



# Fertility Law Update

## 2026

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# Refresher



- Definition of Surrogacy
- Presumptions & Misconceptions
  - A child's mother is the person who gives birth to them (see s.33 Human Fertilisation and Embryology Act 2008).
  - Presumption a child's father is the person married to the mother (see s.35).
- Parental Orders –v – Adoption

28 April 2026



itvX

LATEST SHOP THE SHOW RECIPES BEAUTY FASHION SHOWS

## The couple who are fighting to legally become the parents of their surrogate baby

Tuesday 28 April at 10:21am



For many couples, bringing a baby home is the start of a new chapter of parenthood, but for fashion mogul Adam Frisby and his fiancé Jamie Corbett settling into life as a new family is the least of their concerns. After welcoming their beautiful baby girl Leven, via surrogacy, back in January, the couple are now facing a lengthy court battle to be recognised as Leven's legal parents - as under UK law, Leven's surrogate is still recognised as her mother. As they launch a government petition to change the law on same-sex couples and surrogacy, Adam and Jamie tell us why they are determined to keep fighting for their daughter.

# Misconceptions

More than

**70,000**

donor-conceived children

have been born between  
1991 and 2020 in the UK



# My Family Pod



- <https://open.spotify.com/episode/6YqsCzOdT6Adixara66pv5?si=3bb0e8cd29784da4>



# Year in Review

*Hyperlinks  
included!*



- [RE: H \(Anonymous Surrogacy\) \[2025\] EWHC 220 \(Fam\) \(6 February 2025\)](#)
- [Re Z \(Unlawful Foreign Surrogacy: Adoption\) \[2025\] EWHC 339 \(Fam\) \(19 February 2025\)](#)
- [Re: J \(A child\) \(Surrogacy: Adoption Order\) \[2025\] EWHC 2960 \(Fam\) \(27 October 2025\)](#)
- [Re N \(Paternity: Unregulated Sperm Donor\) \[2026\] EWHC 878 \(Fam\) \(21 April 2026\)](#)

# Consent

- **RE: H (Anonymous Surrogacy) [2025]**
- **The Facts**
- Highly unusual set of circumstances regarding a child, A, aged 2.
- Mr and Mrs H were of Nigerian descent and embarked upon a surrogacy arrangement through a Nigerian clinic. Limited papers were supplied to the Court in support of their application for a parental order. The child was likely conceived from the gametes of the applicant father and the surrogate mother. This was not gestational surrogacy.
- **The surrogate mother remained anonymous by keeping her face covered during video calls at medical appointments, which were convened remotely for the intended parents, who remained in the UK until A was born.**

# Consent

- **RE: H (Anonymous Surrogacy) [2025]**
- **The Issue**
- No identification. No means of contacting her. No way of serving her.
- How can the Court establish she consents to the making of a parental order pursuant to s.54(6)?
- How could it be established the surrogate mother could not be found or incapable of giving agreement pursuant to s.54(7)?

# Consent

- **RE: H (Anonymous Surrogacy) [2025]**
- **The Analysis**
- Sir Andrew McFarlane suggested that any intended parents “would be well advised to avoid engaging with an anonymous surrogate” before determining that he was able to make a parental order for A when the evidence available to the Court confirmed “**that the prospects of tracing [her mother] and securing her engagement with these proceedings are so remote as to hold that the reality is that she 'cannot be found'.**

# Lessons Learned?



- [Re B & C v D & H \[2025\] EWFC 66 \(29 October 2025\)](#)
- “This Court has made clear in a number of recent cases the importance of the intended parents meeting the surrogate and, if possible, having an independent means of contacting the surrogate so that steps can be taken to serve her with any proceedings issued here and to take any necessary steps to obtain the necessary consent to meet the requirements of s 54 Human Fertilisation and Embryology Act 2008 (HFEA 2008) that enable the court to make a parental order.”

# A Clear Warning



- **Re Z (Unlawful Foreign Surrogacy: Adoption) [2025]**
- **The Facts**
- 2 female applicants both in their 60s. 1 applicant in their 70s when final decisions made
- Clinic in Turkish Republic of Northern Cyprus. Not recognised by UK and where surrogacy and placement of children with same-sex parents is unlawful.
- Donor eggs and donor sperm used to match racial characteristics of the applicants.
- £120,000 paid to 2 Ukrainian surrogates deemed a commercial rate (NB: parental order not open to applicants, in any event).
- Genetic twins not actual twins. Alarming decision for elective caesareans.
- Ms. X registers the birth in Turkish. Silent on surrogacy arrangement. Legal parent for both children.
- Children are neither Cypriote, Ukrainian, nor British.
- Clinic became defensive and would not assist the applicants.
- Stateless. No permission to enter the UK.
- 4 years in limbo.

# A Clear Warning



- **Re Z (Unlawful Foreign Surrogacy: Adoption) [2025]**
- **The Issue**
- Where do we begin?!
- Parental Responsibility.
- Care Order –v- Wardship –v- Adoption.
- Policy Considerations.
- Endorsing commercial surrogacy, which is illegal.
- Home Office being left with a fait accompli re: British citizenship.

# A Clear Warning



- **Re Z (Unlawful Foreign Surrogacy: Adoption) [2025]**
- **The Analysis**
- “The account of the circumstances surrounding the birth of these two children strongly suggests that all four women at the centre of the arrangements were being exploited for commercial gain by those running this unlawful operation.”
- “The motives of the two applicants in wanting to become parents of babies in their late 60's would seem to have been entirely self-centred, with no thought as to the long-term welfare of the resulting children. It was astonishing to learn... that the applicants had not given any consideration to the impact on the children of having parents who are well over 60 years older than they are. It is likely that when they are in their early teens, these two young people will become carers for their 80 year old adopted parents.”
- “The only sensible decision that the applicants made, as I observed during the hearing, was to commission the birth of two children so that, at least, these two full siblings will have each other as they grow up.”
- **“Finally, the fact that the court felt obliged to make adoption orders in the present case, should not be taken as any precedent that, in any future case on similar facts, an adoption order will be made.”**

# Genetic Link



- **Re: J (A child) (Surrogacy: Adoption Order) [2025]**
- **The Facts**
- Loving couple unable to conceive a child.
- Identify surrogate mother via Facebook group.
- Surrogacy agreement stipulates she must not have sexual intercourse from the time of the agreement until pregnancy is confirmed.
- Child to be conceived through surrogate's egg and applicant father's sperm.
- Doubts re: paternity emerge during pregnancy.
- Peace of Mind paternity test completed during parental order application.
- Cafcass officer flags this to magistrates.
- CJ joins child as a party and directs paternity testing from accredited laboratory.
- Paternity testing excludes applicant father. Applicants seek permission to withdraw PO application.

# Genetic Link



- **Re: J (A child) (Surrogacy: Adoption Order) [2025]**
- **The Facts**
- Court wants to clarify the false positive in the original Peace of Mind report.
- At a hearing before Henke J it is found the paternal grandmother did not take a sample from the child. The only samples submitted were from the paternal grandmother and the father(!)
- Henke J is satisfied the applicants and the grandmother had attempted to mislead Cafcass and the Court.
- No genetic link therefore adoption order made.
- K&L subsequently born.

# Genetic Link



- **Re: J (A child) (Surrogacy: Adoption Order) [2025]**
- **The Analysis**
- Interplay between findings and s.1(4) ACA 2002 as follows:
- “The lies and deceitful actions of Mr and Mrs P have impacted on J. Their lies and deceitful actions go to the heart of J's identity. But for the court querying the [POM] report, J would have gone through their life believing Mr P was their biological father... **Mr and Mrs P have to take responsibility for their lies and the harm they have caused J and the risk of harm to which they have exposed them. The harm in question is psychological and emotional harm which comes from not knowing your true identity. I have had to take the harm they have caused J into account...** Given the findings I have made about Mr and Mrs P's motivation when acting deceitfully I consider that any future risk is mitigated by the findings of fact in this judgment and by the fact that if I make an adoption order, Mr and Mrs P's fear of losing J will dissipate.”

# Prescient



- “No one reading this judgment should consider that the ends justified the means. No one reading this judgment should presume that on a similar set of facts a court in a future case will grant an adoption order. **This judgment should be read as a cautionary tale of what can go wrong when strangers who meet through social media to bring a child into this world through surrogacy and when one or more of the parties take risks around the circumstances of conception.**”

# Unregulated Donors



- **Re N (Paternity: Unregulated Sperm Donor) [2026]**
- **The Facts**
- Ms JE meets Ms EF
- Ms EF wishes to transition from female to male
- Ms JE wants to conceive a child
- They contact Mr. Albon AKA 'Joe Donor' – £250 later...
- EF falsely registered as the child's father. NFA'd.
- *Mr. Albon applies for DOP, PR, and CAO.*

# Unregulated Donors



- Risks are obvious:
  - No screening for infectious diseases or information about hereditary conditions.
  - No limit on the number of children (and therefore paternal half-siblings) conceived.
  - **Nothing to prevent donors seeking orders and declarations in relation to their biological children.**

# Unregulated Donors



- **Re N (Paternity: Unregulated Sperm Donor) [2026]**
- **The Issue**
- Was it in N's interests for the application for DOP to be heard, or should the Court refuse to hear it? S.55A(5)
- If it proceeds, should DOP be granted, or is it manifestly contrary to public policy? S.58A.

# Unregulated Donors



- **Re N (Paternity: Unregulated Sperm Donor) [2026]**
- **The Analysis – s.55A(5)**
- “From N's perspective, in circumstances where it is agreed that Mr Albon is his legal father, and where it is also agreed that he will be told of his parentage and the circumstances of conception in an age appropriate way, save for the legal status that a declaration would afford to Mr Albon by enabling him to apply for orders under the CA 1989 without the need for permission to do so, there is little in the 'best interests' balance in favour of refusing to determine the application. **For the reasons to which I have already referred, the fact that the other parent may be very difficult and seek to intrude is not an uncommon feature of cases in the Family Court. Where that parent's litigation behaviour, or use of parental responsibility if held, is contrary to the welfare of the child, the court is able to deploy orders limiting that parent's actions and, if justified, imposing a filter on their ability to apply to the court.** When set against the priority that Parliament has attached to the making of a declaration of parentage where the underlying facts are proved, I do not consider that the case is made out for refusing to determine the application on the basis that to do so would not be in N's best interests.”

# Unregulated Donors

- **Re N (Paternity: Unregulated Sperm Donor) [2026]**
- **The Analysis – s.58**
- “The activities of Mr Albon more generally... **are the very antithesis of that which is permitted under the HFEA scheme. Not only are his actions outside the regulatory scheme, they are unregulated in a wider, moral, sense.** On the basis of the findings made by the two judges, there is no indication that Mr Albon's behaviour is governed by any recognised moral principles.”

Any  
questions?



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