

ENGLAND AND WALES / JUDGMENT

M1 v M2 & Ors (Children: Declarations of Legal Parentage)

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IN THE FAMILY COURT AT GUILDFORD Neutral citation: [2025] EWFC 344 Claim No: GU24P00146
The Law Courts Mary Road Guildford GU1 4PS Date:10 th February 2025 Before: HHJ Lindsey
George Sitting as a s9(1) Deputy High Court Judge

- ----- Between: M1
- and – M2 -and- F -and- Applicant Respondent 1/ Cross Applicant 1 Respondent 2/ Cross Applicant 2 RF, AF and FA By their Children’s Guardian Ms S
- ----- Respondents 3-5 Ms Katherine Henry (instructed by Trethowans, Solicitors) for M1 M2 was acting in person F was acting in person Ms Sarah Dines (instructed by Venters, Solicitors) for the Guardian Hearing dates: 13th and 14th January 2025 and 5th February 2025
- ----- Approved Judgment This judgment was handed down on 10th February 2025 by circulation to the parties or their representatives by e-mail. It has subsequently been released to the National Archives. 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 the 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. HHJ Lindsey George:

Introduction

1. 2. I am concerned with three children, RF, aged five, born in 2019, AF aged four, born in 2021 and FA (known by M2 by another forename), aged eight months, born in 2024. I will refer to her by the forename on her birth certificate. I am also concerned with the children’s family and those involved in the children’s conception and birth. For all those involved and in particular the children, what has occurred has been devastating and will have life-long consequences. I am very grateful to the legal representatives who have dealt with this matter in a sensitive way, Ms Henry for the applicant mother (M1) and Ms Dines for the Guardian, Ms S. I directed that there should be QLRs appointed for the respondent mother (M2) and the respondent biological father (F). Unfortunately, no QLR was available for either party,

despite best efforts. As a consequence, I asked the questions on behalf of M2, giving her time to raise further questions after the questions had been answered. F did not seek to cross – examine. The Substantive Applications and Procedural Matters

3. There are a number of applications before the court as follows: On 23rd April 2024 M1 issued a C100 seeking a child arrangements order and (i) prohibited steps order in respect of RF and AF. On 14th May 2024 M2 issued a C100 seeking a prohibited steps order to (ii) prevent M1 from relocating with the children within England and Wales or out of the jurisdiction. On 5th August 2024, F issued a C100 seeking contact with RF and AF and a (iii) C63 seeking a Declaration of Parentage in respect of RF and AF (F's application). On 30th September 2024 M2 issued a C100 for a child arrangements order for (iv) FA (the application had been sent to the court on 27th June). She also issued a C63 for a Declaration of Parentage in respect of FA (M2's application).
4. The matter came before me on 18th September 2024 and I granted permission for M2 and F to bring their applications. I consolidated all four sets of proceedings. F had been invited to attend the hearing. I also appointed a Guardian to represent the children in the proceedings.
5. On 18th November 2024 I gave case management directions in respect of two fact finding hearings, the first to determine the applications for Declarations of Parentage and the second to consider the allegations of domestic abuse and its impact on the children's welfare (if required). I considered that the issue of parentage needed to be dealt with first and listed the matter on 13th and 14th January 2025.
6. At the outset of the hearing on 13th January 2025, I dealt with a further application by M2 to adduce in evidence an additional statement. It had a large number of attachments and recordings. Given that she was representing herself, the parties had had notice of it and there seemed to be little prejudice in it being allowed in, I granted permission for her to rely on the additional statement dated 9th January 2025. 7. In response to that statement, I also gave permission for a small supplemental bundle to be submitted from M1 responding to some of the matters raised in the additional, late statement.
8. Following the conclusion of the hearing, after submissions and after I had adjourned the matter to 5th February for judgment, I received the following email from M2 sent to me by the Guardian's solicitor "Hi Yesterday in my closing statement I referred to a statement I had previously written that was a response to M1's June statement, I thought this had already been sent to the court - with my declaration of parentage for FA in July 2024, it turns out it was not sent, this was an oversight apologies, I had a solicitor at the time and I was never cc'd in what was sent to the court nor did I understand how documents even made it to court, obviously later when I became a litigant in person I started to manage the comms myself. This statement is extremely important as it backs up the verbal evidence I gave yesterday during my testimony and in my closing statement and focuses on the method of conception and has a written element about the syringes and collection of the samples after the "wank" - paragraph 22 - this is the statement I was referring 2 yesterday that I thought

was in the bundle I would like to seek permission to include this as I already talked about it in court yesterday. The email chain below shows the timestamp etc of when I sent this statement to my legal team at the end of June 2024, I didn't get a response at the time that I can see I assumed it had been taken care of, the oversight may have been because my solicitor at the time ... had been in a car accident and hurt his hand, soon after I switched solicitor The coop can be contacted to confirm this if the judge requires it, @CG's solicitor could you please assist by asking the judge to consider this. Thanks M2" I replied as follows, "If M2 seeks to put in evidence after the hearing has finished, she will need to put in a formal C2 application with evidence from her solicitors as to why it was not submitted at the appropriate time or indeed before the hearing at any time." An application was filed with the Court on 23rd January 2025. It not only sought to put in evidence the additional statement but also raised a number of additional post – hearing matters. In consequence I did not feel able to give judgment without considering these additional matters and heard submissions on 5th February instead of handing down judgment. 9. In summary, I dealt with these issues as follows: I gave permission for the statement sent to the Court and the Applicant on 28th (i) June 2024 to be admitted in evidence. While there was no permission for the statement at the time, all parties seem to have been aware of it and it should have been drawn to my attention at the outset of the hearing on 13th January so I could determine whether permission should have been given. I did not give permission for further evidence to be submitted. The Court had (ii) already permitted a very late statement to be admitted in evidence; had heard evidence on 13th and 14th January 2025 and considered that M2 had had ample opportunity to submit whatever evidence she considered necessary, the original order for statements having been made as long ago as September with a filing date of 25th October. This refusal included not permitting a further statement with photographs of what are said to be syringes, allowing evidence responding to the supplemental bundle filed on the morning of the hearing, making a disclosure order against Snapchat and permitting further evidence from a person called KM and M1's sister. (iii) M2 had filed a response from Guildford's Registrar of Births, Marriages and Deaths. I have read the letter and will give it such weight as I consider appropriate. The Children's Guardian did not attend day 2 of the hearing due to (iv) professional commitments elsewhere. She was, however, represented. The Guardian takes a neutral role in fact finds and I did not consider M2 was prejudiced by her absence. In any event this matter was not raised by M2 at the fact find. (v) At the conclusion of the fact find, I ordered DNA testing to be satisfied that no issue would be raised in future as to the biological parentage of the children. I ordered the costs to be shared four ways. This is the only DNA testing within the proceedings and my order stands. If further DNA testing has been carried outside the proceedings that is a matter between the parties and not the Court.

10. On 6th February I was notified by the children's solicitor that a further email had been sent from M2 as follows, "Hi Based on legal advice provided this evening I am advised that procedure was not followed WRT to the submission of this supplementary bundle and I have grounds for another C2 to be submitted before the judgement or an appeal post judgement

as my responses on the bundle (in the c2 dated January 23rd) are critical to my case ThanksM2” No application has been received and, in my judgment, it is now too late for any further evidence to be admitted on the issues before the Court.

11. Following the adjourned hearing, the DNA testing showed F to be the biological father of all three children. The Issues and Position of the Parties
12. This judgment is in respect of the determination of the children’s parentage. The applications are brought under section 55A Family Law Act 1986 (FLA 1986). F who is the biological father of RF and AF asks for a declaration that he be named on the children’s birth certificate in place of M2 who has no biological link with the children but was married to M1 at the time of both children’s birth. M2 seeks a declaration that she be named on FA’s birth certificate in place of F who is FA’s biological father.
13. M1 supports F’s application. M2 is vehemently against it. M1 and F oppose M2’s application in respect of FA. FA has had no contact with M2 since she was born in June
2024. The Guardian’s position is that these matters need to be resolved so that the children have clarity as to who their parents are.
14. The issue of notification of the Attorney General was not raised by any party until I raised it after the conclusion of the hearing. FLA 1986 s59 provides as follows: “59 Provisions relating to the Attorney-General.
 - (1) On an application to a court for a declaration under this Part the court may at any stage of the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney-General.” In my view since the law had been clearly set out by Mrs Justice Gwyneth Knowles in P v Q and F and X [2024] EWFC 85 and upheld by the Court of Appeal in P v Q and F (Child: Legal Parentage) [2024] EWCA Civ 878 it was not necessary for the Attorney General to be notified. However, I thought it right to raise it with the parties. This was canvassed at the hearing on 5th February 2025. Only M2 sought to make a referral to the Attorney General. I refused the request on the basis that (i) the law is well settled and in particular the case of P v Q and F is factually very similar to this case; and (ii) in P v Q and F a referral had been made and the Attorney General indicated that she did not wish to intervene. It therefore seemed unlikely that she would seek to intervene in this matter. Brief Background
15. The mothers met in around 2009/2010 – M1 says December 2009, M2 says December 2010 – nothing hangs on this difference. They began to cohabit in spring 2011, becoming engaged in December 2013. On 14th February 2014 they celebrated a civil partnership and bought their first family home. It is agreed by both M1 and M2 that shortly after their civil partnership they started to try for a family, using intrauterine insemination (IUI) and in - vitro fertilisation (IVF). By 2017 neither procedure had been successful and M1 and M2 decided not to pursue it any further, being both an emotional and a financial drain. They seem to have agreed that they should consider using a sperm donor.

16. In early 2018 M1 and M2 made plans to move to another country as M1 was asked to take up a job there for a few years. In 2018, M1 and M2 converted their civil partnership into a marriage. M2 says that at that time they put plans for pregnancy on hold until they had made the move to another country. M2 also says they were considering her being the gestational mother.
17. In 2018, M1 became pregnant with RF. She informed M2 of this in late July/early August. It is agreed that M1 wrote a letter informing M2 of this but neither M1 nor M2 is able to produce a copy of the letter. They decided not to make the move to another country in the circumstances. The biological father of RF is agreed to be F (and now shown to be F from DNA testing). M1 had worked with F from around 2013 onwards and on her account, they were colleagues, friends and soulmates.
18. In 2019, RF was born. There are conflicting versions of his conception which I will deal with later. However, M2 was registered on his birth certificate.
19. M1 says that in 2019 around the time that RF was born she first sought a divorce from M2. She says that their relationship ended in 2019. This is disputed by M2 who says that the relationship only ended in 2024 with the issue of the divorce proceedings by M1 although she accepts that M1 asked for a divorce on a number of occasions after 2019. She also accepted in evidence that she had no issue with M1 leaving but she would not have allowed her to take the children with her.
20. What happened in relation to the conception of AF is disputed. I will deal with that later. However, she was born in 2021 and again M2 was registered on her birth certificate.
21. During the course of the relationship, sadly M1 suffered two miscarriages at the end of 2019/early 2020 and August 2021.
22. It seems clear on any view of the evidence from M1 and M2 that from 2019 onwards the relationship was in considerable difficulties and there were disagreements and arguments.
23. In around November 2023, M1 informed M2 that she was again pregnant. M2 says in her statement dated 16th May 2024, "Around November, the respondent [M1] informs me that she is a few weeks pregnant, we were both very happy, I am relieved as I knew the respondent wanted 3 kids and this would allow us to complete this phase of the relationship and settle into co-parenting and put the past behind us".
24. However, in February 2024 M1 applied for divorce; she applied for a child arrangements order in April 2024 and moved out of the family home with the children in May 2024.
25. FA was born in 2024. The Law
26. Few feelings are more powerful than the love parents feel for their children. It is therefore very hard to imagine the distress and heartbreak caused by the possibility of no longer being identified as a child's legal parent. This is particularly poignant where a same sex couple have struggled for many years to have children; have two beautiful children and then the

relationship breaks down with allegations that the children, far from being conceived by artificial insemination (AI) have been conceived naturally (NI). In all the emotion of that situation, the court's role is to apply the law, whatever the feelings of the parties and any sense of injustice. The FLA 1986

27. Section 55A of FLA 1986 deals with applications for Declarations of Parentage. That section provides as follows: "55A Declarations of parentage.
- (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) not relevant
 - (c) not relevant
 - (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 (but this is subject to section 27 of the Child Support Act 1991).
 - (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.

28. Section 58 FLA 1986 provides, “(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”
29. Under s55A (5) the Court has a discretion to refuse to hear the application if it considers that the application would not be in the interests of the child. This is clearly a consideration for the outset of the hearing. No party has suggested that it is not in the children’s best interests for this matter to be resolved. Indeed, the Children’s Guardian is firmly of the view that it is in their best interests setting out in her position statement for the fact finding, “5. The Guardian’s role is limited at a Fact- Finding hearing. She says it is important that these matters are resolved so that children have clarity as to who their parents are. The issues need to be determined as soon as possible”. These adults are enmeshed in an impossible situation and until the parentage of the children is resolved they, and the children, cannot move on. It is in my judgment essential for the children that these matters are determined.
30. The other conditions for the Court to consider the matter are satisfied. The children are domiciled in England and Wales. The applications fall squarely within subsection (4). The Human Fertilisation and Embryology Act 2008 (HFEA)
31. The starting point for considering the substantive issues before the court is sections 34 and 42 of the HFEA as follows, “34 Application of sections 35 to 47
 - (1) Sections 35 to 47 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as “W”) as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.” “42 Woman in civil partnership or marriage to a woman at time of treatment
 - (1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership with another woman or a marriage with another woman, then subject to section 45(2) to (4), the other party to the civil partnership or marriage is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).”
32. Knowles J set out the effect of these provisions in P v Q and F and X as follows, “Section 42 and all of the other sections from 35 to 47 only apply where the relevant gateway condition in s34 is satisfied, namely that there was artificial insemination of W or the “placing in her of the embryo or the sperm and eggs”. This is clear from the actual words of s34(1) and 42(1). Unless the court can be satisfied on the balance of probabilities that this condition is met, s42 does not apply and “another woman” cannot in law be a parent of a child who is conceived. In these circumstances, the court must fall back upon the common law in order to establish parentage”.

33. There is no presumption that a child born to a woman during her marriage to another woman is the child of that woman (paragraph 2 Schedule 4 of the Marriage (Same Sex Couples) Act 2013). Lord Justice Peter Jackson confirmed the position in *P v Q and F* (Child: Legal Parentage) as follows, “The baseline position is the common law principle that a child’s legal parents are the gestational mother and the genetic (also known as the biological father). This is a principle of law and not a rule of evidence or a presumption.”
34. Jackson LJ in *P v Q and F* considered just one ground of appeal, the others having been refused or not pursued, namely that Knowles J, “misdirected herself as to the party upon whom the burden of proof lay in an application for a declaration of non – parentage and/or a declaration of parentage under s55A FLA 1986.”
35. The principle that can be derived from that decision is that it is for the person seeking the declaration to establish that X is the genetic father and that there had been NI at the relevant times. It is then for the non-gestational mother to prove on the balance of probabilities that the child was conceived not by NI but by AI which would give her the benefit of the relevant legislation.
36. In other words, and applying it to this case, M1 and F need to show that there had been NI at the relevant time of conception for each of the three children. If they can do that, it is then for M2 to prove on the balance of probabilities that the children were conceived not by NI but by AI. If she is unable to discharge the burden of proof the court “shall make that declaration unless to do so would manifestly be contrary to public policy” (s58(1) FLA 1986).
Evidence
37. I have had a comprehensive trial bundle which I have read. This includes statements from all parties relevant to the issues before the court including the statement from M2 dated 28th June 2024 for which I gave permission and the late filed statement of 9th January 2025 for which I also gave permission. M2 has found it difficult to contain her evidence to the issues and feels deep distress at the situation in which she has found herself. This has resulted in a plethora of statements and further applications to admit additional evidence after the fact find. I have dealt with those above.
38. I heard oral evidence from M1, F and M2. I have also taken into account the position statements filed by M1 and the Guardian and the closing submissions of all parties. M1’s
Evidence
39. It is M1’s case that all three children were conceived naturally with F. In her statement dated 25th October 2024 she describes the relationship with F as follows, “F and I have never been in a romantic relationship. We have an incredible bond and we say that we are soulmates. We have very close friendship and have enjoyed a physical aspect where we have been intimate with each other for many years. The physical relationship is continuing now, and we have discussed potentially having other children in the future”.

40. She sets out meeting F at work in 2013, remotely at first and then in person. She explains that F was married but unhappy in his marriage. He left his wife in August 2013. She sets out a very helpful chronology of what she says happened in the relationship between herself and F and herself and M2. She describes first having sexual intercourse in October and then December 2013. She describes feeling guilty about it, confused about her sexuality and having feelings of shame due to her relationship with M2 and because she “had genuine feelings for [M2] and loved her”.
41. During the period when she was undergoing IUI and IVF she explained that she and F did not have sexual intercourse. In her oral evidence she said that she did not want to confuse matters with the IUI and IVF.
42. She says they resumed their sexual relationship in March/April 2018, having one – off sex at that time but this was followed by a week’s holiday in Turkey from 16th – 23rd May 2018 when M1 says they had sex a few times.
43. M1’s evidence about the conception of RF is that M2 was away on a weekend in 2018. On Friday they engaged in sexual activity but not full intercourse. However, on Saturday they had full sexual intercourse. M1 says that she subsequently discovered that she was at peak ovulation. She discovered she was pregnant. RF was born in 2019 so approximately 36 weeks later. F says he was born three weeks early and this would certainly be within any conception window.
44. It is M1’s case that she and F concocted a story to tell M2 about the conception because she was frightened about how M2 would react if she told her she had had an affair and RF was conceived by NI. It is agreed that a letter was sent to M2 setting out the “story” but no copy of this letter has been produced. The result was that M2 was told and believed that RF had been conceived by AI.
45. After RF was born, M1 says that she did not want to register M2 as the mother on the birth certificate but felt forced into doing it due to the situation and the lies that had been told. The situation came to head in 2019 when following a conversation with F, M1 sent an e mail to M2 in the following terms, “[M2] you are going to hate me forever and do anyway but the truth has to come out. I am sorry I have to tell you this... I conceived RF through natural conception and you should never have been on his birth certificate. That’s why I was so against you being on it. I was scared to tell you the truth for obvious reasons. I think you had your suspicions anyway as you said something via message. This is messy very messy I’m sorry I hurt you. I can’t live this lie anymore.” She goes on to say that she expects M2 to want to divorce her and that they will need to get solicitors. She says, “I have not been happy for years I wanted to make it work but I couldn’t I am sorry”. There is an email trail between M1 and M2 in which M1 is clear that RF was conceived by NI. There appears to be no reason at this stage for M1 to say this and to contradict the previous statements to M2. I consider this to be authentic from M1.

46. M1's case is that the relationship had broken down at that stage or earlier in 2019. M1 and M2 have not shared a bedroom since M1 was pregnant with RF and have not been intimate or had any sexual relationship since 2019. M1 says that in her mind they had separated. It is M1's case that she did not leave as she was too frightened about what would happen to RF and she was told by M2 that she would not be allowed to take him.
47. M1 says in her statement that she and F wanted more children. She became pregnant in 2020 but suffered a miscarriage. She says she conceived AF in 2020 "after quite a lot of trying". This suggests there were multiple attempts and, on her case, multiple occasions of NI. She says that there was never any AI and all three children were conceived by NI. She says that she and F were in a secret physical relationship for years. It is her case that M2 was on AF's birth certificate due to pressure from M2.
48. With regard to FA's conception, M1 says that she became pregnant again in summer 2021 but sadly miscarried due to the stress of a relative dying. She says that she found comfort in F during that time and they continued to have regular sex during 2022 and 2023. She conceived again in 2023 and FA was born in 2024, after these proceedings had started. By this time the parties were in the process of divorcing and M1 and F's names were placed on the birth certificate for FA. Oral Evidence
49. In the absence of a QLR I asked a series of questions for M2. She was also cross – examined by Ms Dines on behalf of the Guardian. M1 accepted that she had not been honest with M2 with regard to the conception of the children. She has also lied when registering the births of RF and AF. She denied ever having used AI to conceive any of the children. She said they were all conceived naturally and she lied to M2 because she was frightened of the consequences. She was clear that she and F had a close friendship/relationship but not one that was a cohabiting or romantic relationship. She wanted him to be a father to the children. There had never been any discussion with him about him being a "sperm donor"; no agreement, nothing in writing and no discussion with M2 about the arrangements. She denied ever purchasing any syringes or home insemination kits.
50. She was asked about the weekend in 2018 when she says RF was conceived and which is challenged by M2 who says it could not be that weekend. She was clear that they were together that weekend and had sex. M2 was in another country.
51. In response to M2's questions she was clear that she was not making this up now in order to influence the financial proceedings. F's Evidence
52. F has filed two statements. In his first statement (undated) he is clear that he has not been a "sperm donor". He says, "M2 has referred to me an alleged sperm donor multiple times within messages and her application to the courts, this is not true I have never had any informal or formal conversations with her or M1 regarding being a sperm donor and certainly would never have signed a sperm donor agreement or waived (sic) any parental rights away to the children". He goes on to say that all three children were conceived via natural sexual intercourse.

53. He sets out how the relationship started in 2013 and agrees with M1 that during the period M1 was having IUI and IVF they did not continue sexual relations. With regard to RF, F describes the weekend and explains them having intimate relations on Friday and then sexual intercourse on Saturday resulting in the conception of RF.
54. He sets out that AF was conceived in 2020 during lockdown and that during 2022 and 2023 he and M1 tried for a further baby. He explains there were many opportunities because he was able to spend time with M1 and the children due to M2 being away following the death of a relative and her visiting another country on her own.
55. With regard to FA, he says that he was involved fully with the pregnancy and went to scans and antenatal appointments. He says he was present at the birth and has been with M1 and FA following the birth, spending time with them at M1's home and seeing RF and AF at the same time.
56. In an email exchange between F and M2, instigated by M2 he says very clearly that all three children were conceived by natural conception. Oral Evidence
57. F was very clear in his oral evidence that he had never been a "sperm donor", he had never carried out the physical act of donating. He said he had never had any conversations about being a sperm donor and he had never been paid to donate his sperm to M1. He said that he had always been uncomfortable with M1 lying to M2 about the method of conception and about M2 being on the birth certificates. He explained that M1 felt bullied and pressured by M2 to put her on the birth certificate of RF and then of AF.
58. He was very clear that he saw himself as their father, he wanted to be a part of their lives, when M1 first became pregnant he thought he was going to become a father but M1 was under pressure from M2 and he allowed her to put M2 on the birth certificate and lie about the method of conception. He was also clear that in addition to the specific dates identified within the statements M1 and F had sexual relations at other times from 2018 onwards. He explained that while M1 and M2 were undergoing IUI and IVF they did not have sexual relations in order not to disturb the cycles of fertility treatment.
59. He was clear that he thought the children should know the truth of their parentage and he should have the opportunity to be identified and participate as their father. M2's Evidence
60. M2 has found it difficult to accept the narrowness of the issue with which I am concerned. She has told the Court repeatedly that (i) she is a litigant in person so needs to be given considerable latitude in complying with orders and providing evidence and then (ii) that the approach of the Court to the issues and the decisions made are wrong and that she has been advised by her lawyers of the same. She has perhaps not been assisted by some of the advice given which may not have helped. In the position statement dated 16th September 2024 at paragraph 12 counsel sets out the following proposition, "With regard to the HFEA in particular, the court will then need to establish whether the conception was natural or artificial. As this is difficult to establish, then the assumption for the older children must be

that it was artificial as all the parties proceeded to register the birth on that assumption". In light of the decision of the Court of Appeal in P v Q and F handed down on 26th July 2024 it must have been clear that there was no such presumption.

61. M2 has been given the opportunity to file with the court very lengthy statements with 100s of pages of exhibits. I have considered and read all of the statements and the exhibits.
62. M2 agrees in large part with the history of the relationship and M1 and M2's long struggle to conceive a baby. It must have been heart breaking for both of them for their hopes to be raised and then dashed after a number of rounds of IUI and IVF. It is understandable why they would not wish to continue after 4 years. M2 explains in her first statement that the first she knew of any "sperm donor" was when she came home to a letter from M1 explaining that she was six weeks pregnant with "the help of [F] as a sperm donor". She seems to have accepted the situation quickly. There is nothing in any of her statements about any discussions about using a sperm donor outside of a clinic or who it would be and how any AI would take place and whether M2 would be part of the arrangements.
63. After RF was born the relationship with M1 seems to have deteriorated partly as a result of F spending too much time in the home with M1 and RF and an argument took place, following which M1 sent the email to M2 regarding the method of conception of RF. According to M2's account, in late June and then later in the year M1 retracted what she had said about RF being conceived by NI and said he was conceived by AI. At the same time M2 accepts that she agreed to F being their donor for their second child.
64. Around June 2020, M2 accepts that M1 moved in with F for a week with RF in order to accommodate a friend of M2's from work. In August, according to M2, M1 was again suggesting that M2 would not be on the birth certificate, although she alleges that she continued to say that the method of conception was AI. However, it is also clear from M2's statement that F was very much around the children in the home including at bath and bedtime.
65. M2 acknowledged in her statements that M1 requested a divorce on a number of occasions although with a few breaks from each other they remained in the family home. M2 accepted in her evidence that she would not agree to a divorce and that the children would remain with her. At one point in September 2021 M2 went to another country for a few weeks and M2 exhibits an email in which M1 suggests they might need relationship counselling and she asks for respect for being the mother who bore the children. With respect to F she says, "I also feel you need to let this feeling of threat that you have when it comes to [F] go. If it wasn't for him neither of us would have the children. You are their [other parent] he isn't officially anything to them except he is biologically linked and they like him and I think this is healthy and good for them".

66. M2 suggests that this is confirmation that she is rightfully on the birth certificates of the children, although in fact there is nothing in the email making reference to how the children were conceived. It is clear that M1 sees F as having a role in the children's lives, one that a sperm donor might not be expected to have.
67. In her statement of 26th May 2024 there is very little evidence of how the children were conceived; there is no evidence of discussions she had with M1 nor any preparations she made with M1 for conception. While I accept that these women had had a very tough time getting pregnant using IUI and IVF for four years, there is nevertheless a complete absence of evidence in M2's statement.
68. In a further statement dated 28th June 2024, M2 provides some detail of how she believes the children were conceived. She also relies on a recording which I have listened to, in which M1 is describing a process of IUI allegedly with F. M2 asserts that M1 told her that all the children had been conceived in the same way by using a syringe. She says that M1's assertion that she had sexual intercourse with F is untrue. In particular, she says that M1 "is a gay woman and enjoys sex with women not men". This is contrary to what M1 said about her being confused as to her sexuality.
69. In her statement of 25th October 2024 at paragraphs Q3-Q5, M2 sets out why she believes the children were conceived through AI not NI. With regard to RF, she points to the inconsistencies in M1's accounts of conception, first that it was AI, then that it was NI then relying on the audio recording detailing that AI took place. With regard to AF, she has no evidence other than being 100% sure; she feels the same about FA and suggests that the hospital documents state that it was IUI. I have looked carefully for the hospital letters that say that and I am unable to find any evidence that the letters say that. They do talk about "intrauterine pregnancy" but that is just a normal pregnancy and has nothing to do with conception.
70. In her fourth statement of 9th January 2025 M2 alleges that M1 told her that it was a sperm donation with a syringe; M2 also relies on M1 telling people that the baby is another addition to the family. She also suggests that when the births were registered, the Registrar asked whether there was home insemination with a syringe. This is not borne out by the replies from either Aylesbury or Guildford Registrars.
71. M2 challenges the dates when M1 and F say they had sexual intercourse. She also challenges the dates for RF's pregnancy, setting out that the dates of the scan do not tie in with the dates when they say they had sex. However, what cannot be challenged is that F is RF's father and there must have been a date when on M2's case it is alleged that AI took place. M2 does not suggest a date for that, nor an occasion. In fact, there is no evidence at all as to when she says AI took place for any of the three pregnancies. There is no alternative to the evidence of M1 and F. Oral Evidence

72. M2 was very emotional giving evidence which is not a criticism but a reflection of the pain these proceedings have brought. She is facing the prospect of the life she thought she had and the role she had in the children's lives being changed irrevocably. That sense of desperation came across in her evidence.
73. Her starting point in her oral evidence was that she just did not accept that M1 and F would have had sexual intercourse and that if they had it would have been as a result of coercion from F. She refused to believe that M1 would have had an affair with F. She drew the court's attention to the fact that M1's story had changed from a letter telling her that the pregnancy was as a result of AI to the e-mail in which she tells M2 that they had sexual intercourse. Throughout her oral evidence she maintained that F was not just a sperm donor but a "rogue sperm donor". She accepted in her oral evidence that she did not know when M1 became pregnant with RF and "she had no idea of the method used to conceive". She accepted that there had been no discussion formal or informal about using F as a sperm donor.
74. During the course of her oral evidence M2 elaborated on key evidence that was not contained in her statements, including the statement of 28th June 2024 for which I gave late permission. She alleged orally that she had photographs of syringes, ovulation kits and syringes in bins although none of those were produced in her very extensive written evidence. She also alleged that she had seen syringes in a freezer bag on more than one occasion and in particular in the early stages of trying for AF and for FA. She said she saw the syringes pushed down the side of M2's handbag.
75. None of this is in written evidence. At its height is paragraph 22 of the statement of 28th June and the audio recording of M1 discussing AI.
76. M2 agreed that she had not been involved at all in the conception of any of the children and had only been told after M1 became pregnant although she alleged that there had been lots of conversations about the second pregnancy and the timing of it. Despite those discussions there was no discussion with F about being a donor, no donor agreement. M2 said that she did not think an agreement was needed although thinks she was naïve. In response to Ms Henry's final question, she said "I don't know if they had sex. I don't believe they had sex".
77. In cross – examination from Ms Dines on behalf of the Guardian, M2 was asked why she had raised concerns about F with his work superiors if she did not believe he was having a sexual relationship with M1. She did not really have a satisfactory answer to this save to say that she was very concerned about M1 and F although she never believed they had a sexual relationship. M2 said that she felt she had been manipulated and controlled but had stayed in a broken relationship because she loved M1 and wanted children. She said she did not believe it was possible for M1 to have sex with a man. My view of the evidence.
78. M1 has clearly been untruthful to M2. What she told M2 in 2018/2019 about the method of conception was inconsistent. In 2018 it was AI but the very comprehensive e-mail trail in June 2019 sets out clearly that the conception of RF was natural. F was a party to the deception. M1's evidence had some significant inconsistencies in it, for example her

explanation of the audio clip talking about AI she explained as being a “snippet in time”. She said she did not know she was being recorded and she was defending herself because she felt uncomfortable. She said she was just talking about what could have happened not what did happen. She then lived a lie for some years, on her case, pretending that M2 was the second parent. I listened carefully to her evidence and despite the inconsistencies I thought her evidence about conception was largely credible.

79. Much was made of the dates of conception and whether it was possible for RF to have been conceived in a particular month. This seems to me to be a red herring. F is RF's biological father. Therefore, at some time there was either NI or AI. Both of these would have required M1 and F to be together and to be involved in sexual activity. M2 does not propose any alternative date when she says AI did take place in respect of RF.
80. I thought F was a largely credible witness. He was subjected to vitriolic abuse by M2 who described him in the most vehement and abusive terms in Court. M2 clearly felt that he had come between her and M1 and had had a hand in destroying their relationship. The language she used about him was unacceptable. She could not accept that M1 might have voluntarily embarked upon an affair nor that M1 might have willingly had a sexual relationship with him. There are many allegations that M2 makes against F and she has involved herself in his work (making complaints) and his family life (contacting his former wife). Throughout this F has remained measured and calm. He has been clear that he wishes to have a parental role with the children.
81. He gave evidence about the nature of the relationship with M1 in a measured way, accepting that his romantic feelings for her were stronger than M1's for him. She described a strong bond and them being soul mates but did not consider the relationship to be romantic in the usual meaning of that. It seems to me that there is an imbalance in the relationship but they can live with that.
82. I found F to have been dishonest about the parentage of the children and his willingness to put a false position before the Registrar. However, in my judgment he went along with M1, wanting to keep the peace and he sought to protect M1. I consider his dishonesty was for the best of intentions. I found him credible in respect of his and M1's sexual relationship.
83. I found M2 to be a largely honest witness. I consider she was truthful with regard to the history of the relationship and M1 and M2's plans to have a family. It was obviously highly distressing that their attempts to conceive a child through the IUI and IVF process was unsuccessful. Unfortunately, she found it very difficult to accept that the intentions behind the conception of the children and the nature of the relationship between herself and M1 would be insufficient to demonstrate that she should remain the legal parent of RF and AF and become the legal parent of FA. She feels understandably that she has been put in an impossible and unfair position.

84. In my judgment, once it became clear to M2 that the key issue was the method of conception, she changed her evidence and added to it when giving oral evidence. It was clear that she did not have any evidence at all that M1 and F had conceived the children using AI, apart from relying on the audio recording which has limited weight. In my judgment she then fabricated evidence about discussing syringes and the method of conception. In her oral evidence this was heightened and she elaborated without there being any substance or additional evidence as to what she was saying. It was not credible and I'm afraid I consider her to be untruthful in that respect. She was also inconsistent, admitting that she did not know how the children had been conceived on the one hand and then saying that she was 100% sure that it would have been AI on the other.
85. I can put very little weight on her evidence with regard to the method of conception and there is very little evidence to consider.
86. For the sake of completeness, I should deal with the statements of other individuals that she exhibited to her January statement. These are all supportive of her and how they perceived the relationship between M1 and M2. However, they shed no light on the method of conception. Analysis and Findings
87. I remind myself that I must make findings on the balance of probability. I also remind myself that it is for M1 and F to show that (i) F is the genetic father and (ii) that there had been NI at the relevant time. Then, it is for M2 to establish that the children were conceived by AI. If she is able to do so, she may then rely on the terms of the HEFA to establish her entitlement to parentage.
88. For the purpose of this judgment, it is not necessary for me to determine the date of the parties' separation. This has been hotly contested between M1 and M2, I suspect for the purpose of the financial remedy proceedings. It is common ground that after RF was born the relationship between M1 and M2 was troubled. They no longer slept in the same bedroom and have not had a sexual relationship since 2019. However, it is clear from the various photographs and the activities that the parties did together that they maintained some sort of relationship; they also agreed on the conception of AF and FA. Both M1 and M2 wanted very much to be parents. I would suggest that the relationship between them as partners effectively broke down in 2019 but they continued to live in the same house and to co parent, including bringing two new children into the world despite that break down. It is also clear from the evidence that M1 asked for a divorce on multiple occasions and it was refused; M2 made it clear that she intended to retain the children in those circumstances. In my view, it is likely that that would have deterred M1 from physically separating and seeking a divorce earlier.
89. I am satisfied that M1 and F had a sexual relationship that included sexual intercourse over a period of years commencing in 2013. All parties accept that M1 and F were work colleagues, had a close friendship and F is the biological father of all three children. They not only had the opportunity to have sexual intercourse but it was anticipated even by M2 that they would

need to have some level of intimacy if he was to donate sperm. This would have given them the opportunity to have intercourse on numerous occasions. Both M1 and F were clear that the relationship was a sexual one albeit not a romantic one. I accept their evidence on that. They had many opportunities to engage in intercourse including on holiday; at the home when M2 was away; when M1 went to stay with F while friends of M2 stayed in their home and on the occasions described by them in their evidence. While there might be some discrepancies in timings and M2 says they would not have had the opportunity on the occasions described, I do not accept that. They had many opportunities to engage in NI and to conceive each of the children.

90. There is no substantive evidence of any of the children being conceived by AI apart from
- (i) the letter sent to M2 in 2018; (ii) the audio of M1 describing the process of AI (iii) the evidence contained in M2's various statements about what she says M1 has told her and (iv) the very late oral evidence given by M2 of the AI paraphernalia that she says she saw in the home.
91. Dealing with each of these in turn: M1 and F described the circumstances in which they say M1 first became (i) pregnant with RF. M1 was clear that she needed to explain to M2 that it was as result of AI. She was scared of M2's reaction if she had said it was as a result of intercourse. I accept this evidence. Having read and heard M2's evidence and seen her demeanour in court and the way in which she spoke about F, I consider it very likely that M1 would have been frightened. I also accept M1's explanation that following the birth of RF she felt conflicted and sent the e-mail telling the truth. I accept M1's evidence that she felt under pressure and gave this as a version (ii) of how it might have happened. There is no evidence that this is how it did in fact happen. I prefer M1's evidence about the absence of AI in the conceptions. I do not (iii) accept that M1 told M2 there was a syringe or provided any detail about the conception of the children. In my judgment it was not discussed. M2 says she did not ask about AF or FA as she considered it to be private. M1 and M2 appear to have avoided any discussion about the method of conception. Perhaps this is a reflection of the nature of their relationship - it was no longer sexual and was fractured as an intimate relationship following the birth of RF. (iv) I do not consider M2 was honest about seeing AI paraphernalia at home and in M1's handbag. In my judgment this was fabricated when M2 realised she had so little evidence to show there had been AI.
92. M2 is unable to point to any occasions when she says that AI took place; she has no times or dates or locations. She accepted in her evidence that she did not know. She cannot say even on her own case that the children were conceived by AI save that she says she is 100% sure. She has no evidence of any planning save for the vaguest references to conversations about AF; she made no preparations with M1 for AI for example, buying any equipment or discussing its purchase.

93. M2 believes that the only reason for M1 doing this now is that it will impact on the financial remedy proceedings and that M1 and F have conspired to have her removed from the birth certificates in order to bolster M1's case in those proceedings. This would have required a conspiracy between M1 and F going back many years and there is no evidence of such a conspiracy. In fact, the contrary is true. In my judgment the e-mails sent in June 2019 following the birth of RF represent the true situation but M2 was not prepared to accept that and M1 felt compelled to remain in the relationship for the sake of the children. On the evidence and from her demeanour in Court, M2 can come across as very determined and intimidating, not frightened to use very abusive language and very dogmatic about her rights and views. This would have been very hard to counter for M1 as a new mother. She would have been vulnerable.
94. The findings I make are: I am satisfied on the balance of probabilities that M1 and F had sexual (i) intercourse on several occasions before the conception of RF and in particular the weekend in 2018, although there may have been other occasions. I am also satisfied that a sexual relationship continued for a number of years (ii) after the birth of RF and while specific dates cannot be identified there was certainly the opportunity for sexual intercourse to have taken place at the relevant times. I am not satisfied that M2 has proved on the balance of probabilities that any (iii) of the children was conceived by AI, nor that any AI ever took place. The evidence she has produced does not support her allegation. I am also satisfied on the balance of probabilities that M1 and F did not (iv) engage with AI.
- Declarations
95. I am satisfied that F is the biological father of RF, AF and FA.
96. Jackson LJ set out the starting point for considering the declarations to be made as follows, "The starting point, notwithstanding the birth registration, cannot be Q's previously understood parental status. The status of legal parentage has to be judged at a point in time, here the moment of conception...Everyone, including P until late 2022, proceeded on the misunderstanding that Q was X's legal parent, but once a dispute arose, the legal question had to be resolved on the basis of fact not supposition"
97. In this case, therefore, notwithstanding the fact that M2 is registered as the parent of RF and AF, the court must look at the facts as determined. I have determined on the balance of probabilities that M1 and F had sexual intercourse on multiple occasions which on the balance of probabilities would have covered the conception windows for all three children. M2 has not been able to prove on the balance of probabilities that they were conceived by AI. As a consequence, the provisions of HFEA are not engaged. It follows that the presumption as to parentage will apply and F will be the children's legal father.
98. In applying s58(1) FLA 1986 I am satisfied that to make the declarations is not "manifestly contrary to public policy"; nor do I consider that it is in the best interests of the children not to determine the application. In such circumstances, I agree with the Guardian that the children have clarity as to who their parents are. This is particularly the situation where two

children have one parent and the other has a different parent, yet they are biologically from the same parents. This is not a welfare hearing and any issues as to the welfare of the children will be dealt with within the context of the next stage of the proceedings.

99. I therefore make the declarations sought by F that F is the legal parent of RF and AF. I refuse the declaration sought by M2 that she is the legal parent of FA. Consequences 100. The consequences of this judgment are far reaching for all parties and they will need time to consider it. It goes without saying that the Court will be seeking advice from the Guardian as to how the children should be told and the consequences to them for their welfare. The next stage will be for the Guardian to prepare a report for the Court about future contact and relationships. However, M2 must be clear that she has no legal relationship with any of the children as a result of this decision and any questions about any child arrangements order are for another day.
101. No party is to inform the children of this decision without consulting with the Guardian and/or the Court. Proposed Directions 102. The matter will need to be listed for a further hearing to consider the way forward and in particular whether a fact finding hearing about the allegations of domestic abuse is necessary taking into account the children's welfare and the matters contained in Practice Direction 12J.
103. My preliminary view is that a separate fact finding hearing is not necessary, M1 and F are not seeking a child arrangements order and believe they can make their own arrangements around contact. M1 accepts that M2 should have contact with RF and AF regardless of the cross – allegations of abuse. There would therefore be no purpose served in the court determining these allegations within Children's Act proceedings. 104. The following directions appear to me to be appropriate:
- (i) A child arrangements order that the children shall live with M1. (ii) The court has considered whether a fact finding hearing is necessary. Neither M1 nor F seek a fact finding hearing. While M2 does seek such a hearing her interest is limited to contact and contact is not opposed by M1 or F due to any allegations of abuse. The Guardian shall provide a final analysis with recommendations as to M2's (iii) relationship and contact with RF and AF. The Guardian shall also consider the position of FA and whether there should be any contact between M2 and FA. The analysis shall consider M2's wider family and how the children's relationship should be managed. The Guardian must also consider the best way of informing the children and what life story work should be done with the children as a consequence of this decision. (iv) Each of the parties may file ONE statement in response to the Guardian's recommendations setting out where they agree with any proposals and any alternative proposals.

- (v) The matter is to be listed for a pre – trial review/early final hearing following service of the parties’ statements. 105. I propose to make these directions without a further hearing in an attempt to save costs. However, given that they were made without a hearing any party may apply to vary them or set them aside on giving the court and all parties notice on or before 17th February 2025.
106. Any party seeking to appeal this order must apply for permission to appeal in the first instance in writing to me by no later than 4.00pm on 17th February 2025. If that is refused, any further application for permission to appeal must be lodged with the Court of Appeal by 4.00pm on 3rd March 2025 using the appropriate form – an Appellant’s Notice. HHJ Lindsey George Sitting as a s9(1) Deputy High Court Judge 10th February 2025 22

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Prepared on 26 October 2026 · Esheria