's biological daughter.
24. On 12 September 2023 the application for the Parental Order came before the Lay Justices. The Reporter confirmed at that hearing that all the requirements of section 54 HFEA 2008 were met with the exception that it needed to be proved that J was Mr P's biological child. The Reporter confirmed that a court approved DNA test would be needed to satisfy the

requirement. It is noted on the face of the order that the applicants expressed concern about funding a DNA test. Consequently, the court ordered that the DNA test be paid for by CAFCASS or if that were not possible, to be arranged by the applicant. The order clearly stated that samples would be needed from Mr P and J.

25. By January 2024, the DNA test ordered by the Lay Justices had not taken place.
26. The application for a Parental Order next came before a Deputy District Judge in the Family Court on 23 January 2024. The order recites that Mrs P was pregnant and that the applicants wished to withdraw their application for a Parental Order and proceed via an adoption application later. The court was told on that occasion that the applicants have significant debts which they owe from the surrogacy in the region of £20,000 and that they cannot borrow more money for a court-approved DNA test. It was recited on the face of the order that there remained a reluctance to provide a DNA sample, and the stress of the continuing proceedings was impacting on the applicants. However, the court did not have a formal application to withdraw before it and did not have evidence in the form of witness statements encompassing the new information provided at the hearing. Accordingly, the court declined to permit the application to be withdrawn, and relevant case management directions were given.
27. On 5 June 2024 the applicants formally applied to withdraw their application for a Parental Order. At that time, they stated that they no longer believed that Mr P is J's biological father. Mr P was willing to engage in DNA testing to ensure clarity given the previous positive result. By this time Mr and Mrs P were stating that Ms T had had a history of relationships with black men and had had a sexual relationship with male during the time they were trying to conceive J.
28. On 13 June 2024 the Parental Order updating report was filed.
29. The application to withdraw came before a Circuit Judge in the Family Court on 27 June 2024. J was joined as a party and a rule 16(4) Guardian was appointed for them. The Guardian appointed was the Parental Reporter. At that hearing directions were given for court approved DNA testing to take place. Further case management directions were given including that Ms T was to be given notice of the proceedings.
30. On 1 July 2024 Ms T confirmed that she would not be attending court and would be happy for an order to be made in her absence.
31. The applicants filed a statement in July 2024. Within it they stated that 'during the first few months of J's life we began to notice their skin darkening. We had comments made by others. We agreed that they appeared mixed race but still did not question this given the recent DNA results. When K was born, the applicants report noticing a big difference in the children's complexion. They state: 'We were aware that Ms T only dated men of black African or Caribbean ethnicity and became concerned. We raised this in a telephone conversation with Ms T. She confirmed she had a sexual relationship with a man during the

period in which we were trying to conceive. Ms T explained this was around the time of our last home inseminations, in June 2022. Ms T has never told us who this man is'. The applicants report that they were no longer on speaking terms with Ms T and that she did not apologise for the situation. Instead, Ms T said that they should be grateful as the fact they are parents was down to her.

32. On 15 July 2024 the report from AlphaBiolabs, the court appointed and approved DNA test reporter was received. The report states that 14 mismatches were observed between the alleged parent and child when no mismatches are expected between a true biological parent and child. Mr P was excluded as the biological parent of J.
33. On 25 July 2024 Ms T sent an email confirming that she consented to an application for an adoption order and parental order and stating she had no further comments to make on J's biological parentage or any other matter.
34. On 26 July 2024 the application for adoption came before the Circuit Judge in the Family Court again. The order records that Ms T had been informed already of the outcome of the second DNA test and that the applicants intended to apply to adopt P. Ms T confirmed that she would consent to that adoption.
35. At the hearing on 26 July the applicants were granted leave to apply for an adoption order. In addition, the court granted the applicants leave to apply for a child arrangements order (live with) and ordered that J shall live with the applicants and that they shall have parental responsibility for J whilst that order remains in force. Upon issue of the adoption application, the parental order application was to be deemed withdrawn and the local authority was to become a party to the adoption application. Further case management directions were given.
36. On 7 December 2024 an Annex A report was filed. Ms T had very clearly told the reporter that she did not wish to provide any information in relation to J's biological father. She outlined that was her right and she said she did not have any comment to add. The Annex A wholeheartedly recommended that J should be adopted by Mr and Mrs P. An adoption order was seen as a positive step. It was in the lifelong interests of J to enjoy a stable family life and increase her sense of belonging and identity with the only family unit she had experienced.
37. On 13 December 2024 the Family Court re-timetable the application because the Annex A report had been delayed, and a redacted copy was not ready to be sent to the applicants.
38. The Guardian's report was filed on 27 January 2025. The Guardian recommended adoption as being in the lifelong best interests of J. However, she also wrote 'As part of these proceedings, the court asked the applicants to explain why they thought the initial DNA test produced a false positive showing paternity. The applicants submitted a statement as directed, within which they reiterate they completed the test as per the instructions and cannot explain why they received the incorrect result. The court may wish to pursue this discrepancy further by seeking an explanation from the laboratory if a serious error has

been made by a reputable testing company which professionals need to be aware of. The company may wish to challenge the report made by the applicants as inevitably this assertion could lead to reputable damage’.

39. Within the Guardian’s report it is stated that Ms T had confirmed by email that she consented to an adoption order being made. Her stance is reiterated in an email she sent on 11 February 2025 which I have before me. It has not wavered since.
40. . The matter came before the same Circuit Judge on 27 February 2025. Despite the clear expectation of the Court on the previous occasion, an adoption application still had not been made. Accordingly, the court could not proceed substantively, and the matter was relisted. Permission was given to the child’s solicitor to share the DNA tests results from AlphaBiolabs with NorthGene. The child’s solicitor was directed to bring to the attention of NorthGene the difficulty that has arisen in relation to DNA testing in this case. The order recited that the child’s solicitor will suggest to NorthGene that they should not be offering “peace of mind” tests to those who need DNA proof for any court application.
41. The adoption application was finally made by the applicants on 27 February 2025. The application records Ms T’s consent to the adoption. On the face of the adoption application, Mr and Mrs P declared that we paid expenses to Mr T of £16,000 as we originally entered a surrogacy arrangement. We are seeking adoption with permission of the court after becoming ineligible for a parental order.
42. On 11 March 2025 the child’s solicitors emailed NorthGene and sent them the AlphaBiolabs report. Attached to the email was the Peace of Mind report supplied by the applicants to the court. There was an email in response from NorthGene. That email stated that “NorthGene do not offer “Peace of Mind” testing for Legal Purposes. According to the email this is made very clear at every stage of the test ordering, sample submission and test consenting process. Please could you confirm who amended the NorthGene Peace of Mind DNA test Report that you have sent to us? [...] From a cursory inspection of the AlphaBiolabs report it would appear that the STR profile of the Putative father generated by them matches the STR profile generated by NorthGene. However, it is clear that the STR profile of the Sample proffered as the child’s is different and must have been provided by a different donor”
43. On 20 March 2025, on the papers and having considered an email from NorthGene dated 11 March 2025, the court directed NorthGene to provide to the solicitor for the child the original report and a statement covering the points raised by NorthGene in their email. NorthGene were not made a party but were given permission to apply to set aside or vary the order.
44. On 24 March 2025 a statement from the CEO of Biofortuna Ltd (NorthGene is a trading name of Biofortuna) was filed. It stated that NorthGene make it clear in their Peace of Mind Testing Form, Terms, and Peace of Mind Reports that NorthGene’s “Peace of Mind” tests are not intended and should not be used for any legal purposes, including court proceedings. It also clarified that the Modified Report provided under cover of the child’s solicitor’s email of

11 March 2025 is materially different to the Original Peace of Mind Report. With reference to the AlphaBiolabs report, the CEO of NorthGene stated “The genotypes/alleles identified for each STR marker for IO by AlphaBiolabs are different from those identified by NorthGene. This indicates that the DNA sample purportedly from J supplied for testing to AlphaBiolabs was from a different individual to that supplied to NorthGene for testing’.

45. On 25 March 2025, the Circuit Judge, having considered the statement of NorthGene of 24 March 2025, transferred the application to me. On being advised by the child’s solicitor that the proceedings had been allocated to a High Court Judge and a hearing listed on 3 April together with documents ordered to be sent, Ms T stated: ‘Thank you for sending me the order of the court, and the statement that is referred to. I will not be attending the hearing on Thursday 3rd April 2025 as I have no objections or matters to raise. I am happy for the court to make a final order in my absence.’
46. On 2 April 2025 the solicitor for the child received an email from the applicants in the following terms: ‘Having just read through the attachments you sent regarding tomorrow’s hearing and discussing it with Mr P, we feel we understand more about what is being questioned. Regarding the amendment of the document from North Gene we have just remembered that we did at some point edit the document. We removed everything other than the result which we then shared with a few family members and possibly a friend. It is possible that when editing back to the original, we didn’t fully edit it back and some bits were still missing from it when we forwarded it to the Guardian/Parental reporter at CAFCASS. Neither of us are 100% certain this is the case because this was around 2 years ago now and the sheer amount of paperwork, emails, attachments etc that we have had to go through over these 2 years is somewhat clouding our memory. But this is the only explanation that we can offer for that at this point for that. ‘
47. On 3 April 2025 the application came before me. I requested that the child’s solicitor write to NorthGene to advise them that:
 - a. An explanation has been given within the proceedings for the modification of the Peace of Mind test result that does not in any way implicate them in the same.
 - b. The court is seeking further information as to how a positive result was achieved from the Peace of Mind testing given the further testing undertaken disproving this positive result.
 - c. The court would be assisted by a statement from NorthGene as to the likelihood of that positive result arising from contamination in any part of the testing process to which NorthGene were responsible.
 - d. The court may at final hearing make findings as to how the positive result was achieved, which may, dependent on the evidence heard, include findings as to NorthGene’s role.
 - e. NorthGene may wish to make representations at any future hearing and the solicitor for the child shall notify them of the date for the next hearing.

48. At the hearing on 3 April 2025 I invited the parties to consider whether any other applications should be considered in this case, such as a declaration of non-parentage and a declaration that the local authority were not required to notify the paternal family of the adoption application. I also directed the applicants to file a further statement dealing with how the first NorthGene report came to falsely identify Mr P as J's biological father, the history of their relationship with Ms T and when they first realised J was not a biological relation of Mr P.
49. Ms T served a statement dated 10 April 2025. She stated that she did not observe the sperm donations being deposited into the specimen containers prior to them being provided to her by the applicants. Thus, she implied but did not expressly assert that Mr and Mrs P might have provided a third party's sample. Ms T also stated that there have been 'no circumstances in which [she] told the applicants about J's parentage'.
50. On 17 April 2025 a second statement was received by the court on behalf of NorthGene. The statement emphasised that the laboratory testing is the same whether the report is for legal purposes or not. It is only if the report is for legal purposes that a sample taker is used and a chain of custody established. Here they were reliant on the samples provided by the applicants. The statement includes the following: The only way that NorthGene could have reported a paternity inclusion for J and the putative father is if the putative father provided a sample from a female first degree relative (such as his mother, another daughter, possibly his sister) or from his identical twin brother's daughter and offered that sample to us as being donated by J. That s it.
51. On 26 June 2025 the local authority applied for a declaration that they be released from their requirement to notify the paternal family of J's birth.
52. On 27 June 2025 the Guardian provided an updating report
53. The case returned before me on 1 July 2025. On that occasion, I made a declaration of non-parentage in relation to Mr P. I made that declaration with the agreement of Mr and Mrs P and with the support of the Guardian and the local authority. I did so because Mr P had been wrongly registered as J's biological parent on their birth certificate and that certificate would need to be rectified. Further, at that hearing I declared that the local authority was not required to take any further steps in relation to the notification of J's biological father or paternal family of the application for adoption. I made that declaration because Ms T had been repeatedly asked but had consistently failed to provide any information concerning the identity of J's biological father and because the court had no further information concerning the identity of J's father and no other avenue by which to obtain it. I gave further case management directions and invited the paternal grandmother to intervene given the findings that might be made against her. I gave permission for maternity testing given the circumstances surrounding J's birth appeared to me to be opaque and there was a need to establish a maternal biological link between J and Ms T.

54. On 4 July 2025 Ms T indicated by email to the child's solicitor that she would not be attending any court hearings: I have replied promptly to communications and cooperated with requests made for me to action. For example, I do not need to attend a court hearing in order to provide written statements or complete a DNA test. I am a full-time working professional with a busy schedule. Modern technology means that I can be communicated with via email and/or phone. This is sufficient in my opinion. Moreover, I do not believe that the court proceedings have been caused by myself. It was envisaged when the applicants and I signed our surrogacy agreement that they would attend a court hearing applying for a parental order, which I would not attend. The court proceedings for the applicants to obtain parental rights have always been viewed by me as a special time for them to legally be recognised as parents of their child. I have never viewed it to be appropriate for me as their surrogate to attend court hearings. My part in assisting them to have a family was completed upon birth of the child. Therefore, I am not prepared to make significant changes to my schedule and/or potentially lose earnings in order to attend court hearings in person. I have also stated previously that I am happy for orders to be made in my absence. Yes I am happy to provide a DNA test. Please send me instructions on how to complete this
55. Ms T filed a statement dated 15 July 2025. Within it she said this I am supportive of the applicants' adoption application. I do not wish to oppose their application in any way. [...] I abstained from sexual intercourse from the date of signing our surrogacy agreement (25.06.21) until pregnancy was confirmed... I did engage in various sexual acts, excluding sexual intercourse, from the date of signing our surrogacy agreement until pregnancy was confirmed. I engaged in various sexual acts with a variety of individuals, of various ethnicities. The applicants were aware of this.
56. On 20 July 2025, DNA maternity testing indicated with a high degree of certainty that Ms T is J's biological mother.
57. On 23 July 2025 the case came before me again. The paternal grandmother was given permission to intervene. I gave further directions to facilitate the final hearing before me on 22 September 2025. During the hearing I indicated that I expected candour at the hearing before me in September.
58. On 4 August 2025 the paternal grandmother filed a statement admitting that she was the female DNA sample tested in July 2023 and asserting that her son had not seen her take the sample.
59. In her statement of 21 August 2025 Ms T stated - 'I believe that the applicants provided me with a sperm sample belonging to a third party sperm donor rather than Mr P' - 'at no point did I inform the applicants that I had sexual intercourse using a coming, at no point did I say that I 'felt this was a good idea to help 'push up Mr P's sperm..' - I abstained from sexual intercourse during the timeframe specified in our surrogacy agreement. I am more than happy to provide telephone numbers for various individuals subject to me still having their contact details, for my abstinence to be verified and/or for these individuals to undertake

DNA testing, if the court wishes for me to do so for specifically named individuals' The Issues Before Me

60. It is common ground between all the parties before me that it is in J's life-long best interests to be adopted by Mr and Mrs J.
61. Before I make an adoption order in relation to J, I will need to consider whether, in light of the information now provided, the non-notification paternity direction made on 23 July 2025 needs to be revisited.
62. On 1 July 2025 I indicated that the court would need to make findings of fact, dependent on the evidence available, on those issues. The issues, in the context of a life changing and lifelong order for J were 'all relevant to J and her origins and should be determined on the best evidence. As she grows and becomes curious, there will be issues of where did I come from; how did I come to live with my mummy and daddy, what happened. It seems to me these issues are intertwined... she must know in so far as this court can ascertain what her origins were and the circumstances around' her conception.
63. To fulfil that purpose, I considered at the pre-trial review that the court needed to determine at the final hearing the following issues:
 - a. The circumstances of J's conception and the applicants' and first respondent's knowledge of it.
 - b. The circumstances resulting in the NorthGene DNA test concluding that there was a greater than 99.999% probability that Mr P was J's biological father.
 - c. The circumstances resulting in the NorthGene DNA report being provided to the guardian and court without the wording "Peace of Mind" and "This Report can NOT be used for legal purposes" included on page one (which were in the original report provided by NorthGene).
 - d. Whether all or any of the above involved an attempt by the (i) applicants, (ii) first respondent and/or (iii) paternal grandmother (in respect of (b) only), to mislead each other, or any other person.
 - e. Whether I considered that the court has been misled. The evidence in this case could, at its highest, lead the court to conclude that the applicants and/or the first respondent knowing she was pregnant by a third party, misled the court in applying for / supporting a Parental Order.
 - f. Whether a third-party sample was knowingly provided by the applicants and/or the paternal grandmother to mislead and obtain a Parental Order.
 - g. Whether DNA evidence for the purposes of court proceedings had been tampered with by the applicants or one of them to mislead and obtain a Parental Order.

64. The above issues are considered by me within the statutory framework of section 1 ACA 2002. There are and never have been any application before me for contempt or permission to bring contempt proceedings. The Hearing Before Me
65. At the hearing before me Mr and Mrs P were represented by Ms MacLynn KC who led Ms Elsworth of Counsel. The paternal grandmother was represented by Mr Flood of Counsel. Ms MacLynn KC, Ms Elsworth and Mr Flood acted pro bono. Ms T represented herself. The local authority was represented by Ms Troy of Counsel. J was represented by their Guardian who instructed Ms Segal KC and Ms Daly of counsel.
66. I heard evidence on 22 September 2025 and adjourned into the next day for submissions. Ms T declined to return for submissions on the second day telling me that she had said all she had to say.
67. I am very grateful to all counsel who appeared before me. The standard of advocacy, oral and written, was high and assisted the court greatly. The Evidence Before Me
68. I have two bundles to assist me. I have read them both.
69. Within the main bundle there is a statement from Mr Z who is employed by CAFCASS. He is a Parental Order reporter but not the reporter in this case. He recalls a post on a social media surrogacy site from Ms T the purport of which was that she had had sexual intercourse with her boyfriend the same day or very soon after she had inseminated herself with the sperm of the intended parent. Within the post she said she had become pregnant soon afterwards after a protracted period of no success. Mr Z cannot recall the date of the post but did recall a jocular comment to the effect that having sex after seemed to push all the swimmers up further to where they needed to be. Mr Z was aware that Ms T was a surrogate involved in Parental Order application which was already in train and brought the information to the attention of his manager. Mr Z was not required to attend for cross-examination by any party. In a subsequent statement from Mr and Mrs P there is exhibited a screenshot which appears to me to be either the post Mr Z speaks of in his statement or very similar thereto. It is a screenshot of a message on a social media page posted by Ms T.
70. I also have before me the report of Prof Denise Syndercombe Court, Professor of Genetics at King's College, London, which is dated 29 May 2025. The report concerned the assessment of a biological relationship between Mr P and J; two DNA tests having provided conflicting results. She highlighted that there was insufficient information to say with sufficient confidence whether the NorthGene report or the AlphaBiolabs report was correct. The DNA from the paternal grandmother, who says she took J's swab and with whom Mr P shares 50% of his DNA, could account for the NorthGene report. An independent test, ideally including the biological mother of J and/or the biological mother of Mr P could, she says, assist the court in providing a result that can be relied upon.
71. Prof Denise Syndercombe Court provided the court with a second report dated 21 July

2025. Within that report she stated that that the DNA profile of Mr P in the NorthGene report and the AlphaBiolabs report was identical but that of J was not. The DNA profile presented in the maternity profile is identical to that provided by AlphaBiolabs in all areas where tests were in common. Confirmation of J's DNA profile therefore indicates that the conclusion provided by Alpha Biolabs that excluded Mr P as J's biological father was the correct one. The DNA results provided in the NorthGene report were fully consistent with a first degree relative of Mr P and could there have been provided from samples originating from Mr P's mother or any biological daughter of his, other than J.
72. Ms T has filed three statements. In addition, as I have referred to in the chronology above, I have before me emails from her. Ms T also gave oral evidence before me. In chief, she told me that her only motivation had been to help Mr and Mrs P have a family. She considered, on reflection, that she had over-shared her private life with Mr and Mrs P. She had viewed them as old friends, but she considered that had been to her detriment. That was a reference to what Mr and Mrs P have told this court about Ms T and the contact she had with men and her attraction to men of African and Caribbean heritage. When cross-examined by Ms MacLynn KC on behalf of Mr and Mrs P she was taken to messages about her sexual relationships which she considered were now being over-interpreted. They did not, she said, evidence that she had had penetrative sexual intercourse with a man at the relevant time. Sex was, according to her, an umbrella term, which did not of necessity mean penile sexual intercourse. References to jiggy jiggy was to a slang term for sexual acts in general not penile sexual intercourse. When asked about the reference to sex pushing up the semen to where it needed to be, Ms T told me that that was a reference to orgasm not penile penetration. She told me when cross-examined by Ms Troy for the local authority that she did not know who J's father was. Initially she told me that she kept a diarised log of all her sexual contacts for gynaecological reasons. Later in her evidence she said she would need to look at the diary for the men she was involved with at the time but denied having penile penetrative sexual intercourse with them at the time of conception. Ms T had ample opportunity to produce her diary before the hearing in September but did not do so. Later in cross-examination she told me that she could not find the diary for 2022. She was asked why she had not mentioned until her final statement that she considered that Mr and Mrs P had introduced third party sperm was the only explanation for the DNA results. She told me that she had not thought of that before. For her it was the only logical explanation. She had not explicitly mentioned it sooner because she said she did not wish to bring the applicants into disrepute.
73. In her oral evidence Ms T was self-confident throughout and arrogant on occasion. She is obviously an intelligent woman who is sexually liberated and assured. She had her narrative, and she stuck to it in the witness box. I do not consider she told me the whole truth. I find that the messages that she was taken to in cross-examination do establish that she was had penetrative penile sexual intercourse with a third party at the relevant time. Her attempts to get around the plain meaning of the messages were not credible. I have, in this context been rightly reminded of a text Ms T sent to Mrs P after a visit to the doctor in February 2022: '...

Plus she said that sometimes the sperm don't always get up high enough using a syringe because it's not "propelled" like sex if you get the idea lol ??'. Her evidence that she did not consider it relevant to mention explicitly that she considered that Mr and Mrs P had used a third party donor until her last statement again was not credible. Ms T has known of the steps in these proceedings and the Parental Order proceedings that have gone before. She has known for a considerable period that the DNA result confirming Mr P as the father was a false result. She had every incentive to mention her theory before. Ms T had implied it before but did not explicitly state it until her August 2025 statement. I find that she raised the inference and later mentioned her theory to deflect any blame from her. Her motivation was self-interest not the protection of Mr and Mrs P and their reputation. In cross-examination, Ms T was asked to name those with whom she was having sexual intercourse at the time J was conceived. Her answers as to who and how many men she was seeing at the relevant time varied, but one thing remained constant, her refusal to name anyone. Thus, she failed to put J's interests first as she failed to reveal a route to discovering J's paternal origins and anything about their father which would assist their future welfare e.g. health issues. Ultimately, I found that Ms T's evidence was self-centred. Her answers were given to protect herself and not help the court.

74. I have evidence from both Mr and Mrs P. They, in their recent statements to this court and the Practice Direction document filed on their behalf, have expressed their sincere remorse that they had not told the truth sooner. They apologise to the court and ask me to accept their evidence.
75. Mr P gave oral evidence. He told me that when J was born their skin was paler and he believed J was his biological child. Any doubts he had pre-birth went from his mind. He was aware the NorthGene report had been edited but that was to do with finances and being unable to afford the court approved reports. He told Ms Troy in cross-examination on behalf of the local authority that he had been in the same room as his mother when he had done his swab. He described to me where J was sat on his mother's lap and where he was. The room was a small room. He told me that his mother had told him in June 2025 that she had given her sample to be tested. He claimed not to have seen his mother take her own swab. However, I reject his evidence on that point. On his own account, he read out instructions to his mother before they took the swabs. The swabs were being taken to provide evidence for a report needed for the Parental Order. J was Mr P's first child, and I find it is highly unlikely that he would not have watched her having a swab taken, if that was what had happened. When I asked him about observing his mother take her sample, he told me he had seen shapes and movements. He was concentrating on his own swab. Later in cross-examination by Ms Segal KC he was asked why he had been prepared to blame NorthGene for the erroneous result. He said because he did not know about his mother taking the sample from herself rather than J. I find his answers incredulous. Mr P was in a small room with J sat on his mother's lap. They had a common purpose to take swabs for the DNA test by NorthGene and had chosen to do it at the same time, in the same place. He did not see shapes and movements. I find he saw his mother take the test rather than J.

76. Mr P told me when cross-examined by Ms Segal KC that he had deleted his messages with Ms T. His wife, he said, kept him updated. Mr P was asked about the Fertility Clinic. Ms T had frozen her eggs and created an embryo. He attended the clinic. Once with Ms T and once on his own. He accepted he had had to tell the clinic it was not for surrogacy. He had said in a message to which he was taken that he did not have to lie too much. It was, he said, a means to an end. Ms T wanted it and they; Mr and Mrs P were sucked up. I find that the lies told to the Fertility Clinic are a marker of Mr and Mrs P's desperation for a family but also their preparedness to lie to professionals get what they wanted.
 77. Mr P told me that they had used the NorthGene report for financial reasons and doctored it because they just wanted to get on with their lives. I reject that evidence.
 78. Mrs P gave evidence before me. She was heavily pregnant and anxious. Mrs P admitted in cross-examination that she doubted paternity at the point the Parental Order application was made. She denied knowing anything about the paternal grandmother using a swab from her own cheek rather than one from J's to send as a sample to NorthGene. I do not consider that Mrs P has told this court the whole truth.
 79. The paternal grandmother gave evidence. In chief she told me that her first statement contained some untruths. In cross-examination on behalf of the local authority by Ms Troy, the grandmother told me that there had been no discussion about her taking the swab for the DNA test herself before she took the swab and that it was not a pre-meditated act - I did it on the spur of the moment. As she was pushed in cross-examination, her evidence about why she took a swab from her own cheek became non-sensical. She told me for instance that she did not know that the test would come back with Mr P as the father and thought it would come back as hers. If that were so, then why would she do it. I find that the grandmother was prepared to tell the truth about taking a swab from her own mouth and passing it off as a swab from J but that she still did not tell me the whole truth. I find that she was still protecting Mr and Mrs P and their part in the swab from the paternal grandmother being passed as the swab from J.
 80. When asked a simple question by me, the paternal grandmother gave heartfelt evidence. She told me how she had funded the surrogacy arrangement as best as she could and how members of the family had also made financial contributions. I brought home to me that to this family, as to many others, £16,000 was a considerable part of their life savings. The paternal grandmother told me that she had helped because she knew how desperately Mr and Mrs P wanted children and, I paraphrase, she could empathise because she too had lost a child to adoption and suffered many miscarriages. In that moment, her vulnerability was apparent as was the overwhelming desire to help Mr and Mrs P have the family they craved.
- The Law Findings of Fact

81. I have been taken to the guidance given by Baker J (as he then was) in *Re L and M (Children)* [2013] EWHC 1569 (Fam) confirmed by the President in *In the Matter of X (Children)* (No 3) [2015] EWHC 3651 at paras 20 – 24 and the judgment of Aikens LJ in *Re J and Re A (A Child)* (No 2) [2011] EWCA Civ 12.
82. The standard of proof is the simple balance of probabilities. As Lord Hoffman observed in *Re B (Care Proceedings: Standard of Proof)* [2008] UKHL 35 that: “If a legal rule requires facts to be proved, a judge must decide whether or not it happened. There is no room for a finding by the court that something might have happened. The law operates a binary system in which the only values are nought and none”.
83. The burden of proof rests on the shoulders of the party which seeks the finding. It is for them to satisfy the Court, on the balance of probabilities, that it has made out the case in relation to disputed facts. A respondent to an allegation has nothing to prove, and the Court must be careful to ensure that it does not reverse the burden of proof. As Mostyn J said in *Lancashire v R* [2013] EWHC 3064 (Fam), there is no pseudo- burden to come up with alternative explanations.
84. Findings of fact must be based on evidence, and the inferences that can properly be drawn from the evidence, and not on speculation or suspicion. The dividing line between the drawing of inferences and speculation may not be a clear one; it is essentially a matter of judgment as to what is a legitimate inference and what is insupportable speculation: *Re A (A child)* (Fact Finding Hearing: Speculation [2011] EWCA Civ 12 [2011] and *Re A* [2015] (Application for Care and Placement Orders: Local Authority Failings) [2015] EWFC 11 .
85. A party/witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear, and distress. They may lie because they are desperate to have a family or keep a child who they regard as theirs within their family. The fact that a party/witness has lied about some matters does not mean that he or she has lied about everything: *R v Lucas* [1982] QB 720. Within the context of family proceedings, the Court of Appeal has made it clear that the application of the principle articulated in *Lucas* in family cases should go beyond the Court merely reminding itself of the broad principle. In *Re H-C (Children)* [2016] 4 WLR 85, McFarlane LJ (as he then was) stated as follows: “[100] One highly important aspect of the *Lucas* decision, and indeed the approach to lies generally in the criminal jurisdiction, needs to be borne fully in mind by family judges. It is this: in the criminal jurisdiction the ‘lie’ is never taken, of itself, as direct proof of guilt. As is plain from the passage quoted from Lord Lane’s judgment in *Lucas*, where the relevant conditions are satisfied the lie is “capable of amounting to a corroboration”. In recent times the point has been most clearly made in the Court of Appeal Criminal Division in the case of *R v Middleton* [2001] Crim. L. R. 251. In my view there should be no distinction between the approach taken by the criminal court on the issue of lies to that adopted in the family court. Judges should therefore take care to ensure that they do not rely upon a conclusion that an individual has lied on a material issue as direct proof of guilt.”

86. The four relevant conditions which must be satisfied before a lie is capable of amounting to corroboration are set out by Lord Lane CJ in *Lucas* as follows: “To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.”
87. In the Family Court, even where the Court is satisfied that a lie is capable of amounting to corroboration, the Court must weigh that lie against any evidence that points away from the allegation being made out: *H v City and Council of Swansea and Others* [2011] EWCA Civ 195.
88. In *Re F (A Child) (Placement Order)*
- [2018] EWCA Civ 7261 para 25 Jackson LJ said this: “[25] Similarly, close attention must be paid to the true significance of lies deplorable, are significant only to the extent that they affect the welfare of the child, and in particular to the extent that they undermine systems of protection designed to keep the child safe. However, as noted by Macur LJ in *Re Y (A Child)* [2013] EWCA Civ 1337, they cannot be allowed to hijack the case. See also Sir James Munby P in *Re A (Application for Care and Placement Orders: Local Authority Failings)* [2015] EWFC 11, [2016] 1 FLR 1, at para [12]: ‘The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority’s case was that the father “lacks honesty with professionals”, “minimises matters of importance” and “is immature and lacks insight of issues of importance”. Maybe. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority’s evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts.’ Although these observations about lies and lack of insight are directed to proof of the threshold, they can equally be applied to the welfare evaluation”
89. In *Re K (children) (placement orders)* [2020] EWCA Civ 1503, Jackson LJ who said at paragraph 29: “The next general matter concerns the significance of lies. The correct approach to lies in relation to fact-finding is well known and the Judge appropriately gave himself a *Lucas* direction in that context. Here the more pertinent matter for our purpose concerns lies in the context of welfare. Lies, however disgraceful and dispiriting, must be

strictly assessed for their likely effect on the child, and the same can be said for disobedience to authority. In some cases, the conclusion will simply be that the child unfortunately has dishonest or disobedient parents. In others, parental dishonesty and inability to co-operate with authority may decisively affect the welfare assessment. But in all cases the link between lies and welfare must be spelled out. That did not happen in *Re Y (A Child)* EWCA Civ 1337, where Macur LJ said this at [7(4)]: "... I consider the case appears to have been hijacked by the issue of the mother's dishonesty. Much of the local authority's evidence is devoted to it. The Children's Guardian adopts much the same perspective. It cannot be the sole issue in a case devoid of context. There was very little attention given to context in this case. No analysis appears to have been made by any of the professionals as to why the mother's particular lies created the likelihood of significant harm to these children and what weight should reasonably be afforded to the fact of her deceit in the overall balance."

90. Those principles have recently restated by Cobb LJ in the case of *Re M (Care Order: Risk: Family Placement)* [2025] EWCA Civ 163, where he said at paragraphs 89 and 90: "There is one final contextual point to make. The Judge placed great weight on the mother's lies and dishonesty as illustrative of her lack of protective capability, but in my judgment she failed to have proper regard to the observations of Peter Jackson LJ in *Re F* at [25] and Sir James Munby P in *Re A (Application for Care and Placement Orders: Local Authority Failings)* [2015] EWFC 11, [2016] 1 FLR 1, at para [12]: "Lies, however deplorable, are significant only to the extent that they affect the welfare of the child, and in particular to the extent that they undermine systems of protection designed to keep the child safe". Parental Order
91. An application for a Parental Order following a conventional surrogacy may only be made if the gametes of the applicant, or at least one of two applicants, were used to bring about the creation of the embryo – HFEA 2008, S54(1)(b) and S54A(1)(b) Adoption
92. Pursuant to section 42(5) Adoption and Children Act ('ACA 2002') the child must have their home with the applicants for not less than three years, or the court can give leave - section 42(6) ACA 2002. As the chronology set out above captures, Mr and Mrs P have already been given leave to make an adoption application in relation to J.
93. Sections 19 and 20 ACA 2002 are not engaged. Therefore, the prescribed forms referenced within section 52(7) ACA 2002 and as set out within PD5A are not a mandatory requirement. Rather, as per FPR 2010, r14.10(2) consent to the making of an adoption order may be given in the form referred in PD5A or a form to the like effect or otherwise as the court directs (emphasis underlined). Here, Ms T has consistently given her consent to J's adoption by Mr and Mrs P. She did so again in her oral evidence before me. Accordingly, I direct that her consent need not be given on the form referred to in PD5A.

94. Health reports should be provided no more than three months earlier (FPR 2010, r14.12). The court can be satisfied in this case that although slightly older, the medicals are complete, and no additional reports are needed.
95. I accepted the Guardians submission that with C and Another v E (International Surrogacy and Domestic Adoption) well in mind and having considered the evidence, sections 92 or 95 ACA 2002 are not engaged (or breached) in this case.

[2025] 2 FLR 637

96. Part 14 FPR 2010 provides that a father without parental responsibility is not an automatic respondent to proceedings for an adoption order. However, the procedural rules provide a specific process by which the interests of a father without parental responsibility can be considered. Where the father's identity is known, the Adoption Agency have certain duties (Adoption Agency Regulations 2005, Reg 14(3) and (4)). Those duties (including contact with the father) arise 'if the agency is satisfied that it is appropriate to do so'. As a matter of practice, a father without parental responsibility should be informed of proceedings unless for good reason the court decides it is not appropriate to do so. The Court of Appeal comprehensively considered the approach to be adopted in notifying fathers and relatives of an adoption application in *Re A, B and C (Adoption: Notification of Fathers and Relatives)*. There is a careful balance to be struck. However, notification can only take place if there is someone to notify.

[2020] EWCA 41

97. In making a decision to make an adoption order, the child's welfare throughout their life is my paramount consideration and I must apply section 1 of the ACA 2002. My Analysis and Findings
98. I begin by quoting the words of Peter Jackson J, as he then was, in *M, F and H*

[2013] EWHC 1901 (Fam): "Happily, many children are born to individuals or couples who have faced challenges in conceiving. Some births follow treatment at licensed clinics and others originate from informal arrangements. Either way, those involved must often be confronted by profound feelings and powerful forces. These include, relevantly to this case, a yearning for children, a need for friendship and a hunger for sex, forces that can overpower and defeat routine social conventions. Nor should it be forgotten that, however difficult or unsatisfactory the circumstances of conception may have been, a child – as here – has been born. But it is naïve to ignore the difficulties that can arise from time to time. Even in the field of regulated fertility treatment there are clear examples: laboratory error (*Leeds Teaching Hospitals NHS Trust v A*)

[2003] 1 FLR 1091; incorrect clinic procedure (*Re E & F* [2013] EWHC 1418 (Fam)); deception (*Re R (a Child)(IVF: Paternity of Child)* [2005] 2 AC 621). Nonetheless, regulation is broadly successful in protecting participants from exploitation and from health risks, while providing some certainty about legal relationships. Codes of Practice limit the number of

times a person can donate sperm: in this country a donor can normally donate to a maximum of 10 families (see HFEA donation policy). In comparison, participants in informal arrangements have to judge all risks for themselves. They may not be in a good position to do so. Those seeking to conceive may be in a vulnerable state and not all donors are motivated by altruism.

99. I find that in this case Mr and Mrs P were desperate to have a child of their own. Mrs P had had a previous child with another partner, but that child had died in infancy of an inherited condition. She was left lost and bereft by their death. She longed for a family and to have children with Mr P. Mr and Mrs P are in a loving and enduring relationship. They tried to conceive without success. They turned, as many do, to their GP and to the local hospital for fertility tests. Mr P was found to have a normal sperm count. Mrs P had PCOS and was not ovulating regularly. There was also a possibility, albeit small, that any child she conceived would have the same condition as her first child. The advice she was given was that she could go through pregnancy using donor eggs but, as Mr and Mrs P, discovered the cost of doing so was huge. I accept, as the applicants tell me that it was at this point, they started to explore other avenues to parenthood whilst also continuing to try to conceive naturally. 100. Overtime, Mr and Mrs P discounted adoption and fostering as routes to parenthood perceiving those routes to be uncertain and boundaried by red tape. They had, however, conducted their own research into surrogacy. To them the fees for the authorised and regulated surrogacy agencies appeared expensive and beyond their reach. They considered those fees, the expenses payable to the surrogate and the waiting lists to join an agency were too greater barriers to parenthood and discounted that route. They had begun to explore the independent surrogacy route. They discovered through social media relevant groups and talked to others about their experience of independent surrogacy. Through a social media surrogacy group, they met Ms T. 101. I accept the applicants' evidence that they were careful to get to know Ms T. They met her in person and kept in touch with her thereafter. Initially Ms T was not available to act as a surrogate as she had committed to another couple but that fell through and in March 2021, Ms T agreed to act as a surrogate for Mr and Mrs P. Ms T had previously been signed up with an authorised agency and she had the relevant forms which she and the applicants used as templates for their discussions. It was agreed by Mr and Mrs P that Ms T did not dictate the terms of the surrogacy agreement any more than they did. It was a specific clause of the agreement which they entered that the surrogate must abstain from sexual intercourse from time of agreement until pregnancy is confirmed. 102. I accept that the method of insemination agreed and used throughout was that Mr P and Mrs P would go to Ms T's home where Mr P would provide a semen sample and then Mr and Mrs P would leave, and Ms T would inseminate herself. I reject Ms T's assertion that on the last occasion, unknown to her, Mr and Mrs P introduced a third party's semen. They would have no reason to do so. The couple wanted a biological child. Mrs P attended Ms T's home with Mr P when he provided a sample. Mr P's fertility was not in doubt. They had used Mr P's sperm when freezing eggs at the fertility clinic. There is no evidence they did use third party's semen. 103. I find that Mr and Mrs P knew of Ms T's lifestyle choices before they entered into the

surrogacy agreement with Ms T. They knew she continued to date men during periods when she was trying to conceive. I find that they ought to have been aware that despite the clause in their agreement, there was a risk Ms T would have penile penetrative sexual intercourse when she was trying to conceive for them even if they did not want to believe that she would. 104. I find that Ms T did not take her responsibility to the child she was creating seriously enough. I find that Ms T did have unprotected penetrative penile sexual intercourse with a man on or around 31 May 2022. That is the plain and accurate meaning of the messages about which she was cross-examined. It is the only credible explanation for Mr P not being J's biological father. Ms T told me in her evidence that her only motivation to be a surrogate was to help Mr and Mrs P become parents. Having heard her give evidence, I do not consider that was her only motivation although it may have been part of it. On the evidence she gave I cannot pinpoint her precise motivation, but I can find it was complex and that it is likely that it included her own strong lifestyle choices. I find that Ms T's unwillingness to be honest about how J was conceived, and J's likely father, is not child-centric. I find that Ms T is an obviously intelligent woman who had made a conscious decision to stick to her narrative and that in doing so she has put her own interests before J's best interests. 105. On 16 June 2022 Ms T told Mr and Mrs P she was pregnant. Mr and Mrs P had always wanted to be part of the pregnancy. Ms T duly showed them the pregnancy test and invited them to the scans which they attended. They felt bonded to baby J in utero and ordered extra private scans to be able to consolidate the bonding process. That bond has grown into what I find is a strong attachment. 106. Soon after the last insemination, Ms T informed Mrs P that she had had sexual intercourse with a man shortly after she had inseminated herself with Mr P's sperm but said she had used a condom. Mr and Mrs P were therefore aware at that point that there was a risk the baby was not Mr P's biological child although, I consider that they chose at that time to put the risk to the back of their minds. 107. I find that by the time of the 4 D scan in December 2022, Mr and Mrs were concerned that Mr P may not be J's biological father. I find that that was a concern that the paternal grandmother shared, hence she was saying at that time that she would not continue to fund the surrogacy arrangement unless there was proof of paternity. Understandably, the paternal grandmother who was funding the expenses of the surrogacy arrangement in the main wanted to be re-assured before she paid any further monies. Accordingly, Mr and Mrs P attempted to arrange pre-natal DNA testing, but the sample taken by Ms T was insufficient and she refused a second test. Mr and Mrs P preferred to proceed in the belief that J was Mr P's biological child and although the paternal grandmother had doubts, she continued to help fund the surrogacy arrangement. 108. I accept that Mr and Mrs P were present at J's birth. Once J was born, she was handed directly to Mrs P. Mr P gave J their first feed. After a short period of recuperation Ms T went home leaving J and Mr and Mrs P at the hospital where they remained overnight. On discharge J went home with Mr and Mrs P. I accept the common evidence that initially Ms T and Mr and Mrs P remained in touch, meeting up approximately monthly. 109. I find that as J grew, their complexion became darker and it became obvious that J was a mixed-race child. I find that by the time they applied for a Parental Order on 29 May 2023, Mr and Mrs P had real doubts about J's paternity. I find that irresponsibly they ignored their doubts and

ploughed ahead with an application for a Parental Order. I find that by the time the samples were taken for the Peace of Mind report, it is likely that Mr and Mrs P and the paternal grandmother knew that Mr P was highly unlikely to be J's biological father. 110. In their initial surrogacy statement, Mr and Mrs P told the court that their plan was to be honest with J about how she was conceived. I accept that that may have been their intention when they entered the surrogacy arrangement, but I find that what happened has been anything but honest. I find that the lies told by them have strong origins in Mr and Mrs P's love for J who they regarded as their child whoever their biological father was. I find that they were terrified of losing a child to whom they were strongly attached and who was strongly attached to them. I find that it is likely they feared that if J was not Mr P's biological child, J would be removed from them and possibly taken into care and adopted by others. I find that they are also likely to have been frightened that Ms T could withdraw her consent to the Parental Order or subsequently, the Adoption order at any time. 111. On 5 June 2024 Mrs P on behalf of both applicants wrote a statement to withdraw the application for a Parental Order. Within it they stated that although they had not had a second DNA test, they now accepted that Mr P is not J's biological father. They stated that as J has grown J's complexion has obviously darkened and it has become apparent that they are of mixed race. Their second child K is noticeably different in complexion to J. Within this statement the applicants then stated that Ms T revealed that she had in fact had a sexual relationship with a male during the period they were trying to conceive J despite the surrogacy agreement. They described how they had been deceived and felt their trust has been broken. All that appears perfectly reasonable at face value but of course it does not explain the redacted Peace of Mind report which they filed with the court, and which showed Mr P as J's biological father. 112. In their statement dated 19 July 2024, Mr and Mrs P accept that in their discussions with the Parental Reporter they had had no difficulty with providing the required DNA test. They chose NorthGene from the list of court approved providers. They received the results on 27 July 2023. There is no mention within this statement of editing the NorthGene report or that the unedited version of the report they had obtained said it was not for legal purposes. There is no mention within this statement of how the NorthGene report came to identify Mr P as J's father. 113. The next statement from the applicants was dated 1 January 2025. It had a heading Circumstances of obtaining the DNA test under which they explained that they chose NorthGene from the list provided by the Parental Reporter because it was the cheapest option. They set out how Mr P took his own cheek swab, and the paternal grandmother took J's cheek swab. In paragraph 6 they state the result was emailed to us on 27.07/23 stating Mr P was the biological father of J [...] We had no reason to doubt the result at the time and were relieved confirmed paternity. Later within the statement they express how they cannot understand why or how the DNA test from NorthGene confirmed paternity. This highlights to us the importance of using a court approved tester and to have a third party collect the sample. We intend to contact NorthGene once court proceedings are over to gain more information on what they think may have produced a false result. That was, in my judgment, an attempt to deflect responsibility away from themselves and wrongly place it at NorthGene's door. It does not engage with how they came to use a report which is

clearly not to be used for legal purposes and how and why that report was edited to remove that it was a peace of Mind Report and not intended for legal purposes and why it is edited version which the Parental Reporter saw and was before the court. 114. Mr and Mrs P filed a further statement on 17 April 2025 in which they stated that they had been thrilled to receive the results of the NorthGene DNA test and wanted to share it with family and friends. Mrs P edited the document leaving only the result before they shared it with their family and friends. They had intended to, but in fact had not, undone all the editing but claim to have never hidden from the Parental reporter that this was a Peace of Mind test. In fairness to them, as stated above, the first report from the Parental reporter does mention that it was a Peace of Mind Report. 115. On 18 July 2025 the paternal grandmother filed and served a statement within these proceedings. She recalls that she was present in Mr and Mrs P's home, the same day as the DNA kit from NorthGene arrived. According to her Mrs P was out shopping and had asked Mr P to get the test done and get on with it. Mr P had taken his own sample and given her the swab to take J's sample. She says she took a swab from J's mouth and gave it back to Mr P. She accepted within that statement that she could have contaminated J's swab. The paternal grandmother attended the hearing before me on 23 July 2025. She tells me that the fact that I mentioned the Family Court required candour struck home to the extent she filed and served a second statement in which she says she took the sample from herself without Mr P's knowledge. She said she did it because she was concerned that Mr P was not J's biological father. 116. In their statement of 14 August 2025 Mr and Mrs P acknowledge that they have previously misrepresented the truth. They had spent tens of thousands of pounds on surrogacy and could not afford the £400 DNA test for legal purposes. They chose the Peace of Mind report in the hope it would not be noticed and they would avoid the extra cost. They had found out after the hearing before me on 23 July 2025 that the paternal grandmother had submitted her swab to NorthGene rather than J's swab. She had done it on the spur of the moment and because she was concerned about the issue of paternity as J's complexion was growing darker. They had taken the paternal grandmother's admission as a trigger to be truthful themselves. They had previously feared if they told the truth they might lose J to her biological father, if found; the child might be taken into care and adopted by others or Ms T would react negatively and withdraw her consent to J's adoption. 117. I have already set out the relevant oral evidence of the parties. 118. I find that Mr and Mrs P purchased a Peace of Mind report from NorthGene not because it was cheaper but because they are likely to have known that for a Peace of Mind Report they would be responsible for the sample taking and collection. There would be no independent observation of the sample collection. I find on her own admission that Mrs P edited the report to remove all signs that it was a Peace of Mind Report and not to be used for legal purposes. I find that Mr and Mrs P submitted that edited report to the court. I find that that was not a mistake but was done knowingly. I find that by submitting an edited report the applicants knowingly misled the Guardian and the court. 119. I have already found that by the time the Peace of Mind report was commissioned, Mr and Mrs P and the paternal grandmother are likely to have known that it was highly unlikely that Mr P was J's biological father. The Peace of Mind report when received stated that Mr P was the

biological father of J. That was not a mistake on North Gene's part. I find that they had been supplied with cheek swabs from the father and the paternal grandmother. The paternal grandmother has told me that she provided a swab from her cheek instead of J's cheek. I find she did. It is incredulous to suggest, as she did, that she did so without any prior knowledge that that could result in Mr P being considered to be genetic match for J. If she did not know that would be a likely outcome, then why would she do it is the rhetorical question that the paternal grandmother's evidence did not answer. I find that the paternal grandmother gave a swab from her own cheek because the outcome that Mr P was thought to be the biological father of J was that which she wished to achieve. I have already given my reasons for rejecting Mr P's evidence that he did not see his mother take the test. I find that he did and consequently I find that he knew that the NorthGene report was a sham. I find that he knew that when he submitted it to the court. I find that the grandmother has not revealed her son's part in what happened to protect him. I find that Mr P has not told the whole truth about the taking of the swabs because he feared the ramifications of doing so, including potential contempt proceedings. I find that the substitute swab is another example of Mr P's strong desire to be a parent and his belief that the end justified the means. I accept Mrs P's evidence that she was out of the home at the time. Accordingly, she would not have seen the paternal grandmother take a swab from her cheek and use that one for the testing. I find on the evidence before me that Mrs P being out of the house when the swabs were taken is inconsistent with the evidence I have of her being an attentive mother who puts her children first. This was an important test and a necessary part of the Parental Order she and Mr P wanted in relation to J. I find that it is inconceivable that she would not want to be there when her baby's mouth was swabbed yet she was absent when J's mouth was swabbed. I reject the evidence that this was because Mr and Mrs P wanted the test done quickly and it could not wait. This was an important test, and it could wait Mrs P's return from shopping, if that is what the parties wanted. I find on the facts that the only reasonable implication that can be drawn is that Mrs P was out of the home to distance her from the paternal grandmother's swab being passed off as J's sample. 120. I have rightly been reminded that the question for me at this stage is what impact those lies have on the welfare decision I must make for J. With that well in mind I now turn to consider the application for adoption before me. 121. As is foreshadowed earlier in this judgment when I set out the chronology, I find that Ms T has given her consent to J's adoption freely and unconditionally. She has never wavered in that stance. In her oral evidence before me Ms T confirmed her consent to J's adoption by Mr and Mrs P. In the circumstances, I do not consider it necessary that she complete a prescribed form and accept her consent which was first given in July 2024 and was last restated in the witness box on 22 September 2025 122. I have already made a non-notification direction in relation to J's paternal family. I have revisited my previous decision in the light of all the evidence I now have. Ms T did not give any evidence that would enable J's father to be identified or cause him to be identified. There are no leads to follow up to ascertain for J who their paternal family are. There is no person who has been identified who could be notified. Accordingly, the non-notification direction stands. 123. Given Ms T's stance throughout the proceedings and before me, J's paternity remains unknown and is

likely to remain unknown. J will not know what they have inherited from their biological father and the paternal side of their family. 124. The lies and deceitful actions of Mr and Mrs P have impacted on J. Their lies and deceitful actions go to the heart of J's identity. But for the court querying the NorthGene report, J would have gone through their life believing Mr P was their biological father. Their birth certificate would have been incorrect as Mr P is registered as J's biological father. Mr and Mrs P have to take responsibility for their lies and the harm they have caused J and the risk of harm to which they have exposed them. The harm in question is psychological and emotional harm which comes from not knowing your true identity. I have had to take the harm they have caused J into account when making my welfare evaluation – S1(4) ACA 2002. I have had to consider whether there is a risk of that harm continuing. Given the findings I have made about Mr and Mrs P's motivation when acting deceitfully I consider that any future risk is mitigated by the findings of fact in this judgment and by the fact that if I make an adoption order, Mr and Mrs P's fear of losing J will dissipate. 125. On the basis of all the evidence before me, I find that it is in J's best interests that their place in Mr and Mrs P's family is solidified and made permanent by an adoption order. No lesser order, such as a child arrangements order or a special guardianship order, will do. No other order will provide the stability and permanency J's welfare requires. No other order will reflect that J is a fully integrated member of Mr and Mrs P's family and will be throughout their life. No other order will provide J with the legal status that adoption will. That legal status reflects the physical, the emotional and psychological relationship J has with Mr and Mrs P and which will endure throughout her life. Mr and Mrs P have been J's psychological parents since birth. If J were able to articulate their wishes and feelings, I have no doubt that it would be to be brought up with Mr and Mrs P and for K and the baby yet to be born to be their full siblings because that is how J views them. I find that Mr and Mrs P are more than able to meet J's physical, emotional and psychological needs. Ms T is J's biological mother, but she has never taken any step to fulfil that role. J does not and is unlikely to know who their biological father is because Ms T will not identify them. The reality for J is that losing their biological family is unlikely to have any impact on them now or throughout their life. J's reality as viewed through their eyes is that they are Mr and Mrs P's child and part of their family with K as their sibling and another sibling expected soon. The adoption order will give J the legal status which reflects her reality. 126. I make the adoption order because it is in J's lifelong best interests that I should do so. My focus in making my analysis has been on J's lifelong welfare. Nothing within this judgment should be read as my condoning the behaviour of any of the lay parties. I have already set out above the impact of the lies told by Ms T on J and the impact of Mr and Mrs P's deceit on J. In addition, for J, the actions of the lay parties, individually and cumulatively, have delayed the resolution of these proceedings. J has had to wait for over 2 years before a final order can be made in relation to them. They have been the subject of protracted proceedings and their homelife has been the subject of professional and court scrutiny. The lies and subterfuge in this case have resulted in an extensive and protracted court process. 127. The lies and deceit have had procedural implications and could have had serious commercial and reputational consequences for NorthGene. The CEO of NorthGene had to take legal advice and, at one

point the company's reputation was wrongfully being put into doubt because of the outright lies told in this case by Mr and Mrs P. The lies have resulted in the unnecessary instruction of Prof Syndercombe Court and thus in unnecessary cost and further delay. 128. Mr and Mrs P and the paternal grandmother have complained in evidence or through submission at case management hearing about the protracted nature of the proceedings and the toll it has taken on them and is taking on them. However, I find that the reason for the delay is their lies and their deceit. I consider that they need to take responsibility for the impact of their actions. They have only themselves to blame. 129. No one reading this judgment should consider that the ends justified the means. No one reading this judgment should presume that on a similar set of facts a court in a future case will grant an adoption order. This judgment should be read as a cautionary tale of what can go wrong when strangers who meet through social media to bring a child into this world through surrogacy and when one or more of the parties take risks around the circumstances of conception. As Jackson J (as he then was) said in M, F and H (above): "... participants in informal arrangements have to judge all risks for themselves. They may not be in a good position to do so". It about how lies and trying to deceive the court solves nothing. Indeed, it about how lies and deceitful acts prolong the legal process and cause, distress, anxiety and uncertainty for all concerned. It is also about the use of Peace of Mind DNA reports in court proceedings. That is not their intended purpose. The sample taken for a Peace of Mind Report is not observed and thus the person from whom it is taken cannot be verified. It is thus a process open to abuse by those who seek to deceive. 130. The Guardian in her closing submissions asks that they, and the other parties, should be given time to consider whether this judgment should be published. I agree. I also consider that all parties should be given time to make such further submissions as they may wish about whether I should notify the HFEA that the fertility clinic in this case was deceived by Mr P and Ms T. I will direct that all parties should have 14 days to make any written submissions that they wish in relation to either or both issues. I will decide those issues on the papers unless any party asks the court to hear oral argument. 131. That is my judgment.

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