



Neutral Citation Number: [2020] EWFC 74

Case No: PR20P00303

IN THE FAMILY COURT

Sitting Remotely

Date: 18/11/2020

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

**H
- and -**

Applicant

**A
-and-**

**First
Respondent**

An Adoption Agency

**Second
Respondent**

The Applicant appeared in person

The First Respondent did not appear and was not represented

**Ms Lorraine Cavanagh QC and Ms Eleanor Keehan (instructed by the Adoption Agency)
for the Second Respondent**

Hearing date: 29 September 2020

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 18 November 2020.

Mr Justice MacDonald:

INTRODUCTION

1. Does the court have jurisdiction pursuant to s 55A(1) of the Family Law Act 1986 to grant to a birth parent in the position of the applicant a declaration of parentage in respect of a child following the lawful adoption of that child under the Part 1 of the Adoption and Children Act 2002? If the court does have jurisdiction to grant a declaration of parentage in such circumstances, does s 55A(5) of the Family Law Act 1986 permit the question of whether the court should refuse to hear such an application, on the grounds that it is not in the child's best interests to determine the application, to be dealt with as a preliminary issue? If so, should the court refuse at this stage to hear the application in this case or list the matter for a final hearing? These are the questions that arise at this stage of the proceedings in respect of an application made by Mr H for a declaration of parentage in respect of an adopted child formerly known as T (who, for the sake of convenience, I shall refer to in this judgment as T). Mr H appears before the court in person. He is the birth father of T as confirmed by the results of a DNA test dated 16 November 2015. Mr H has provided the court with a Position Statement and has made short oral submissions at this hearing.
2. The respondents to this application are R, the birth mother of T, and [named local authority], the adoption agency that placed T for adoption. R does not appear before the court and is not represented. The adoption agency, which opposes Mr H's application, is represented by Ms Lorraine Cavanagh, Queen's Counsel and Ms Eleanor Keehan of counsel. Ms Cavanagh and Ms Keehan have provided the court with a comprehensive Skeleton Argument borne of meticulous research into the relevant statutory provisions and Ms Cavanagh has made detailed oral submissions at this hearing.
3. Whilst T was for a time joined as a party to these proceedings by an order of His Honour Judge Booth of 5 June 2020, on 31 July 2020 His Honour Judge Booth discharged T as a party to the proceedings having regard to the provisions of FPR 2010 r 8.20(1). The adoptive parents of T are aware of this application but are not party to these proceedings, His Honour Judge Booth having directed on 22 June 2020 that they should not be joined. The views of the adoptive parents have however, been conveyed to the court by the statement of L on behalf of the adoption agency dated 25 September 2020.
4. On 31 July 2020 the adoption agency were directed by His Honour Judge Booth to notify the Attorney General of the proceedings and to serve copies of the relevant documents upon her pursuant to s 59 of the Family Law Act 1986. Notice was given to the Attorney General pursuant to the order of His Honour Judge Booth and the documents duly served on 7 August 2020. No response has been received to date from the Attorney General.
5. For the reasons set out below, I am satisfied that the court does have jurisdiction in an appropriate case, pursuant to s 55A(1) of the Family Law Act 1986, to grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child under Part 1 of the Adoption and Children Act 2002. I am further satisfied that s 55A(5) of the Family Law Act 1986 does admit, again in an appropriate case, of

a preliminary hearing on the question of whether it is in a child's best interests for the court to refuse to hear an application under s 55A(1) of the Act. However, I am not satisfied in this case that it is in T's best interests for the court to refuse at this stage to hear Mr H's application and I accordingly intend to list that application for a final hearing having determined the question of jurisdiction in the affirmative.

6. Finally by way of introduction, and very importantly, the objective stated on the face of Mr H's application is to facilitate him having T's birth re-registered such that his name appears upon her original birth certificate as her birth father. I observe however, that it is clear that Mr H, who is without the benefit of legal advice, also considers that his application for a declaration of parentage prefigures his resuming a role in T's life. In these circumstances, it is only right that the court makes absolutely clear to Mr H that whilst I am satisfied that the court has jurisdiction to deal with his application under s 55A of the Family Law Act 1986 and that it is appropriate for the court to hear and determine that application at a final hearing, *if* the court decides to make a declaration of parentage in his favour that declaration will *not* of itself mean that Mr H can resume a role in T's life and will *not* confer upon Mr H parental responsibility in respect of T nor any other legal rights in respect of her.

BACKGROUND

7. The background to this matter can be stated shortly for the purposes of answering the questions that are set out in the first paragraph of this judgment.
8. T became the subject of care proceedings under Part IV of the Children Act 1989 and placement proceedings under Part 1 of the Adoption and Children Act 2002 in 2015. Mr H is not named on T's birth certificate. However, following the DNA paternity test dated 16 November 2015, to which I have referred and which indicated that Mr H is the birth father of T, he was made a party to those care proceedings. On 6 April 2016 District Judge Greensmith (as he then was) made a final care order and placement order in respect of T. Mr H sought permission to appeal the placement order. On 26 July 2016 His Honour Judge Duggan refused Mr H permission to appeal.
9. During the case management stage of this application a question arose as to whether His Honour Judge Duggan had, during the course of the aforementioned care proceedings, directed the local authority to cause T's birth certificate to be amended to record Mr H as her birth father, Mr H asserting (initially to CAFCASS) that Judge Duggan had made such an order in July 2016. However, an investigation of the court file reveals no such order made by Judge Duggan, who was in any event dealing with Mr H's application for permission to appeal the placement order rather than the substantive care and placement proceedings themselves, which as I have stated were heard by District Judge Greensmith (as he then was). The order of Judge Duggan dismissing the application for permission to appeal the placement order contains no order relating to T's birth certificate and a transcript of the final hearing of the care and placement proceedings before District Judge Greensmith contains no reference to amendment of T's birth certificate. In addition, there is no record of any application being made by Mr H for a declaration of parentage in respect of T prior to the application currently before this court.

10. Within the foregoing context, and whilst acknowledge that Mr H submits to the contrary, I am satisfied that no order was made by His Honour Judge Duggan directing the local authority to cause T's birth certificate to be amended to record Mr H as her birth father, whether by declaration of parentage pursuant to s 55A(1) of the Family Law Act 1986 or otherwise and make clear that I have proceeded on that basis.
11. Following refusal of permission to appeal, T was placed for adoption and an application was made for an adoption order by the then prospective adopters. Mr H applied for permission to oppose the making of the adoption order. That application was refused by District Judge Jones on 28 February 2017. T was made the subject of an adoption order pursuant to s 46 of the Adoption and Children Act 2002 on 12 April 2017. Notwithstanding the making of the adoption order on 12 April 2017, on 27 June 2019, and well out of time, Mr H applied for permission to appeal against the refusal of permission to oppose the making of the adoption order. On 17 July 2019 permission to appeal was refused by His Honour Judge Booth.
12. On 2 March 2020, Mr H issued his application for a declaration of parentage in respect of T. The C63 application form made no mention of the fact that T had been made the subject of an adoption order on 12 April 2017. It is this application that now comes before me.
13. As I have noted, the views of the adoptive parents have been conveyed to the court through the adoption agency by the statement of L dated 25 September 2020 on behalf of the adoption agency. They are summed up succinctly in the following, impressively child centred, passage from an email dated 10 July 2020 sent by the adoptive parents to L:

“We now understand that he would just like to ‘set the record straight’ and have his name put on T's birth certificate because after all he is T's biological father. We have no problems or issues with this because we believe it is important that T should know her full life history and all information should be correct and full without any "gaps". We have already started doing some very basic life story work with T, and she already knows that she was a special baby who did not come out of "mummy's tummy" We have shown her pictures of Mr H and R holding T and she has enquired as to who is holding her, to which we have given her a honest answer. We do not intend to keep anything a secret from T and will tell her about Mr H and R and her adoption as she grows up. With that in mind we again emphasize that we do not object to Mr H's name been placed on T's birth certificate.”
14. The adoptive parents confirmed to L on 22 September 2020 that their views remained as stated above *provided* that there was no risk to T or themselves, including to the confidentiality of the adoptive placement. Within this context, and reminding the court that the adoption agency does not hold parental responsibility for T, L set out the position of the adoption agency as follows in the concluding paragraph of her statement dated 25 September 2020:

“Therefore, leaving aside the legalities of whether the court has jurisdiction or not to make such an order, I do believe it would be in T's interests to

have a corrected birth certificate. However, currently the risks associated with Mr H continuing his long series of interventions, and the impact that this is already having upon T's family, prevent me at this point in advocating for such a move. However, I am mindful of and respectful of her parents' current wishes in this regard."

SUBMISSIONS

Mr H

15. In circumstances where he appears in person, Mr H limited his submissions on the relatively complex legal issues that arise out of his application to asserting before the court that he is, as the birth father of T, entitled to a declaration of parentage pursuant to s 55A(1) of the Family Law Act 1986 to enable him to be named on T's birth certificate as her father. Mr H submits that without this step being taken he "cannot progress further as my father's rights are in question" and that he would, in particular, be denied his Art 6 "right to be heard". Mr H further submits that T has a right to know who her biological father is and that she has two siblings.

The Adoption Agency

16. On behalf of the adoption agency, Ms Cavanagh and Ms Keehan submit that a birth parent cannot bring themselves within the terms of s 55A of the Family Law Act 1986 in respect of a child who has been made the subject of an adoption order in circumstances where, by reason of s 67 of the Adoption and Children Act 2002, the proposition which the birth parent seeks to prove the truth of for the purposes of s 58(1) of the 1986 Act, namely that they are or were the parent of the child, cannot be established. In particular, Mr Cavanagh and Ms Keehan submit that in circumstances where, pursuant to s 67(3) of the 2002 Act, an adopted person is to be treated in law as not being the child of any person other than the adopters and, pursuant to s 67(1) of the Adoption and Children Act 2002, an adopted person is to be treated in law as if born as the child of the adopters, there is no basis on which a birth parent can be declared to be, or to have been, the parent of the adopted child under s 55A(1) of the Family Law Act 1986. Within this context, Ms Cavanagh and Ms Keehan submit that the decision of Hogg J in *M v W (Declaration of Parentage)* [2007] 2 FLR 270, which is not binding on this court, was incorrectly decided as s 55A of the 1986 Act does not divide the concept of parent into subsets of legal and biological, Hogg J's use of such subsets in the context of s55A constituting an impermissible gloss on the statute.
17. Within this context, Ms Cavanagh and Ms Keehan submit that on a plain reading of the section, where the past tense is used in s 55A(1) it plainly concerns applications with respect to deceased persons and does not anticipate a declaration being made that a still living person was, at a defined point in the past, the parent of a child but is now not the parent of the child in the present. Ms Cavanagh and Ms Keehan further submit that a birth parent cannot bring themselves within the provisions with respect to standing contained in ss 55A(3) and 55A(4) of the 1986 Act. In this context, Ms Cavanagh and Ms Keehan submit that a birth parent cannot bring themselves within the terms of s 55A(4) as, again, it is impossible to demonstrate the truth of the proposition which the birth parent must be seeking to prove for the purposes of s 55A of the 1986 in order to come within the terms of s 55A(4), namely that they *are* the parent of the child. Further, Ms Cavanagh and Ms Keehan submit, for essentially the

same reason, that it is not possible for a birth parent to demonstrate sufficient interest in the question of who is a legal parent of the child to bring them within s 55A(3). In support of this latter submission, Ms Cavanagh and Ms Keehan further point to the fact that a birth parent has no rights under Art 8 of the ECHR, those rights being terminated by the making of an adoption order.

18. Ms Cavanagh and Ms Keehan further submit that support for the foregoing submissions can be derived from what they contend is clear evidence that it was never Parliament's intention that birth parents would be able to bring themselves within the terms of s 55A of the Family Law Act 1986 in respect of a child who has been made the subject of an adoption order. In this regard, Ms Cavanagh and Ms Keehan point to the consequences for the re-registration of an adopted child's birth were a birth parent to be declared to be, or to have been, the legal parent of the child subsequent to that child being made the subject of an adoption order. Namely, that such re-registration following a declaration would result in the word "Adopted" being removed from the adopted child's birth certificate and in that child losing the protection of having a sealed birth certificate as provided for by the relevant provisions of the Adoption and Children Act 2002. Ms Cavanagh and Ms Keehan submit that the absence of a procedure in the Adoption and Children Act 2002 to account for this eventuality reinforces their submission that it was never Parliament's intention that birth parents would be able to bring themselves within the terms of s 55A. Ms Cavanagh and Ms Keehan seek further to support this submission in by highlighting the absence in s 55A of the 1986 Act, by contrast to other applications available to birth parents in respect of adopted children, of a permission provision designed to protect the adoptive placement from unmeritorious applications, and to the absence in the Family Procedure Rules 2010 of provisions designed to protect adopters and adopted children from becoming involved in such unmeritorious applications.
19. If the court is not persuaded by the foregoing submissions, Ms Cavanagh and Ms Keehan submit that, in any event, s 55A(5) of the 1986 Act embodies a *preliminary* procedure under which the court can determine, as a preliminary issue, to refuse to hear the application on the grounds that it is not in the child's best interests for the application to be determined. Within this context, Ms Cavanagh and Ms Keehan submit that s 55A(5) is properly construed as a preliminary procedure, intended to be a bulwark against intrusive or inappropriate applications which have the potential to disrupt the lives of adopted children, particularly in the absence of any other provision to protect adopters and adopted children from becoming involved in plainly unmeritorious applications.
20. Within this context, Ms Cavanagh and Ms Keehan contend that if, contrary to their primary submission, a birth parent can bring themselves within the provisions of s 55A(1) of the 1986 Act, in any event a refusal to hear the application on the grounds that it is not in the child's best interests to be determined will be the likely outcome in most, if not all, such applications by birth parents with respect to children who have been made the subject of an adoption order. Further, on the facts of this case, Ms Cavanagh and Ms Keehan in any event invite the court at this stage to refuse to hear Mr H's application pursuant to s 55A(5) of the 1986 Act.
21. Finally, Ms Cavanagh and Ms Keehan submit that even were the court to be satisfied that it is appropriate to hear Mr H's application and parentage was proved with respect to him by the DNA test results obtained on 16 November 2015 during the

course of the care proceedings, it would manifestly be contrary to public policy for the purposes of s 58(1) of the Family Law Act 1986 for a court to declare a birth parent to be, or to have been the parent of a child *after* that child has been made the subject of an adoption order pursuant to the provisions of the Adoption and Children Act 2002, public policy in this instance being demonstrated clearly by s 67 of the Adoption and Children Act 2002.

THE LAW

Family Law Act 1986

22. Part III, Section 55A of the Family Law Act 1986 as inserted by the Child Support, Pensions and Social Security Act 2000 s.83 and amended by the Crime and Courts Act 2013 s 17, Sch 11 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) has been habitually resident in England and Wales throughout the period of one year ending with that date, or
- (c) died before that date and either—
 - (i) was at death domiciled in England and Wales, or
 - (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.

(3) Except in a case falling within subsection (4) below, the court shall refuse to hear an application under subsection (1) above unless it considers that the applicant has a sufficient personal interest in the determination of the application (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.

23. Where an application is made for a declaration under Part III of the Family Law Act 1986, including a declaration of parentage under s 55A of the Act, s 58 of the Family Law Act 1986 provides as follows:

58 General provisions as to the making and effect of declarations

(1) Where on an application to a court for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.

(2) Any declaration made under this Part shall be binding on Her Majesty and all other persons.

(3) A court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made.

(4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court.

(5) No declaration may be made by any court, whether under this Part or otherwise—

(a) that a marriage was at its inception void;

(b) (*Repealed*)

(6) Nothing in this section shall effect the powers of any court to grant a decree of nullity of marriage.

24. Within this context, it is also important to recall that as Black LJ (as she then was) noted in *Re S (A Child)(Declaration of Parentage)* [2012] All ER (D) 140 at [24] and [37], the question of parentage is a question that concerns more than just the individuals involved in a specific case, stating at [24] that:

“[24] Issues of status, such as parentage, can be expected to be approached with some formality. They concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records.”

25. An application pursuant to s 55A of the Family Law Act 1986 will be dismissed where it amounts to an abusive collateral attack on an earlier judgment (see *Dunkley v Dunkley and Another* [2018] 2 FLR 258 at [22] to [24]).

26. A declaration of parentage under s 55A(1) of the Family Law Act 1986, once made, is there for all time and its implementation cannot be deferred (*Re F (Paternity Registration)* [2013] 2 FLR 1036 at [20] to [23]). Declarations made under Part III of the 1986 Act are binding on the Crown and all people for all purposes pursuant to 58(2) of the Act. As Black LJ (as she then was) noted in *Re F (Paternity Registration)*, the terms of s 58(2) of the 1986 Act make clear the importance and the solemnity of declarations of parentage made under s 55A(1) of the Act.
27. Section 55A(7) of the Family Law Act 1986 imposes a mandatory requirement whereby an 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 a declaration under s 55A(1) of the 1986 Act. The prescribed period is now set out in Rule 8.22 of the Family Procedure Rules 2010 which provides that a court officer must send a copy of a declaration of parentage and the application to the Registrar General within 21 days beginning with the date on which the declaration was made.
28. If the declaration of parentage is granted pursuant to s 55A(1) of the Family Law Act 1986, within the context of s 55A(7) of the 1986 Act, s 14A of the Births and Deaths Registration Act 1953 confers a discretion on the Registrar General as follows:

14A Re-registration after declaration of parentage

(1) Where, in the case of a person whose birth has been registered in England and Wales—

(a) the Registrar General receives, by virtue of section 55A(7) or 56(4) of the Family Law Act 1986, a notification of the making of a declaration of parentage in respect of that person; and

(b) it appears to him that the birth of that person should be re-registered, he shall authorise the re-registration of that person's birth, and the re-registration shall be effected in such manner and at such place as may be prescribed.

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

29. It is important to note that reregistration following a declaration of parentage made under section 55A(1) of the Family Law Act 1986 does *not* have the effect of granting parental responsibility to the person whose parentage is declared as the 1986 Act is not listed under s 4(1A) of the Children Act 1989 (see *Re M & Ors* [2013] EWHC 1901 (Fam) at [31] and *JB v KS & E (Contact: Parental Responsibility)* [2015] 2 FLR 1180 at [29]).

Adoption and Children Act 2002

30. This application for a declaration of parentage concerns an adopted child, T having been made the subject of an adoption order pursuant to s. 46(1) of the Adoption and Children Act 2002 on 12 April 2017. Within the context of this case, it is therefore important to remember that adoption is a statutory process (see *Re Webster v Norfolk County Council* [2009] 2 All ER 1156 at [149]) and to set out the following

provisions that stipulate the consequences of an adoption order for the birth parent and for the child.

31. Section 46 of the Adoption and Children Act 2002 provides as follows with respect to the effect of an adoption order on the legal status of the birth parent:

46 Adoption orders

(1) An adoption order is an order made by the court on an application under section 50 or 51 giving parental responsibility for a child to the adopters or adopter.

(2) The making of an adoption order operates to extinguish—

(a) the parental responsibility which any person other than the adopters or adopter has for the adopted child immediately before the making of the order,

(b) any order under the 1989 Act or the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),

(c) any order under the Children (Scotland) Act 1995 (c. 36) other than an excepted order, and

(ca) any child assessment order or child protection order within the meaning given in section 202(1) of the Children's Hearing (Scotland) Act 2011,

(d) any duty arising by virtue of an agreement or an order of a court to make payments, so far as the payments are in respect of the adopted child's maintenance or upbringing for any period after the making of the adoption order.

“Excepted order” means an order under section 9, 11(1)(d) or 13 of the Children (Scotland) Act 1995 or an exclusion order within the meaning of section 76(1) of that Act.

(3) An adoption order—

(a) does not affect parental responsibility so far as it relates to any period before the making of the order, and

(b) in the case of an order made on an application under section 51(2) by the partner of a parent of the adopted child, does not affect the parental responsibility of that parent or any duties of that parent within subsection (2)(d).

(4) Subsection (2)(d) does not apply to a duty arising by virtue of an agreement—

(a) which constitutes a trust, or

(b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.

(5) An adoption order may be made even if the child to be adopted is already an adopted child.

(6) Before making an adoption order, the court must consider whether there should be arrangements for allowing any person contact with the child; and for that purpose the court must consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

32. Whilst s 46(3)(a) makes clear that an adoption order does not act retrospectively with respect to a birth parent's parental responsibility in the period before the making of the adoption order, s 67 of the Adoption and Children Act 2002 makes clear that an adoption order *does* act retrospectively with respect to the legal status of the child and the identity of the child's legal parents in the period before the making of the adoption order. Section 67 of the Adoption and Children Act 2002 provides as follows with respect to the effect on the legal status of a child who has been made the subject of an adoption order and the legal status of the adoptive parents:

67 Status conferred by adoption

(1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.

(2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by—

(a) a couple, or

(b) one of a couple under section 51(2),

is to be treated as the child of the relationship of the couple in question.

(3) An adopted person—

(a) if adopted by one of a couple under section 51(2), is to be treated in law as not being the child of any person other than the adopter and the other one of the couple, and

(b) in any other case, is to be treated in law, subject to subsection (4), as not being the child of any person other than the adopters or adopter;

but this subsection does not affect any reference in this Act to a person's natural parent or to any other natural relationship.

(4) In the case of a person adopted by one of the person's natural parents as sole adoptive parent, subsection (3)(b) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.

(5) This section has effect from the date of the adoption.

(6) Subject to the provisions of this Chapter and Schedule 4, this section—

(a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption, and so applies subject to any contrary indication, and

(b) has effect as respects things done, or events occurring, on or after the adoption.

33. Previous authorities have emphasised the elemental nature of section 67 (see *Re A (A Child) (Adoption: Human Rights)* [2016] Fam 171 at [33]). Within this context (and relevant to the question of public policy under s 58(1) of the Family Law Act 1986) in *Re C (Adopted Child: Contact)* [1993] Fam 210 Thorpe J (as he then was) emphasised that adopted orders are intended to be permanent and final. In *Re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 Swinton Thomas LJ noted at 245 that:

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

And Lord Bingham MR (as he then was) observed at p 251 that:

“The act of adoption has always been regarded in this country as possessing a peculiar finality. This is partly because it affects the status of the person adopted, and indeed adoption modifies the most fundamental of human relationships, that of parent and child. It effects a change intended to be permanent and concerning three parties. The first of these are the natural parents of the adopted person, who by adoption divest themselves of all rights and responsibilities in relation to that person. The second party is the adoptive parents, who assume the rights and responsibilities of parents in relation to the adopted person. And the third party is the subject of the adoption, who ceases in law to be the child of his or her natural parents and becomes the child of the adoptive parents.”

34. In *Oxfordshire CC v X and Y and J* [2011] 1 FLR 272 the Master of the Rolls stated that, in the context of s 46 and s 67 of the Adoption and Children Act 2002 that:

“[36] ... The adoptive parents are J’s parents; the natural parents are not. The adoptive parents are the only people with parental responsibility for J. Why, unless the circumstances are unusual, indeed extremely unusual – and here, in our judgment, they are neither – should that responsibility be usurped by the court? We can see no good reason either on the facts or in law. On the contrary, there is much force in the point they make, that they wish their status as J’s parents to be respected and seen to be inviolable – not for themselves but in order, as they see it, to give J the very best chance for the adoption to be successful.”

35. The fundamental nature of the change of legal status visited on the child and the adoptive parents by the making of an adoption order is further emphasised by the fact that an adoption order will act to terminate the birth parents’ Art 8 right to respect for private and family life with the child made the subject of the adoption order (see *Eski v Austria* [2007] 1 FLR 1650 and *Pini v Romania* (2005) 40 EHRR 13). In *Re A (A*

Child) (*Adoption: Human Rights*) [2016] Fam 171 Peter Jackson J (as he then was) concluded:

“... that the making of an adoption order always brings pre-existing Art 8 rights as between a birth parent and an adopted child to an end. Those rights arose from and co-existed with the parent-child relationship, which was extinguished by adoption. There is no right to re-establish family life that has ended in this way.”

36. Finally, with respect to consequences of an adoption order in the context of an application for a declaration of parentage pursuant to s 55A(1) of the Family Law Act 1986, Schedule 1 of the Adoption and Children Act 2002 para 1 provides as follows:

Registration of adoption orders

1.

(1) Every adoption order must contain a direction to the Registrar General to make in the Adopted Children Register an entry in the form prescribed by regulations made by the Registrar General with the approval of the Secretary of State.

(2) Where, on an application to a court for an adoption order in respect of a child, the identity of the child with a child to whom an entry in the registers of live-births or other records relates is proved to the satisfaction of the court, any adoption order made in pursuance of the application must contain a direction to the Registrar General to secure that the entry in the register or, as the case may be, record in question is marked with the word “Adopted”.

(3) Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in England or Wales under Part 1 of this Act or any other enactment—

(a) sub-paragraph (2) does not apply, and

(b) the order must contain a direction to the Registrar General to mark the previous entry in the Adopted Children Register with the word “Re-adopted”.

(4) Where an adoption order is made, the prescribed officer of the court which made the order must communicate the order to the Registrar General in the prescribed manner; and the Registrar General must then comply with the directions contained in the order.

“Prescribed” means prescribed by rules

37. Further, Schedule 1 Paragraph 5 of the Adoption and Children Act 2002 provides as follows:

Marking of entries on re-registration of birth on legitimation

5.

(1) Without prejudice to paragraphs 2(4) and 4(5), where, after an entry in the registers of live-births or other records has been marked in accordance

with paragraph 1 or 2, the birth is re-registered under section 14 of the Births and Deaths Registration Act 1953 (c. 20) (re-registration of births of legitimated persons), the entry made on the re-registration must be marked in the like manner.

(2) Without prejudice to paragraph 4(9), where an entry in the registers of live-births or other records is marked in pursuance of paragraph 3 and the birth in question is subsequently re-registered under section 14 of that Act, the entry made on re-registration must be marked in the like manner.

38. Thus, every adoption order must contain a direction to the Registrar General to make an entry in the Adopted Children's Register. Pursuant to s 77(5) Adoption and Children Act 2002, a certified copy of an entry in the Adopted Children's Register (which contains the date and place of birth of the child) is received as evidence of the date and place of birth of the child in all respects as if the copy were a certified copy of an entry in the registers of live-births. Further, the adoption order must contain a direction that the entry in the register of live-births or other record relating to the child is marked with the word 'Adopted'. After an entry in the registers of live-births or other records has been so marked, the adopted child's birth is re-registered under s 14 of the Births and Deaths Registration Act 1953 and the entry made on the re-registration must also be marked 'Adopted'. In accordance with s 79(1) of the Adoption and Children Act 2002, the Registrar General must make traceable the connection between any entry in the registers of live-births or other records which have been marked 'Adopted' and any corresponding entry in the Adopted Children Register.
39. The Adoption and Children Act 2002 contains no provisions for marking a birth certificate of an adopted child following re-registration after the making of a later declaration of parentage under section 55A(1) of the Family Law Act 1986.

Family Procedure Rules 2010

40. Pursuant to FPR 2010 r 8.1, an application for a declaration of parentage must be made by way of the procedure under Part 19 of the FPR. Pursuant to FPR r 8.20(1) the respondents to an application for a declaration of parentage include any person who is alleged to be a parent of the person whose parentage is in issue (the procedural protections provided by FPR r 14.2, which provides for a serial number to be applied to protect the identity of the adopters, does not apply to applications under s 55A(1) of the 1986 Act). Pursuant to FPR r 19.5 respondents served with an application for a declaration of parentage must acknowledge service and provide the evidence on which they intend to rely. Further, pursuant to FPR r 8.22(1), if the person whose parentage is in issue is known by a name other than that which appears in that person's birth certificate, that other name must also be stated in any order and declaration of parentage.

DISCUSSION

41. I am satisfied that the court has jurisdiction, pursuant to s 55A(1) of the Family Law Act 1986 and in an appropriate case, to grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child under Part 1 of the Adoption and Children Act 2002. I am further satisfied that s 55A(5) of the

Family Law Act 1986 does permit a preliminary hearing on the question of whether the court should refuse to hear such an application on the grounds that it is not in the child's best interests to determine the application. However, I am not satisfied that at this stage of the proceedings the court should refuse to hear Mr H's application on the grounds that to determine that application is not in T's best interests and I accordingly intend to list the matter for a final hearing, subject to the directions set out at the end of this judgment. My reasons for so deciding are as follows.

Does the court have jurisdiction under s 55A(1) of the Family Law Act 1986 to grant to a birth parent in the position of the applicant a declaration of parentage?

42. As I have set out above, Ms Cavanagh and Ms Keehan submit that a birth parent cannot bring themselves within the terms of s 55A(1) of the Family Law Act 1986 in respect of a child who has been made the subject of an adoption order in circumstances where, by reason of s 67 of the Adoption and Children Act 2002, the proposition which the birth parent seeks to prove the truth of for the purposes of s 58(1) of the 1986 Act, namely that they are or were the parent of the child, cannot be established. I am not able to accept that submission.
43. By operation of s 67(6) of the Adoption and Children Act 2002, where, as here, the court is faced with an application for a declaration which post-dates the making of an adoption order, the court must interpret the provisions of s 55A of the Family Law Act 1986 in the context of s 67 of the Adoption and Children Act 2002 and the effect of that latter section on the legal status of the child and the adoptive parents following the making of an adoption order.
44. Section 55A(1) of the Family Law Act 1986 provides, subject to the provisions of ss 55A(2), 55A(3) and 55A(4) dealing with jurisdiction and standing, that "any person" may apply for a declaration. The natural and ordinary meaning of the expression "any person" needs no elaboration. Dicey & Morris on the Conflict of Laws 15th Ed. at para 20-007 state that the effect of s 55A is to widen the range of persons who may seek declarations of parentage. Within this context, whilst the court is required, pursuant to the ordinary principles of statutory construction and s 67(6) of the Adoption and Children Act 2002, to consider the effect of s 55A(1) of the 1986 Act in the context of ss 67(1) and 67(3) of the 2002 Act, I am satisfied that giving the term "any person" in s 55A(1) of the Family Law Act 1986 its ordinary meaning does not bring that section into conflict with the terms of s 67 of the Adoption and Children Act 2002.
45. Section 55A(1) of the Family Law Act 1986 deals with the identity of a child's parent as a matter of *fact*. The purpose of Part III of the Family Law 1986 is to make provision for declarations regarding status, dealing as it does with marital status (s 55), parentage (s 55A), legitimacy and legitimation (s 56) and adoptive status under a foreign adoption order (s 57). Within this context, s 58(1) of the 1986 Act makes clear that on an application under Part III of the Act for a declaration of status, the court is concerned with proof of matters of fact. A declaration as to status made under Part III of the Family Law Act 1986 is intended to be an authoritative statement

of the fact so declared. Within this context, the term ‘parent’ in s 55A(1) of the Family Law Act 1986 refers to someone who is a parent of the child as a matter of *fact*.

46. By contrast, s 67 of the Adoption and Children Act 2002 deals with the identity of a child’s parent or parents as a matter of *law*. Pursuant to ss 67(1), 67(2) and 67(3) of the Adoption and Children Act 2002, once a person is made the subject of an adoption order, as a matter of *law* that person ceases to be the child of his or her birth parents and is to be treated in *law* as not being the child of any person other than the adoptive parents, the child being treated in *law* as if born as the child of the adopters and the legitimate child of the adopters. Section 67 has effect from the date of the adoption, but is retrospective in its effect on the *legal* status of the child and the adoptive parents. Save for the matters dealt with by ss 67(3), 67(4) and 74 of the 2002 Act (which are of no application in this case), there are no exceptions to the operation of s 67 of the Adoption and Children Act 2002.

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

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

48. In *Re G (Children)(Residence: Same Sex Partner)* [2006] 4 All ER 241 the House of Lords recognised that it is possible to be a parent as a matter of fact but not as a matter of law and vice versa. In *Re G (Children)(Residence: Same Sex Partner)* at [32] Baroness Hale of Richmond stated as follows:

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

49. A further example of the dichotomy Baroness Hale sought to illustrate in paragraph [32] in *Re G(Children)(Residence: Same Sex Partner)* is provided by adoption. Namely, the birth parent of the adopted child remains as a matter of fact the child’s biological, or natural, parent but is not the child’s legal parent by reason of the

retrospective and prospective operation of ss 67(1) and 67(3) of the Adoption and Children Act 2002.

50. Within the foregoing context I am satisfied that it is possible to read the words “any person” in s 55A(1) of the Family Law Act 1986 as encompassing a birth parent in the position of Mr H whose child has been made the subject of an adoption order pursuant to s 46 of the Adoption and Children Act 2002 without the risk of conflicting decisions being arrived at due to the terms of s 67 of the 2002 Act. Within the context of these two statutory frameworks, it remains possible for a birth parent to establish the truth of the proposition contended for, namely that he or she is as a matter of *fact* the parent of the adopted child, without that factual determination coming into conflict with the status in *law* of the child and the adoptive parents under s 67 of the Adoption and Children Act 2002. Within this context, a declaration as to status under s 55A(1) of the 1986 Act does not conflict with the question of legal status established by the operation of s 67(1) of the 2002 Act. This conclusion is, of course, entirely separate from the question of whether such a declaration should be made following the adoption of a child.
51. As I have noted, Ms Cavanagh and Ms Keehan have been unable to locate any binding authority on the question of whether the court has jurisdiction under s 55A(1) of the Family Law Act 1986 to grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child pursuant to the relevant provisions of Part 1 of the Adoption and Children Act 2002. However, the one authority that does exist, the decision of Hogg J in *M v W (Declaration of Parentage)* [2007] 2 FLR 270, in my judgment reinforces the analysis that I have set out above.
52. It is correct that the decision of Hogg J in *M v W (Declaration of Parentage)* stands alone as authority for the making of a declaration of parentage under s 55A(1) of the Family Law Act 1986 after the making of an adoption order (the case of *Veasey v Attorney General* [1982] 3 FLR 267 concerning a declaration of legitimacy after adoption under earlier statutory provisions, and which is now provided for in any event by the 2002 Act, and *Re O* [2016] EWHC 2273 (Fam) being a case in which the court revoked the adoption order before making the declaration of parentage). However, the decision in *M v W (Declaration of Parentage)* is consistent with the clear distinction between questions of fact under s 55A(1) of the 1986 Act and questions of law under s 67 of the 2002 Act that I have sought to draw out above.
53. In *M v W (Declaration of Parentage)* Hogg J granted a declaration of parentage in respect of an adopted person where that person wished for such a declaration in order to have his biological father named on his birth certificate. The application was not opposed and indeed was broadly supported by the Attorney General, subject to the declaration being strictly confined to biological parenthood. Hogg J did not hear any legal argument as to whether a declaration pursuant to s 55A(1) of the Family Law Act 1986 was possible after an adoption order having regard to the effect of the adoption legislation with which she was concerned. Within this context, Ms Cavanagh and Ms Keehan submit that Hogg J’s decision cannot stand because the learned Judge imported a distinction between biological parentage and legal parentage that does not exist in s 55A(1) of the Family Law Act 1986 and that does not respect the terms of s 67 of the Adoption and Children Act 2002. However, that submission again fails to recognise that the two acts are dealing with different questions, namely questions of *fact* under s 55A(1) of the 1986 Act and questions of *law* under s 67 of

the 2002 Act. Within this context, in *M v W (Declaration of Parentage)* at [16] to [18] Hogg J held that as follows in a passage that recognises fully the distinction between a declaration of fact under s 55A(1) of the 1986 Act and the position in law under the adoption legislation applicable in that case:

“[16] I therefore have to ask myself whether there is any public policy issue which I should and have to consider before making the declarations which are sought. I have obviously considered that making a declaration would be to acknowledge on behalf of the state the factual basis as to the petitioner's natural father.

[17] I am of the view that it could be of assistance to the petitioner and his own children to know who the natural father was, because questions are often asked now as to a person's possible vulnerability to medical conditions or genetic make-up. It may be of value for the petitioner and his family to know that the state has recognised the named father. It would, of course, also satisfy the petitioner's personal wishes and emotions.

[18] The declaration sought would not alter or affect the validity of the adoption order made in May 1965. That is a forever order by which the petitioner became a legal member of the adoptive family and the adopters his legal parents.”

54. I am also not persuaded that Ms Cavanagh and Ms Keehan have identified other evidence that demonstrates convincingly that, contrary to the analysis I have set out above, Parliament intended that birth parents would not come within the terms of s 55A(1) of the Family Law Act 1986 following the making of an adoption order under Part 1 of the Adoption and Children Act 2002.
55. With respect to the provisions of the Adoption and Children Act 2002 concerning re-registration, Ms Cavanagh and Ms Keehan correctly identify, pursuant to the provisions set out in Schedule 1 to the Adoption and Children Act 2002, that where a child is made the subject of an adoption order (a) that order must contain a direction to the Registrar General to make an entry in the Adopted Children's Register and a direction that the entry in the register of live-births or other record relating to the child is marked with the word 'Adopted', (b) after an entry in the registers of live-births or other records has been so marked the birth must be re-registered under s 14 of the Births and Deaths Registration Act 1953 and the entry made upon re-registration also be marked 'Adopted' and (c) the Registrar General must make traceable the connection between any entry in the registers of live-births or other records which have been marked 'Adopted' and any corresponding entry in the Adopted Children Register. Ms Cavanagh and Ms Keehan are also correct that, by contrast, there is no provision in Schedule 1 of the Adoption and Children Act 2002 that makes provision for the birth certificate to be *re-marked* with the word "Adopted" following the re-registration of an adopted child's birth after a declaration of parentage has been made pursuant to s 55A(1) of the 1986 Act. In addition, it is the case that s 55A(1) of the 1986 does not contain a permission provision, by contrast to other statutory provisions that permit applications by legal strangers in respect of adopted children and that, in this context, there are potential omissions in Part 8 of the FPR 2010 with respect to applications concerning adopted children. I am not however satisfied that any of these matters constitute evidence of an intention on the part of Parliament's to exclude birth

parents, and thus a whole cohort of biological parents, from the operation of s 55A(1) of the Family Law Act 1986.

56. Once again, s. 55A(1) of the Family Law Act 1986 uses the term “any person” to denote who may apply for a declaration of parentage under the Act. In these circumstances, there would need to be very strong evidence indeed before the court could properly conclude that, notwithstanding that the terms of s 55A(1) of the Family Law Act 1986 and s 67(1) of the Adoption and Children Act 2002 are capable in the aforementioned context of being read consistently with each other for the reasons I have given, Parliament in fact intended the words “any person” to exclude from the ambit of s 55A of the 1986 Act a whole category of persons, namely birth parents whose children have been adopted. Within this context, whilst it is the case that Ms Cavanagh and Ms Keehan have identified certain statutory lacunae and potential omissions from the rules in relation to an application under s 55A(1) made by a putative birth parent (which statutory lacunae and potential omissions from the FPR will plainly be relevant when the court comes to determine the merits of such an application) having regard to the plain meaning of the term “any person” it is not possible to interpret those statutory lacunae, much less lacunae in the procedural rules, as indicating an intention on the part of Parliament to exclude birth parents, and thus a whole cohort of biological parents, from the operation of s 55A(1) of the Family Law Act 1986.
57. Finally with respect to the proper interpretation of s 55A(1) of the 1986 Act (and based on their submission that s 67 of the 2002 Act means that a birth parent can no longer be a parent in any sense following the making of an adoption order), Ms Cavanagh and Ms Keehan submitted that the term “was” in s 55A(1) must relate to declarations which may be made where that person who is named as a parent or child of the applicant is deceased at the time of the application or making of the declaration and that, on a plain reading of the section, the use of the past tense does not anticipate a declaration being made that a still living person was, at a defined point in the past, the parent of a child but is no longer the parent in the present. It is not however, necessary to determine this point in the context of an application by a putative birth parent with respect to a living child in circumstances where an applicant in that position who asserts that they are the biological parent of a living child will, by definition, fall within the term “is” rather than the term “was” by reason of the enduring nature of biological parentage.
58. The term “any person” in s 55A(1) is qualified by the words “Subject to the following provisions of this section”. As I have already noted, those provisions concern jurisdiction (s 55A(2)) and standing (ss 55A(3) and 55A(4)). In the circumstances, notwithstanding the conclusions as to jurisdiction I have set out above, a birth parent seeking a declaration of parentage pursuant to s 55A(1) will still need to demonstrate that they come within the terms of the provisions regarding jurisdiction and standing. In this context, Ms Cavanagh and Ms Keehan submit that (again based on their submission that s 67 of the 2002 Act means that a birth parent can no longer be a parent in any sense following the making of an adoption order), that a birth parent cannot come within the terms of s 55A(4) and that it is also not possible for a birth parent to demonstrate “sufficient interest” for the purposes of s 55A(3). Again, I am not able to accept that submission.

59. Sections 55A(3) and 55A(4) draw a distinction between applications concerning current status as a parent (“is”), in which case the applicant may apply without the need to show sufficient interest pursuant to the exception set out in s 55A(4), and all other applications, including those concerning past parental status (“was”), in which case the applicant must demonstrate sufficient interest if the court is not to refuse to hear the application pursuant to s 55A(3). Accordingly, it is apparent that the sufficient interest criterion applies only where an application concerns the question of whether a person “was” the parent of a child but not where the application concerns the question of whether a person “is” the parent of a child. Within this context, as I have already noted, in respect to an application by a putative birth parent, an applicant in that position who asserts that they are the biological parent of a living child will, by definition, fall within the term “is” rather than the term “was” by reason of the enduring nature of biological parentage. Accordingly, where a putative birth parent seeks a declaration of parentage in respect of a living adopted child the question of sufficient interest does not arise. Rather, for the reasons I have given, that putative birth parent will fall within s 44A(4)(a) of the 1986 Act.
60. For each of the reasons set out above, I am satisfied that the court has jurisdiction, pursuant to s 55A(1) of the Family Law Act 1986 and in an appropriate case, to grant to a birth parent in the position of the applicant a declaration of parentage in respect of a child following the lawful adoption of that child under the Part 1 of the Adoption and Children Act 2002.

Does s 55A(5) of the Family Law Act 1986 permit a preliminary hearing on whether the court should refuse to hear the application in the child’s best interests?

61. I am able to accept the submission of Ms Cavanagh and Ms Keehan that 55A(5) of the Family Law Act 1986 allows the court, in an appropriate case, to decide as a preliminary issue whether it should refuse to hear the application for a declaration of parentage on the grounds that it is not in the child’s best interests for the application to be determined.
62. In support of their submission in this regard Ms Cavanagh and Ms Keehan referred the court to the Law Commission Working Paper Number 74 *Illegitimacy* dated 13 March 1979, which at p 127 suggested that the hearing of an application concerning parentage should be subject to the court being satisfied that it is consistent with the welfare of the child for the issue be tried. Ms Cavanagh and Ms Keehan further point out a report laid before Parliament by the Law Commission in 1983 entitled *Law Commission (No 118) Family Law Illegitimacy*, which report recommended that the court should decide as a preliminary point whether an application is in the child’s interests.
63. Further support for the interpretation of s 55A(5) of the 1986 Act advanced by Ms Cavanagh and Ms Keehan can be gleaned from the authorities. In *Re R (IVF: Paternity of Child)* [2003] 1 FLR 1183 Lady Justice Hale (as she then was) noted at [32] that one of the advantages of s 55A of the 1986 Act is that the court may refuse to hear the application if it is not in the child’s best interests. In *Re S (Declaration of Parentage)* [2012] All ER (D) 140 (Aug) Black LJ (as she then was) also appeared to suggest at [32] that s 55A(5) does constitute a discrete, preliminary stage:

“[32] I have deliberately chosen an example in which the application of section 55A(5) is obvious but there may well be cases in which the facts were less radical but the court would still exercise its power under section 55A(5). I would have thought that the examples in Professor Cretney's book of the child conceived in a rape or the child who is settled with adopters would potentially give rise to a power under section 55A(5) to refuse to hear the application. I question whether it is likely that a case would avoid being derailed at the section 55A(5) stage, proceed to a determination of the fact of parentage, and then throw up welfare considerations which would make it manifestly contrary to public policy to grant a declaration.”

64. Within this context, I am satisfied that the words used in s 55A(5), namely “refuse to hear the application” at the very least suggest that the court is permitted to determine as a preliminary issue the question of whether it is in the child's best interests for the application to be determined. Whilst the power in s 55A(6) to order that the applicant may not apply again for the same declaration without leave of the court where the court has refused to hear the application pursuant to s 55A(5) might be said to argue against the latter constituting a separate stage prior to the hearing of the substantive application, having regard to the matters set out in the foregoing paragraph I am satisfied that s 55A(5) at the very least *permits* the court, in an appropriate case, to determine as a preliminary issue that the determination of the application would not be in the best interests of the child.

65. With respect to the principles to be applied when considering whether to refuse to hear the application by reason of the determination of the application not being on the child's best interests, In *Re S (Declaration of Parentage)* Black LJ (as she then was) noted as follows at [31]:

“[31] Returning to the sphere of declarations of parentage, it may be helpful, in order to examine how section 55A and section 58 interrelate, to take the example of a teenage child who is aware of the application for a declaration of parentage by a man who claims to be his or her father and who threatens that he or she will commit suicide if the man's application is permitted to proceed. A psychiatrist gives evidence that he considers the threat to be genuine and that, should the proceedings continue, the child is at serious risk of emotional harm at the very least. Section 55A(5) would enable the court to refuse to entertain the father's claim for a declaration on the basis that the determination of the application would not be in the best interests of the child.”

66. As I observed in *MS v RS (Paternity)* [2020] 2 FLR 689 [45], there is a further relevant factor in determining pursuant to s 55A(5) of the 1986 Act whether it is in a child's best interests to hear an application for a declaration of parentage:

“[45] In considering whether it can be said that to hear the application is not in the children's best interests (and further highlighting why facts justifying such a conclusion will generally, but not always be radical in nature) the right of the child to know, and the importance of the child knowing his or her paternity is a factor that must also be weighed in the balance, subject to the matters set out above.”

67. Having regard to the foregoing principles, I accept Ms Cavanagh and Ms Keehan's submission that it is open to the court at this stage to refuse to hear Mr H's application on the grounds that to hear the application is not in T's best interests. However, I cannot accept Ms Cavanagh and Ms Keehan's submission that, pursuant to s 55A(5) of the Family Law Act 1986, the court *should* refuse to hear Mr H's application in respect of T at this stage.

Should the court refuse to hear the application in this case at this stage or list the matter for a final hearing?

68. T was made the subject of an adoption order on 12 April 2017. The applications for permission to appeal made by Mr H during the proceedings leading up to that order were refused. T is now settled in her adoptive placement and has been for nearly four years. The statement of L makes clear that T's adoptive parents harbour a concern that if Mr H's application is granted it has the potential to cause disruption in the future should Mr H wish to cause difficulties. However, it is also clear, as set out above, that the adoptive parents believe it is important that T should know her full life history, that all official information in respect of her should be correct and without gaps and that, in this context, that they do not object to Mr H's name being placed on T's birth certificate. On behalf of the adoption agency, L also makes clear that she considers it would be in T's interests to have a corrected birth certificate, albeit that she does not advocate for that course.
69. Within this context, I am satisfied that the following matters fall to be balanced when considering the submission of Ms Cavanagh and Ms Keehan that the court should at this stage refuse to hear Mr H's application because the determination of that application is not in T's best interests.
70. It is plain that there is potential for disruption to result from the determination of an application by a birth parent for a declaration of parentage in respect of an adopted child. The potential for such disruption is brought into focus by the nature of an adoptive placement. As I have noted above, the authorities make clear that adoption orders are intended to be permanent and final and the family unit thereby created is intended to be inviolable and autonomous with respect to the decisions made as to what is in the best interests of the child in the light of the circumstances that exist from time to time, free from State interference or interference from legal strangers (see *Re C (Adopted Child: Contact)* [1993] Fam 210, *Re S (A Minor) (Adopted Child: Contact)* [1998] Fam 283 and *Oxfordshire County Council v X, Y & J* [2011] 1 FLR 272). Within this context, whilst as I have been at pains to make clear, s 67(1) and 67(3) operate to determine only the question of legal parentage, it must be recognised that the practical effect of such an order is more profound for the child and his or her adoptive parents, extending to emotional, personal, psychological and social consequences and, in some cases, cultural and religious consequences (see *Re X (A Child)(Surrogacy: Time limit)* [2015] 2 WLR 745).
71. In addition, the potential disruption consequent an application by a birth parent for a declaration of parentage in respect of an adopted child is brought even further into focus by the fact that whilst, for the reasons set out above, I am satisfied that a birth parent is entitled to apply for a declaration of parentage under s 55A(1) of the 1986 Act, neither the statute nor the associated rules of procedure in the FPR contain the protective provisions that are ordinarily incorporated where an application can be

made by a birth parent with respect to a child who has been made the subject of an adoption order and which account for the fact that the child has been adopted. Section 55A of the 1986 does not provide a permission stage before an application can be issued in respect of an adopted child, by contrast, for example, to that imposed by Parliament by s 51A(4)(c) of the Adoption and Children Act 2002 upon birth parents who seek an order under s 51A of the 2002 Act. Further, the effect of the rules in Part 8 of the FPR is that the adoptive parents will be amongst the automatic respondents to the application for a declaration of parentage in respect of a child who has been made the subject of an adoption order (notwithstanding the difficulties with the adoptive parents being served with the application in a closed serial number adoption case). In addition, if a declaration of parentage is made in favour of a birth parent with respect of a child who has been made the subject of an adoption order under the Adoption and Children Act 2002, pursuant to s FPR r 8.22(1) the declaration in favour of the birth parent made by the court must state the name given to the child by the adoptive parents if different (in circumstances where, if the child is known by a name other than that which appears in that child's birth certificate, r 8.22(1) requires that other name must also be stated in any order and declaration of parentage), which order would, by FPR r 8.22(2), have to be sent to the Registrar General within 21 days beginning with the date the declaration was made for the Registrar General to consider whether re-registration should take place under the provisions of the Births and Deaths Registration Act 1953. Within this latter context, the matters set out at paragraph [56] above regarding the consequences of re-registration also have the potential to cause disruption.

72. Had the adoptive parents not been given informal notice of Mr H's application and their views in respect of the same ascertained as set out in the statement of L, the position set out in the two foregoing paragraphs would constitute a weighty factor in favour of refusing, in T's best interests, to deal with Mr H's application at this stage. However, the adoptive parents are now aware of Mr H's application and, moreover, have expressed qualified support for the aim that Mr H seeks to achieve by that application insofar as it relates to the amendment of T's birth certificate. In these circumstances, whilst certain of the matters set out above will fall for further careful consideration by the court when deciding whether to grant the declaration sought (in particular in the context of considering the issue of public policy pursuant to s 58(1) of the Family Law Act 1986), they are less powerful as reasons for refusing at this stage to hear the application where the application has already caused a degree of disruption to the equilibrium of the family which the adoptive parents have, to their credit, met with a degree of child centred equanimity.
73. Further, and as recognised by both the adoptive parents and L, there are in my judgment other factors that argue against the court refusing at this stage, to hear Mr H's application.
74. First, as I have noted above, in considering whether it can be said that to determine the application would not be in the child's best interests, the right of the child to know, and the importance of the child knowing, his or her paternity is a factor that must also be weighed in the balance. In addition, there is plainly benefit to a child having access to accurate genetic information. Whilst it is the case that this information can be relayed to T via life story work and by her adoptive parents (they confirming that they are indeed ensuring that this is done), as the adoptive parents

recognise, there is also value for T in the *official* record accurately and completely reflecting these matters without gaps.

75. Second, and related to that latter point, as Black LJ (as she then was) made clear in *Re S (A Child)(Declaration of Parentage)*, issues of status, such as parentage, can be expected to be approached by the court with some formality in circumstances where they concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records. Within this context, I remind myself that DNA testing has already taken place in this case that shows that, as a matter of fact and as recognised by the adoptive parents, Mr H is the biological parent of T.
76. In all the circumstances, balancing these competing considerations, I am cannot accept the submission of Ms Cavanagh and Ms Keehan that the court should at these stage of the proceedings refuse to hear Mr H's application for a declaration of parentage in respect of T on the grounds that to determine that application would not be in her best interests. Once again, it is important that I make clear for Mr H's benefit that in deciding that the court will hear his application, I am *not* deciding the merits of that application, merely refusing to accede to the submission of Ms Cavanagh and Ms Keehan that the application should fall at a preliminary stage.
77. In the circumstances, it is not appropriate for me to go on to consider at this point the submissions made by Ms Cavanagh and Ms Keehan regarding the impact of the public policy principles articulated by s 58(1) of the Family Law Act 1986 which, by the terms of that section, fall to be considered if, and only if the court that the truth of the proposition to be declared is proved to the satisfaction of the court. That will be a matter for, and indeed the principle issue at, the final hearing. There are however two further matters that will bear on the courts analysis under s 58(1) of the 1986 Act at the final hearing on which I need to make comment to ensure the court is fully equipped to deal with that issue at the final hearing.
78. First, as I have noted, there is available confirmation by way of DNA testing that Mr H is the biological father of T, where Mr H's stated objective is to secure an amendment to T's original birth certificate to show him as her biological father and where T's adoptive parents do not object to Mr H's name being added to T's original birth certificate for that purpose. Against this however, the strict application of the current rules in this situation will result in T's adoptive name appeared on the declaration of parentage. Within this context, it will be important ahead of the final hearing of Mr H's application to establish whether a declaration of parentage pursuant to s 55A(1) of the Family Law Act 1986 is *only* way of achieving this agreed aim. For example, by HM Passport Office Form GRO185 an application can be made to re-register a child's birth to add the details of the natural father. Within this context, it is my intention to direct the adoption agency to make enquiries of the Registrar General to establish whether this procedure can be utilised to amend the birth certificate without the need for a declaration of parentage and whether, the Registrar General would also, as a matter of practice, add the word "Adopted" to upon re-registration following the use of this procedure where the child has been made the subject of an adoption order by the court.
79. Second, and within this context, it is clear that when the rules set out in Part 8 of the FPR were drafted it may not have been appreciated that it is open to a birth parent to

apply for a declaration of parentage under s 55A(1) of the 1986 Act with respect to a child who has been made the subject of an adoption order and that, in some cases, it may be appropriate to grant such a declaration. Within this context, if the procedure posited in the foregoing paragraph is not available, the following aspects of the rules will remain of particular relevance at the final hearing of Mr H's application:

- i) By FPR r 8.22(1), were the court to make a declaration in favour of the applicant that declaration, that declaration must, pursuant to FPR r 8.22(1), contain T's adoptive name, which at present is confidential to the adoptive parents. It is not clear whether the court has power to disapply the provisions of FPR r 8.22(1).
- ii) FPR r 8.22(2) pursuant to r 8.22(2), a copy of the declaration would have to be sent to the Registrar General within 21 days beginning with the date the declaration was made for the Registrar General to consider whether re-registration should take place. It is not clear whether the Registrar General would accept an order in respect of which the court has disapplied FPR r 8.22(1) if it has the power to do so.

80. In the absence of a procedure for amending T's birth certificate that does not rely on a declaration of parentage, when the court considers the merits of Mr H's substantive application, and in particular the application of the public policy provisions of s 58(1) of the Family Law Act 1986, the court will need to consider whether it has the power to disapply FPR r 8.22(1) to avoid T's adoptive name appearing on the declaration of parentage having regard to the need to maintain the confidentiality of the adoptive placement. Further, the court will also need to understand whether the Registrar General would accept a declaration in respect of which the court has disapplied FPR r 8.22(1), if it has the power to do so and whether, if the Registrar General exercised his discretion to re-register the birth following the granting of a declaration of parentage, the Registrar General would also, as a matter of practice, add the word "Adopted" to upon re-registration following a declaration of parentage in favour of a birth parent in circumstances where the child who is the subject of the declaration has been made the subject of an adoption order by the court. Within this context, I will make directions with a view to ensuring these issues are fully ventilated at the final hearing.

81. Finally, whilst in this case the adoptive parents have been put on informal notice of the application and their views ascertained, this case raises the wider issue of whether, in the absence of a permission stage in s 55A of the Family Law Act 1986, an amendment is required to FPR r 8.20(1) to legislate for the fact that applications under s 55A(1) of the 1986 Act can, as I have found, be made by birth parents. I also note that the Form 63 application for a declaration of parentage contains no provision for indicating the child whose parentage is in issue has been adopted. Whilst I note that the court retains control over who is respondent to any proceedings pursuant to Rule 1.4(2)(b) FPR 2010, in circumstances where, as matters, stand FPR r 8.20(1) means that adoptive parents are automatic respondents I consider it appropriate to refer these matters to the Family Procedure Rules Committee for their consideration.

CONCLUSION

82. In conclusion, I am satisfied that the court has jurisdiction, under s 55A(1) of the Family Law Act 1986 and in an appropriate case, to grant to a birth parent in the

position of the applicant a declaration of parentage in respect of a child following the lawful adoption of that child under the Part 1 of the Adoption and Children Act 2002. I am further satisfied that pursuant to s 55A(5) the court can, in an appropriate case and as a preliminary issue, decide to refuse to hear an application on the grounds that it is not in the child's best interests for the application to be determined. However, in this case and for the reasons I have set out above, I decline to refuse to hear the application made by Mr H and will list that application for final hearing.

83. In circumstances where the court has available to it the DNA test results in respect of Mr H dated 16 November 2015, the primary issue for the final hearing will be the application of the public policy exception contained in s 58(1) of the Family Law Act 1986. Within this context, I direct that:

- i) The adoption agency shall file and serve a statement detailing the outcome of its enquiries of the Registrar General on the questions of:
 - a) Whether Form GRO 185 can now be utilised to amend the birth certificate in the circumstances of this case without the need for a declaration of parentage;
 - b) Whether the Registrar General would accept a declaration pursuant to s 55A(7) of the Family Law Act 1986 in respect of which the court has disappplied FPR r 8.22(1), if the court has the power to do so; and
 - c) Whether, if the procedure under Form GRO 185 is available *or* if Registrar General exercised his discretion to re-register the birth following the granting of a declaration of parentage to a birth parent, the Registrar General would also, as a matter of practice, add the word "Adopted" to upon re-registration in circumstances where the child who is the subject of the declaration has been made the subject of an adoption order by the court.
- ii) The Adoption Agency shall send a copy of this judgment to the Attorney General, confirm with the Attorney General that the papers in this matter have been received, notify the Attorney General that at the final hearing the primary issue before the court will be one of public policy under s 58(1) of the Family Law Act 1986 and invite the Attorney General to confirm whether she intends to intervene in these proceedings.
- iii) A copy of this judgment shall be disclosed to the Family Procedure Rules Committee in order that the matters I have set out above can be considered by the Rules Committee if the Committee considers it appropriate to do so.

84. Finally, it is once again important to ensure that Mr H is clear about the effect of this judgment and the potential outcomes consequent upon it. In particular, I again make clear to Mr H that, although I am satisfied that the court has jurisdiction to deal with his application and should do so at a final hearing, if the court decides to make a declaration of parentage in his favour that declaration will *not* confer on Mr H parental responsibility for T and will *not* confer on Mr H any other legal rights with respect to T. Whilst a birth parent remains, as a matter of fact, the biological parent of an adopted child, that birth parent has no legal standing in relation to the child. That is

the effect of the distinction between fact and law I have sought to highlight in this judgement and, accordingly, of the adoption order made in respect of T on 12 April 2017. That will remain the effect of the adoption order even if the court is satisfied at the final hearing that the fact of Mr H's biological parentage should be stated by way of a declaration of parentage pursuant to s 55A(1) of the Family Law Act 1986.

85. That is my judgment.