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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

No. WD23Z00103

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 12 July 2023

IN THE MATTER OF THE **ADOPTION AND CHILDREN ACT 2002**

Before:

THE PRESIDENT OF THE FAMILY DIVISION

(**In Private)**

Re H (Step-Parent Adoption: Human Rights)

REPORTING RESTRICTIONS and ANONYMISATION APPLY

PROF. R GEORGE (instructed by Rayden Solicitors) appeared on behalf of the Applicant.

MR R JONES and MS E COLEBATCH (instructed by Freemans Solicitors) appeared on behalf of the Respondent Child.

MS A KAKONGE (instructed by the Legal Department) appeared on behalf of the Local Authority.

MR C OSBORNE (Solicitor of Cafcass Legal) appeared as *Amicus*.

J U D G M E N T

THE PRESIDENT:

1 This is an application for adoption made by the step-father of a young man who was born in 2006 and is therefore aged 17. It ought to be a straightforward application under section 51(2) of the Adoption and Children Act 2002 as the young person concerned, whom I attribute "H" to as an entirely randomly chosen letter ("H") has lived as part of the family with his step-father since the age of 2 when the step-father married his mother. The application is not, however, straightforward, because the mother sadly died suddenly in early 2020 and thus the applicant's step-father makes the application on his own, and it is accepted by all parties before the court. Therefore it does not fit within the ordinary interpretation of the words in section 51(2).

2 Thus it has been that the court has received detailed submissions from counsel on behalf of the applicant, Professor Rob George; counsel on behalf of H, Mr Jones, leading Ms Colebatch, and also counsel instructed as an *amicus*, Mr Osborne, solicitor of Cafcass Legal, as to the detailed legal context within which the application should be considered. All three of those contributors urged the court to use its power under section 3 of the Human Rights Act 1998 to "read down" additional words into section 51(2) so as to allow the application to proceed to the making of an order, notwithstanding the untimely death of the young person's mother.

3 In all other respects, the adoption application is entirely in order. A detailed and impressively full social work report has been prepared in accordance with the Adoption Agency Regulations by the local authority and they have appeared by counsel in court today, Ms Kakonge, to support the application. Most importantly H is entirely desirous of an adoption order to be made in favour of his step-father.

4 The Home Office has been given notice of the application. Detailed correspondence between the applicant's lawyers and the Home Office shows that notice was given on 16 May and repeated on subsequent occasions.

5 I will give further short details of the background before turning to the legal difficulties that the application faces.

6 Both H and his mother originated from an EU country. His mother was aged 33 when he was born. She had already been married but that marriage had ended in divorce. Her then partner, who is the natural father of H, had separated from her while she was still pregnant. The natural father is not named on H's birth certificate. Indeed, I understand that all that is known of the natural father is his first name. He has played absolutely no part in H's life and again, as I understand it, has never met H. His whereabouts are unknown. As a parent who does not have parental responsibility, the natural father is not an individual whose consent to adoption is required. That is clear from the provisions of section 52(6) of the Adoption Act which states: " 'Parent" (except in (9) and (2)) means a parent having parental responsibility." It is plain that the natural father does not have parental responsibility.

7 As I have indicated, the applicant step-father married H's mother when H was 2. That marriage took place in the mother's home country but the couple have lived much of their life together with H in England and Wales. The mother died at the very young age of 47 in 2020. Since that time, until orders were made very recently in the Family Court, no person had parental responsibility for H. He continued to live in the family with his step-father.

8 On 24 April 2023 Judge Vevrecka, sitting in the Family Court, made holding orders. First of all, a child arrangements order providing for H to live with his step-father under the

Children Act 1989 section 8. In addition, he made a guardianship order under section 5 of the same Act. Directions were then given for the process of proceeding with the step-parent adoption application to which I now turn.

9 The application is made under section 51(2) of the 2002 Act which provides:

> "(2) An adoption order may be made on the application of one person who has attained the age of 21 years if the court is satisfied that the person is the partner of a parent of the person to be adopted."

10 As I shall explain in more detail, this provision allows adoption to be achieved and the elevation of a step-parent to full parental status without interfering with the legal and natural arrangements in law between the other parent, the natural parent, and their child. Hitherto, prior to the 2002 Act, if a couple wished to achieve full parental status for a step-parent, the artificial step of both of them applying for a joint adoption order had to be undertaken with the unattractive consequence of the natural mother, as it may well be, or natural father ceasing to be a mother or father and becoming an adopted natural father or mother of their own child.

11 It is the case that the applicant in these proceedings could apply for a single adoption order under section 51. Section 51(1) provides:

> "(1) an adoption order may be made on the application of one person who has attained the age of 21 years and is not married or a civil partner."

12 That is the position of the applicant now following the death of his wife. The legal impact of such an order would be to extinguish, which is the word used in the Act, the legal relationship that H had with his mother, and also extinguish in legal terms the relationship he has with his wider maternal family with whom he has a close positive relationship.

13 In terms of H's view, he has written a letter to the court which summarises his perspective on matters. I have read that letter three times. It is a very impressive and clear document. I do not intend to read all of it into this judgment, but to give the essence of what he says, the following extracts are illustrative.

> "Through every stage of my childhood I can recall my dad being present, from learning to ride my bike, to playing sport, to buying new school shoes which are inevitably destroyed in the school playground. He was simply always there. However, your Honour, I do not want to falsely depict our relationship to you. Like any family, we have had hardships in our relationship."

14 He then goes on to describe the understandable difficulties that that relationship went through when he, as a teenager, was coping with the sudden and appalling sad loss of his mother, compounded no doubt by the fact that very soon after that Covid restrictions caused families to be locked down together. However, he goes on to describe that the relationship that he has with his step-father has survived those difficulties and that the main reason that he now seeks an adoption is to "cement" the relationship that they have.

15 The letter further describes the difficulties that he has encountered in these recent years by having no parent in legal terms who can give permission for activities or otherwise authorised activities that have to be undertaken. He is also concerned that his immigration status and nationality status may be impacted by the vacuum that has been left following his mother's death.

16 The difficulty that the applicant has in legal terms is plain. Section 51(2) is written in the present tense and requires the applicant to be a "person [who] is the partner of a parent of the person to be adopted". Sadly, that is no longer the case in this family and in relation to this applicant. What Professor George seeks to achieve is the reading down of additional

words into that provision so that after the final word of the sub-section the following words should be inserted: "„, (or was the partner until the time of the parent's death)."

17 The structure of the 2002 Act is such that the various configurations of relationships which are described there are further described in other sections, for example section 46(3)(b) which reads:

> "(3) An adoption order –
>
> ...
>
> "(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)."

18 And section 67(2)(b):

> "(2) An adopted person is the legitimate child of the adopters or adopter and, if adopted by ...
>
> "(b) one of a couple under section 51(2)."

19 Counsel before the court have easily persuaded me that there is no need to read into any of those additional provisions additional words, provided that the core subsection, section 51(2) is read in the way that Professor George urges the court to read it.

20 Stepping back from the immediate issue, it is helpful to look more widely at step-parent adoption. As it happens, in a judgment that I gave some nine years ago I reviewed the landscape, as it by then was, with respect to step-parent adoption in *Re P (Step-parent adoption)* [2014] EWCA Civ 1174. In the course of that judgment from para.11 to para.17 I described the applicable statutory context. There is no need to repeat any of those

observations here. At para.18 I described the beneficial amendments to the previous legislative scheme brought in by section 51 in these terms:

> "18. Prior to the legislative changes brought about under the ACA 2002 the options open to a step-parent who wished to share parental responsibility with his or her partner in the care of children who had become part of their joint family unit were limited. It was possible for the step-parent to be granted a 'residence order' under CA 1989, s 8; under the law prior to April 2014, the holder of such an order gained parental responsibility for the child while the residence order remained in force (...). Prior to the ACA 2002 reforms it was not possible for a step-parent to be granted a free standing order for parental responsibility. The only other option, therefore, was adoption. A further difficulty under the pre ACA 2002 law was that any such adoption had to be a joint adoption by the step-parent together with their spouse, who was one of the child's natural parents (...) This had the unattractive consequence of the natural parent becoming the adoptive parent of their own offspring."

21 At para.22 I summarised the position of a successful step-parent adoption applicant in these terms:

> "In a single applicant step-parent adoption case under the ACA 2002 regime, such as the present case, the result of these various provisions is that if a step-parent adoption order is made:
>
> "(a) The child is treated as if born as a child of the step-parent [...];
>
> "(b) Is to be treated in law as not being the child of any person other than the step-parent adopter and the natural parent who is that step-parent's partner [...];
>
> "(c) The natural parent who is not the step-parent's partner (i.e. A's natural father in the present case) has any parental responsibility for the child extinguished [...]; and
>
> "(d) The adopter gains parental responsibility for the child [s 46(1)].

That is exactly the outcome that both the applicant and H in the present case seek.

22 From para.38 to 44, which again I will not read into this judgment, I described the approach to be taken to step-parent adoptions and drew the distinction between adoptions in the

context of a family re-arranging the legal status of its family members in contrast to adoptions brought before the court which are fully contested within the structure of child protection care proceedings.

23 From para.45 onwards I continued that analysis and stressed that the key difference between those two different types of adoption applications was proportionality. What is being sought where local authority social services seek to achieve adoption against the will of the natural parents is a high order – indeed it is often said the highest order – of intervention that the state can achieve in an individual's family life. The degree of justification for such an order and the underlying proportionality analysis is therefore of a high order before the court can be satisfied that such an outcome is "necessary". Where, conversely, in the context of a step-parent application what the court is considering is re-arranging, often with the consent of everybody involved. The legal status of the family members, the degree of interference with their family life and their rights under the European Convention on Human Rights is an altogether different order.

24 In the present case it is accepted, as indeed it obviously must be, that the applicant step-father and H have the fullest possible family life relationship sufficient to engage Article 8 of the ECHR. In addition, they have private life rights with respect to each other which relate to their status in respect to each other within their family. The application made to the court by Professor George which is supported by the other parties involves the court exercising its jurisdiction under the Human Rights Act section 3. The relevant provision reads as follows:

"3 Interpretation of legislation.

> "(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

25 Much has been said in judgments in previous cases about the approach to be taken to section 3 of the 1998 Act. I do not intend to add in any significant way to that, but to follow the guidance that has been given. Looking at section 3, a number of words are important. First, there is the mandatory word "must" which imposes a duty on the court to read and give effect in a compatible way to legislation. The second words to stress are "it is possible to do so". This not an option on the court. The court must act in a way to achieve compatibility with the Convention rights unless it is impossible to do so within the structure of the legislation and the wording of the provision.

26 The approach to be taken was helpfully distilled and explained in the authoritative speeches of the House of Lords in *Ghaidan v Godin-Mendoza* [2004] UKHL 30. The speech of Lord Nicholls, in particular, explained that s 3 should not be given a narrow interpretation:

> "29. … It is now generally accepted that the application of section 3 does not depend upon the presence of ambiguity in the legislation being interpreted. Even if, construed according to the ordinary principles of interpretation, the meaning of the legislation admits of no doubt, section 3 may nonetheless require the legislation to be given a different meaning …
>
> 30. From this it follows that the interpretive obligation decreed by section 3 is of an unusual and far-reaching character. Section 3 may require a court to depart from the unambiguous meaning the legislation would otherwise bear. In the ordinary course the interpretation of legislation involves seeking the intention reasonably to be attributed to Parliament in using the language in question. Section 3 may require the court to depart from this legislative intention, that is, depart from the intention of the Parliament which enacted the legislation. The question of difficulty is how far, and in what circumstances, section 3 requires a court to depart from the intention of the enacting Parliament. The answer to this question depends upon the intention reasonably to be attributed to Parliament in enacting section 3.
>
> …
>
> 32. … Section 3 enables language to be interpreted restrictively or expansively. But section 3 goes further than this. It is also apt to require a court to read in words which change the meaning of the enacted legislation, so as to make it Convention-

> compliant. In other words, the intention of Parliament in enacting section 3 was that, to an extent bounded only by what is "possible", a court can modify the meaning, and hence the effect, of primary and secondary legislation."
>
> 33. Parliament, however, cannot have intended that in the discharge of this extended interpretative function the courts should adopt a meaning inconsistent with a fundamental feature of the legislation. That would be to cross the constitutional boundary s 3 seeks to demarcate and preserve. Parliament has retained the right to enact legislation in terms which are not Convention-compliant. The meaning imported by application of s 3 must be compatible with the underlying thrust of the legislation being construed. Words implied must, in the phrase of my noble and learned friend Lord Rodger of Earlsferry, "go with the grain of the legislation". …

Lord Steyn similarly held at paragraph that "Section 3 requires a broad approach concentrating, amongst other things, in a purposive way on the importance of the fundamental right involved." At paragraph 46, Lord Steyn described s 3 as the "lynch-pin of the legislative scheme" and, adopting the government's language when introducing the Bill, said that "Rights could only be effectively brought home if section 3(1) was the prime remedial measure, and section 4 a measure of last resort."

Lord Rodger cautioned that the issue was not about the number of words that had to be 'read in' to legislation to make it compatible, but rather in "a careful consideration of the essential principles and scope of the legislation being interpreted" (at paragraphs 115, 122 and 124):

> "115. … In any given case, however, there may come a point where, standing back, the only proper conclusion is that the scale of what is proposed would go beyond any implication that could possibly be derived from reading the existing legislation in a way that was compatible with the Convention right in question. In that event, the boundary line will have been crossed and only Parliament can effect the necessary change.
>
> …
>
> 122. … [T]he key to what it is possible for the courts to imply into legislation without crossing the border from interpretation to amendment does not lie in the number of words that have to be read in. The key lies in a careful consideration of the essential principles and scope of the legislation being interpreted. If the insertion of one word contracts those principles or goes beyond the scope of the legislation, it amounts to impermissible amendment. On the other hand, if the implication of a dozen words leaves the essential principles and scope of the legislation intact but allows it to be read in a way which is compatible with Convention rights, the implication is a legitimate exercise of the power conferred by s 3(1).
>
> …

> 124. Sometimes it may be possible to isolate a particular phrase which causes the difficulty and to read in words that modify it so as to remove the incompatibility. Or else the court may read in words that qualify the provision as a whole. At other times the appropriate solution may be to read down the provision so that it falls to be given effect in a way that is compatible with Convention rights in question. In other cases the easiest solution may be to put the offending part of the provision into different words which convey the meaning that will be compatible with those rights. The preferred technique will depend on the particular provision and also, in reality, on the person doing the interpreting. This does not matter since they are simply different means of achieving the same substantive result."

27 From their Lordships' judgments, it is plain that the court must approach the matter as I have already described, reading down the provision "if it is possible to do so". I take particular note of the need for the court to understand the "underlying thrust of the legislation being construed" and to "go with the grain of the legislation". In doing so, it is necessary to construe the provision in "a purposive way".

28 Looking at matters through that lens, I am assisted greatly by the detailed exposition of Mr Osborne, as *amicus*, as provided to the court. Not only has he reviewed the statutory provisions themselves, but he has gone back to remind the court of details of the underlying consultation documents which preceded the 2002 Act, and he has referred to some parts of the Parliamentary debate that led to the legislation being passed. Mr Osborne says this at para.17.6 of his position statement:

> "The inclusion of section 46(3)(b) ACA 2002 demonstrates that the purpose of a partner adoption was for the child to benefit from the permanency and transformative effect of adoption without needing the parent to adopt his/her own child so as to avoid the result of the child breaking all legal ties with the parent who the father was a couple with."

29 That is very much in line with the observations I have already made about the beneficial appearance of the option for a single person step-parent adoption to be made under section 51(2).

30 Going back to consideration of rights under the ECHR, the outcome that is sought by the applicant and by H is, to my eyes, entirely compatible with the preservation and enhancement of their respective rights under Article 8. Not only would an adoption order in favour of the applicant under section 51(2) bring him into the correct legal status with respect to H which mirrors their lived reality, and indeed the reality that H has known since the age of 2 which he so eloquently describes in his letter, but it will maintain the extant legal family life relationship that he had had with his mother and continues to have with his maternal family. From what I have read he is a fortunate young man in that he has positive and active family relationships with both his maternal family and with his step-father's family (the applicant's family).

31 It is important not to consider H as "a child" in the sense that one's focus on these matters is limited to him during the age of his minority, which will end soon. Both the Adoption and Children Act 2002 and the jurisprudence of the court in Strasberg look at relationship in this context on a life-long basis. What the court is being invited to do is not simply provide someone with permanent and secure parental responsibility for H for the next few months before he reaches the age of 18. This application is not about parental responsibility; it is about parental relationship and family relationship. Far more important is to cement the reality of the emotional, psychological and lived experience of these two in a legal structure and afford legal status to the applicant. It simply matches how life is being lived by the two of them and by both sides of H's family, now and for the future. In that context, it is hard to under-estimate the importance of the application that is being made.

32 Again, looking at Article 8, if the preferred route of an application proceedings under section 51(2) is denied because of the strict reading of the statutory provision, an unwelcome choice would have to be made. Either the court would simply continue the orders made by his Honour Judge Vevrecka, which simply provide for cover in terms of

parental responsibility during the final months of H's minority, or the applicant would have to assume an application under section 51(1) which would have, as I have explained, the effect of extinguishing his mother's legal status as "mother" in a wholly unwelcome and unjustified manner. It is a choice that counsel on behalf of H has submitted simply should not be required to be made of him.

33 In terms of Article 8, were a section 51(1) order to be made, I am satisfied that that would have a negative impact on H's Article 8 rights in so far as it would remove his mother and her family legally from his parentage. There is no basis for holding that that step is necessary in any way, and it is certainly not proportionate to the outcome that is sought, namely the elevation of the applicant to the status of parent rather than alteration of anything in terms of parentage on the maternal side. So, in terms of any evaluation under Article 8, all points lead to the conclusion that the application should be granted if the subsection can be read in a compatible way to achieve that.

34 Understandably Professor George, in mounting comprehensive submissions on behalf of the applicant, sought to promote a further case based upon discrimination under Article 14 of the Convention. Article 14 reads:

> "Protection from discrimination.
>
> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

35 Whilst I understand the basis upon which the submission is made, in my view it may be difficult to actually make a distinction here that amounts to a discrimination. Sadly, the applicant is now a widow and not a married man, but to hold that this provision

discriminates against widowers and widows is possibly stretching matters too far. In my view, it is simply not necessary to consider the ECHR analysis by including Article 14. For the reasons that I have given, the analysis under Article 8 could not be stronger and more in favour of the court reading matters down.

36 Fortunately, the path that I am encouraged to tread has, in a different context, already been traversed by other judges, in particular Theis J in the course of two judgments in the contexts of the law relating to surrogacy. The first is *A v P* [2011] EWHC 1738 (Fam). In that case her Ladyship was considering an application for a parental order where the circumstances were that the intended father, who was in fact the parents with a biological connection to the child, had died after the initial application for the order had been made. Mrs Justice Theis having considered, in the course of a long and careful judgment, the approach to be taken under section 3 HRA 1998 and after extensive quotation from *Ghaidan* and other authorities, concluded that to do otherwise than to read into a provision the possibility of the application continuing with an order being made would be to deny the trial the "transformative effect" of a parental order in circumstances which are otherwise wholly consistent with the intention of Parliament in passing the surrogacy legislation.

37 I propose to quote from Theis J's judgment at para.22 onwards:

> "22. ... [Counsel] puts it in her skeleton argument in the following way:
>
> "(i) The court must read all primary and secondary legislation so as to give effect to the provisions of the Human Rights Act 1998.
>
> "(ii) The effect of s 3 HRA is that when considering the interpretation of legislation the court must have regard to not just the intention of Parliament but it should seek to adopt any possible construction which is compatible with and upholds convention rights. (...)

> "(iii) Article 8 [European Convention for the Protection of Human Rights and Fundamental Freedoms] includes a positive obligation which requires the State to ensure that de facto relationships are recognised and protected by law (...)
>
> "(iv) Article 8 (European Convention for the Protection of Human Rights and Fundamental Freedoms] requires the court to provide protection of the rights of children which are real and effective and not theoretical and illusory."

> "23. In this case, it is submitted, the Court may read into s 54(4) and (5) [of the HFEA 2008] an interpretation which would allow a parental order to be made in favour of both applicants. In making such an order the court should have regard to the public policy constraints which may be summarised as follows..."

The judge then summarised the relevant policy factors relating to surrogacy.

> "24. The primary aim of s 54 [of the HFEA 2008] is to allow an order to be made which has a transformative effect on the legal relationship between the child and the applicants. The effect of the order is that the child is treated as though born to the applicants. It has clear implications as regard the right to respect for family life under Article 8. Family life exists in this case as the child has lived with both Mr and Mrs A. The child is biologically related to Mr A and perhaps Mrs A. The effect of not making an order will be an interference with that family life in that the factual relationship will not be recognised by law. The court's responsibility [is] to 'guarantee not rights that are theoretical and illusory but rights that are practical and effective'...)

38 I have quoted those paragraphs in full because whilst the legal provision is different, the approach described there is very much in line with the approach that I consider is justified in this case.

39 The next decision is one of Sir James Munby (President of the Family Division as he then was) in *Re X (Surrogacy: Time Limit)* [2014] EWHC 3135 (Fam). As the case title suggests, the difficulty in that case was that the application for a parental order was made well outside the six month time limit for bringing such an application to the court. The question for the President was whether the provisions could be read in such a way as to

allow an application to proceed out of time. Sir James Munby took the opportunity to refer to the judgment of Theis J in *A v P* and to add his own further observations in these terms:

> "58. If for some reason that is wrong, if that is wrong, if to go that far is in truth to take a step too far, the same conclusion is, in my judgment, amply justified having regard to the Convention. The two key authorities here are the decision of Theis J in *A v P* ... and the later decision of the Supreme Court in *Pomiechowski v District Court of Legnica, Poland and another*. Although, as I have pointed out, Theis J founded her analysis on Article 8, whilst the Supreme Court's analysis was based on Article 6, the reasoning in both cases is fundamentally the same: the statute must be 'read down' in such a way as to ensure that the 'essence' of the protected right is not impaired and that what is being protected are rights that are 'practical and effective' and not 'theoretical and illusory'.
>
> "59. I agree entirely with Theis J's powerful and compelling reasoning. Her focus was on section 54(4)(a) [HFEA 2008], but in my judgment her reasoning applies *mutatis mutandis* with equal force to section 54(3).
>
> "60. I add two things. First, I draw attention to the fact that Theis J was prepared to read down – and in my judgment correctly prepared to read down – section 54(4)(a) to enable her to make a parental order after one of the commissioning parents had died notwithstanding that section 54(4)(a), in contrast it may be noted to section 54(3), seemingly requires the relevant condition to be satisfied both 'at the time of the application' and 'at the time of … the making of the order.' If that degree of 'reading down' is permissible in relation to section 54(4)(a) – and Theis J held that it was, and I respectfully agree – then the lesser degree of 'reading down' required in relation to section 54(3) is surely *a fortiori*.
>
> "61. The other point is this. Theis J focussed on that aspect of Article 8 [of the European Convention] which protects 'family life', but Article 8 also protects 'private life', and 'identity', on which she appropriately laid stress, is an important aspect of 'private life'. So, any application for a parental order implicates both the child's right to 'family life' and also the child's right to 'private life'. The distinction does not matter in the circumstances of the present case (...) but I make the point because it is, I suppose, possible to conceive of a case where, on the facts, it might be more difficult or even impossible to demonstrate the existence of 'family life'."

40 I have quoted that in full partly because it demonstrates that Sir James Munby P entirely endorsed the approach taken by Theis J, but because I too endorse the approach that he took there. The final case of this trio is a further decision of Theis J in *Re X (Parental Order: Death of Intended Parent Prior to Birth)* [2020] EWFC 39. There the embryo had been created using gametes from the surrogate mother and from the commission father. However, the father died suddenly in the middle of the term of pregnancy. His widow applied for a parental order jointly on her behalf and on behalf of her deceased husband, and the question for the court was whether the court had jurisdiction to grant such an order notwithstanding the untimely death of the commissioning father. Again Theis J repeated the exercise of considering the ECHR rights of the individuals involved, and the approach to be taken. It is not necessary for me to quote from her judgment on that occasion, but in referring to the case I readily approve the course that she took. Although surrogacy is plainly a different area of the law, in reality the decisions that are being made and the policy imperatives that are in play with respect to the parentage of a new-born baby achieved through surrogacy are very much the same as the issues now some years after the event where adoption is now being sought with respect to H by his step-father.

41 Having reviewed the legal context I must plainly strive to achieve a result here if it is possible to do so in a manner which is compatible with the Convention. For the reasons I have given, the outcome of a single adoption order in favour of the applicant with respect to H is the only form of order which will properly reflect the practical and lived reality of their lives. Any other order either fails to achieve anything that is of much use in terms of the attribution of parental responsibility to the applicant for the remaining months of H's minority; or achieves an outcome which is unnecessarily intrusive by extinguishing in legal terms the role of his mother and the maternal family.

42 Had H's mother not died, a joint application by the applicant and H's mother would have been entirely uncontroversial – something no doubt they had considered and H had contemplated in happier times when she was alive. The granting of such an order would entirely meet the court's view to have as its paramount consideration H's welfare "throughout his life".

43 Despite the death of H's mother, the dynamics remain entirely the same. The beneficial impact of granting this application remains as strong and, in a way, after her death, stronger because without the granting of his application H has nobody to regard as a living parent when in fact there is a human being, his step-father, who has been his psychological, emotional and in all other ways, parent throughout his life. So not to grant the order is a major detriment.

44 As I have indicated, the Article 8 factors all go one way and looking at this in terms of the life-long impact on H within his family, both sides of his family, it is hard to under-estimate the positive importance of granting the order from that perspective. The word "transformative" has been used in some of the authorities, and it was rightly used today by counsel for the local authority, Ms Kakonge. This order is not just going to be a piece of paper; it will be transformative with respect to the relationship of these two individuals.

45 I am satisfied that it is necessary to read into the Act the words that Professor George has put forward. To do so is entirely compatible with the underlying policy of the Act. Parliament deliberately created section 51(2) in order to provide a proportionate but needed route by which a step-parent could enter into equal status with a natural parent with whom they were in a relationship or to whom they were married, without dislocating the legal relationship that the natural parent had with his or her child.

46 To require the applicant to consider making a sole adoption application under section 51(1) would, for the reasons I have given, be a positive interference with H's Article 8 rights with respect to his family. It is not necessary to contemplate that.

47 For all the reasons that I have given, I am entirely persuaded that the step that is required in order to grant this application, using the jurisdiction of section 3 of the 1998 Act is entirely justified, and for all the reasons I have given is a step which I now take. I therefore read the words that Professor George has put before the court into the provision. Having read all of the documents in the case, I am entirely persuaded, for the reasons that I have described, that this order is thoroughly justified. It has no doubt been an emotional burden on both the applicant and on H to have to go through the process that we are now concluding with this judgment, but I am very pleased to be able now to grant the application that has been made.

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CERTIFICATE

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This transcript is subject to the Judge's approval