ENGLAND AND WALES / JUDGMENT

P, Re (No 2: Welfare) [2026] EWCA Civ 571 (12 May 2026)

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Case No: CA-2025-001294

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE FAMILY COURT SITTING IN EAST LONDON

HER HONOUR JUDGE REARDON

ZE22P00939

Royal Courts of Justice

Strand, London, WC2A 2LL

12/05/2026

B e f o r e :

RT HON SIR ANDREW MCFARLANE

LADY JUSTICE KING

and

LORD JUSTICE STUART-SMITH

Between:

'Father 2'

Appellant 1

'Guardian'

Appellant 2

- and -

'Mother'

Respondent 1

'Father 1'

Respondent 2

Re P - No 2: Welfare

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

Andrew Bagchi KC, Emma Hudson, Luke Eaton and Sylvie Armstrong (instructed by GT Stewarts) for Appellant 2

Anna McKenna KC, Naomi Wiseman and Joseph Landman (instructed by Creighton & Partners) for Respondent 1

Janet Bazley KC, Karen Kabweru-Namulemu and Melissa Elsworth (instructed by Charles Russell Speechlys LLP) for Respondent 2

Hearing dates: 24-26 November 2025

HTML VERSION OF APPROVED JUDGMENT

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Sir Andrew McFarlane:

On 20 March 2026, this court handed down judgment in three conjoined appeals relating to the determination of issues of paternity and parental responsibility [

Re J, M and P (Loss of Parental Responsibility)

[2026] EWCA Civ 344

]. That judgment sought to resolve all of the issues for which permission to appeal had been granted, save for those relating to the welfare of the child at the centre of the third case,

Re P

. This supplementary judgment deals solely with those remaining issues, following receipt of further written submissions from the parties and on the basis of agreement that it was not necessary to hold a further oral hearing.

In our main judgment [paragraphs 44 and 45], I described the approach taken by the trial judge, HHJ Reardon:

'44. The judge then determined future arrangements for the children which provided for them to spend significant time with all three adults, albeit that their primary base was to be with MP.

45. With respect to parental responsibility, the judge expressly declined to make an order engaging s 12(2) or exercise powers under s 12(2A), attributing parental responsibility to one or both of TP1 and TP2 under a child arrangements order. Instead, partly to afford clarity for the three adults as to the ground rules (my phrase) for parenting from the time of the hearing going forward, the judge provided that MP should be free to make all parental decisions regarding P other than in relation to four specified areas of high-level decision making (for example change of school or leaving the jurisdiction). Both TP1 and TP2 were, however, to be empowered to do what is reasonable for the care of either child when in their care under CA 1989, s 3(5).'

In addition to the matters covered in that short summary, the judge made a child arrangements order for both children to live with their mother. Having noted that, under that order, the mother would have permission to take the children out of the jurisdiction for up to 28 days without needing to seek permission, the judge made orders expressly giving permission in like terms to each of TP1 and TP2, so that all three adults were each able to go out of the jurisdiction with the children, for up to 28 days, on the same terms. A regime of contact was established under which the subject child is to spend one weekend per month with TP1 and one weekend per month with TP2.

In addition, the judge discharged a previous order prohibiting TP1 from removing the child from the care of the mother. As explained in her judgment, the judge's aim was to enhance the standing of TP1 as an important figure in the lives of both children (he being acknowledged to be the father of the other child and there being a 50% prospect of him being the father of the subject child).

By his Notice of Appeal, TP2 sought to challenge the child arrangements order with respect to the subject child (no challenge was made regarding orders relating to the other child). In particular, TP2 sought to challenge permission being given for TP1 to remove the child from the jurisdiction, and the discharge of the order prohibiting removal from the mother's care.

In the course of her extensive judgment, HHJ Reardon devoted a significant part of it to a review of the evidence relating to the welfare of both of the children [paragraphs 77 to 98] and her subsequent analysis of the welfare issues [paragraphs 118 to 127]. It is not necessary to reproduce those passages in this judgment.

The two grounds of appeal relied upon by TP2 relating to welfare are Grounds 5 and 6:

'Ground 5

The court failed to adequately balance the risk posed by F1 of removing the children from F2's care in June 2024.

Ground 6

The court failed to analyse properly, if at all, the impact on Child 1 of the child arrangements and how such arrangements will psychologically affect [their] understanding of [their] role within her family.'

Ground 5 relates to June 2024 when TP1 removed the children from a party in London and took them to his home for some days in breach of the existing court order and without the knowledge of the mother or TP2. It was submitted that, during the course of her welfare analysis, the judge failed to balance the harm caused to both children by these two events. The judge dealt with this episode at paragraph 94 of her judgment:

'94. M argues that F1's actions in taking both children to his home in Y County in 2024 demonstrate a similar lack of respect for her parental responsibility. It is correct that F1 acted in breach of the interim contact order, not only removing the children from a party but taking them to stay with him in Y County without M's consent. F1's explanation is that the children were adamant that they wanted to stay with him and would not get out of the car; that account is supported by that of family members, but even assuming that to be the case, F1 could and should have managed their expectations better (and ensured that they did not get into the car in the first place.) However, I bear in mind that this incident took place after a sustained period when F1's contact with his [child] had been severely restricted without justification, and that, presumably as a result, both children were missing him and making it clear that they wanted to see more of him. Going forwards, if an arrangement is in place that better meets the children's needs, I think it less likely that F1 will seek to take matters into his own hands in this way.'

This court also has the benefit of HHJ Reardon's observations on the proposed welfare appeal represented by Grounds 5 and 6 as she gave a short judgment determining the various applications for permission to appeal that had been made to her:

'Grounds 5 and 6 are a challenge to the decisions as to welfare/child arrangements. The events of June 2024, and my view of those events, are dealt with at para [94] of the judgment where I explained why I consider that the risk of a similar episode will be reduced in future. As to [the child]'s understanding of [their] family relationships, and the relevance of this issue to the child arrangements, my thinking is set out at paras [83-88], [93], [96-98] and [118-120]. Those passages

make it clear, in my view, that [the child]'s understanding of [their] family relationships was a key welfare issue that carried significant weight in my decision about [their] living arrangements.'

The appellant submitted that, in paragraph 94, the judge did not give an account of the impact on the children of this event, in which TP1 removed the children from a family party in London and drove them over 100 miles to his home without informing the mother or TP2 and which resulted in police involvement and a criminal process.

In relation to Ground 6, the appellant submitted that the judge, in April 2025, should have established a stepped build up to the position of effectively equal time for the child as between TP1 and TP2 embodied in the child arrangements order. Ms Markham points to evidence that the children were settled into the arrangements as they were before the hearing, with the guardian expressing concern if their understanding of their family lives were to be disturbed. It is submitted that too much weight was given to attempting to re-establish TP1 back into the child's life. The evidence of the children's guardian favoured maintaining the status quo and Ms Markham KC submits that there is insufficient reasoning in the judgment to justify the judge departing so readily from this professional evidence. The appellant's skeleton submits that the judge should have maintained the status quo, by allowing the mother and TP2 to promote his role in the child's life given he is already their social and psychological father. This court is urged to allow the appeal and reduce TP1's time with the child to 'informal contact at family events and celebrations in his role as [their] psychological uncle'.

TP2's welfare appeal is supported by the child's mother. It is opposed by TP1 and the children's guardian.

In the written submissions that have recently been submitted, Ms Markham and Ms Whelan for TP2 have sought to widen the scope of the welfare appeal. It is stated that, in the light of this court's decision that neither TP1 nor TP2 can be declared to be the father of the child, there is a need for a court charged with making welfare decisions 'to review what orders are now needed to scaffold the child's rights and the protection of their welfare'. Counsel's document notes that the regime established by the judge for the child to spend one weekend each month with each twin has become established and continues. It is of note that no reference is made the primary focus of TP2's appeal skeleton which was to limit TP1's contact with the child to informal events or family celebrations.

TP2 seeks an order granting him parental responsibility. Finally, relying upon the incident pleaded in Ground 5, it is submitted that HHJ Reardon ought to have kept the prohibited steps order in place on a permanent basis, and should not have given TP1 permission to remove the child from the jurisdiction.

TP2's overall case, as it is now put, is that this court should allow the appeal on Grounds 5 and 6, and make the following orders:

a) An order granting parental responsibility to TP2 either by making a 'lives with order' under CA 1989, ss 8+12, or 'under s 4';

b) An order prohibiting TP1 from taking the child out of the jurisdiction with out the permission of MP or TP2; and

c) An order prohibiting TP1 from removing the child from the care of MP or TP2.

In her recent submissions, Ms Anna McKenna KC for MP sought 'an order which prevents any person using or seeking to use the current birth certificate for any purpose without simultaneously producing this court's order dated 20 March 2026 which removes parental responsibility from TP1. Or conversely an order requiring that the two documents shall always be produced together for any such purpose, including, for example to third parties such as HM Passports' Office'.

In her document in response, Ms Janet Bazley KC for TP1, submitted that:

a) There is no basis for the Court of Appeal now to grant parental responsibility to TP2 as this was not an issue before court at first instance and was not an element in TP2's welfare appeal;

b) The judge's decisions to remove the prohibited steps order and to give both TP1 and TP2 permission to remove the child from the jurisdiction were fully supported by her reasoning and carefully balanced welfare analysis and should not be set aside;

c) There is no welfare advantage to the child in making the unusual order sought by the mother and, in any event, production of the court order alongside the birth certificate at, for example, the Passport Office will not assist in determining who is the father;

d) It is of note that TP2 no longer seeks [in the list of orders sought] a variation to the apportionment of time in the child arrangements order made by HHJ Reardon. In any event it would be wrong to alter the arrangements that were carefully put in place by the judge over a year ago.

For the children's guardian, Mr Andrew Bagchi KC relied upon the submissions previously made on welfare which in effect opposed the appeal on the basis that the decisions taken were neither wrong nor outside the generous boundaries of judicial discretion afforded by this court to courts of first instance. Insofar as any party is now seeking orders that go beyond the scope of the appeal, these should be refused, with any further consideration being undertaken at first instance.

Discussion and conclusion:

The appellant's case in challenging the judge's decision on welfare is a weak one. After a four day hearing, in which the judge was immersed in the full detail of this unusual case, and during which she was exposed to each of the three key adults on an extended basis, she set out a comprehensive review of the welfare evidence before giving a full analysis of the key features as she saw them. In those circumstances, for an appellant to choose a single incident (Ground 5), and assert that the judge gave insufficient weight to the harm that it caused, in order to establish that the judge's overall decision on welfare was wrong, is ambitious.

The appellant is able to formulate Ground 5 because it is the case that the judgment does not, in terms, refer to any harm that the child may have suffered as a result of the incident in June 2024. That, however, is the high point of the appellant's case on Ground 5. This court has not been taken by the appellant in their skeleton arguments to any detail in the evidence before the court, either written or oral, which describes the impact on the child of this event. General submissions, which are to be accepted, are made that the incident would have caused the children and their carers 'significant worry'. It is rightly said that this was a clear breach of the court order and a significant event. On that basis it is submitted that, taking account of this history, the judge was wrong not to re-introduce contact with TP1 on a step-by-step basis.

The judge did take account of the June 2024 incident, as described at paragraph 94 of her judgment. The primary role of a judge in making a welfare evaluation is to look to the future. Past events may be an important element in assessing future risk, and it will be for the judge to attribute weight to any particular event when assessing any future risk of harm. In paragraph 94, the judge is doing precisely that; the whole paragraph is focussed on the 2024 incident and her conclusion, as to future risk, is that, if an ordered regime that better meets the children's needs is put in place, TP1 would be less likely to take matters into his own hands. On appeal, this court could only overturn the decision of a judge on a point such as this if it was clear that the judge's evaluation was wrong, in the sense of not being reasonably open to the judge on the evidence. There is simply no basis for holding that that is the case here. The judge was fully seized of the evidence in the case, as a whole, including the 2024 incident. She engaged in analysing future risk in the light of that evidence and came to a conclusion that was plainly open to her.

Further, if, as is the case, the criticism made does not go to the root of the welfare orders, but is limited to failure to re-introduce contact in a stepped manner, the ground must surely be academic when it is run as part of an appeal over a year after the order was made and implemented. In any event, the judge did provide for a degree of build-up [paragraph 124]:

'There may therefore need to be a short transitional period when these arrangements are put in place. I hope the parties can agree a stepped arrangement which builds up to the above pattern by (at the latest) the end of the summer term. If they cannot I will determine this issue on the papers.'

The criticism can therefore only be one relating to the degree of gradient in the stepping and, it would seem, the parties either agreed that detail or did not take up the judge's offer to determine any dispute on the papers.

Ground 6 is more generally drawn, but, again, it seeks to pick out a single alleged omission that the judge is said to have made in her welfare evaluation. The appellant assets that the judge failed to analyse properly, if at all, the impact on the child of the child arrangements and how such arrangements will psychologically affect their understanding of their role within her family.

In a section of the judgment, within the overall review of the welfare evidence, the judge considered '

The children's understanding of family relationships

' over the course of six detailed paragraphs. At the conclusion of her judgment, there are four paragraphs under the heading '

The 'Narrative'

in which the judge offers thoughts and advice on how the children may be introduced to the complicated truth as to their paternity.

The appellant's central criticism under Ground 6 is that the child arrangements have focused too much on creating equality in the minds of the children to try and reflect reality, rather than focusing on the subject child's emotional stability and their understanding of the role they have in the family. It is thus a challenge as to the degree to which the judge sought to reintroduce TP1 into the child's life, rather than an assertion that the judge was wrong to do so at all. It is submitted that the child was happy with the status quo, and the judge attributed 'too much weight to the necessity of equality, rather than the children's [respective] needs'.

Whilst the appellant's case no doubt sets out what he would have wished to have achieved before the judge, and whilst submissions are made as to the attribution of weight, neither the Skeleton Argument nor the recent written submissions engage with the exercise of setting out a case for holding that the judge was wrong to come to the conclusion that she did The judge gave a clear description of the children's understanding of relationships in the family. She gave advice as to the 'narrative' that the children might, in time, be given. From this is apparent that the judge was fully aware of the need to focus on this aspect of the case. Indeed, in circumstances where it was just not possible to hold whether TP1 or TP2 is the child's father, relationships and narrative were, ultimately, what the case was all about. As the judge said in her judgment dealing with permission to appeal:

'[The child]'s understanding of her family relationships was a key welfare issue that carried significant weight in my decision about her living arrangements.'

In circumstances where it may well be that TP1 is the child's father, as well as being the father of the other child, it is difficult to understand how the judge may be said to have been wrong to put in place a regime that provided that TP1 and the child had ordinary and regular contact with each other. In any event, TP2's current position is that no order is sought from this court to vary the child arrangements regime; instead it is said that welfare now needs to be reviewed by the lower court in the light of the determination of the appeal relating to paternity.

In the circumstances that I have described, the appeal under Ground 6 must wholly fail. There is no basis for holding that the judge was in error as to the attribution of weight to the need to re-establish the child's relationship with TP1. Looked as a whole, the judgment of this very experienced Family judge, who was, as I have already observed, fully engaged in the detail of this case, demonstrates that she undertook a careful and reasoned evaluation of the future welfare arrangements. An appellate court will only intervene to set aside the determination made at the conclusion of such a process if it can be shown that the judge was wrong to order as she did. It is

simply not possible so to hold in this case and, indeed, TP2's pleaded case falls short of arguing the contrary.

TP2's appeal relating to welfare based upon Grounds 5 and 6 must therefore be dismissed.

Turning to the position now put forward by TP2 which is to seek an order from this court granting him parental responsibility, such an outcome is plainly not possible as the appeal itself has failed, but, in the light of Ms Markham's proposal that matters should now be reviewed by the lower court, I offer some observations as to the approach to parental responsibility taken by the judge.

Ms Markham's recent written submissions commenced:

'The first appellant submits that there remain a number of welfare matters which require re-consideration; these arising not only from the appeal for which permission was granted, but also now in light of the appellate courts' decisions in relation to s 4 and the Declaration of Parentage. It is submitted that there exists now a confusing situation from the existence of TP2's [sic] name on child one's birth certificate and the lack of clarity around who [their] father in fact and law is.'

This submission is difficult to understand and accept. The position reached at the conclusion of the substantive appeal left matters in exactly the same position, with regard to paternity, as was the case when HHJ Reardon gave her judgment, save that any parental responsibility that TP1 may have had by being named as 'father' has now been removed.

By the orders that she made, the judge acknowledged MP's role as mother and afforded to her a pre-eminent status in terms of parental responsibility, whilst carving out bespoke, high-level, issues upon which TP1 and TP2 should be consulted. This was an unusual approach, but not a legally impermissible one. It was followed in the unusual circumstances generated not only by the facts of this case, but also because it was known that the overarching legal issue was to be considered on appeal. Rather than make orders about the attribution of parental responsibility to one or both of the twins, the judge took the pragmatic course of simply spelling out who could decide what with respect to P's future welfare as between MP, TP1 and TP2.

Whilst it is a matter for the parties to decide whether there is a need to reopen proceedings in the Family Court, I would, therefore, question whether any basis for doing so arises from this court's determination on the issue of paternity.

Finally, the order sought by Ms McKenna requiring a copy of the court order to be produced by anyone seeking to rely upon the content of the birth certificate is not a matter that arises from the welfare appeal. I would question what jurisdiction this court may have to make such an order, but, in any event, as Ms Bazley observes, even if made it is unlikely to impact upon the actions of the Passport Office of a similar agency. I would therefore decline the request to make the order that Ms McKenna seeks.

In conclusion, if My Lady and My Lord agree, TP2's appeal on matters of welfare is dismissed on both grounds.

Lady Justice King:

I agree.

Lord Justice Stuart-Smith:

I also agree.

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