



Neutral Citation Number: [2024] EWFC 41

Case No: ZC157/23

**IN THE FAMILY COURT**  
**Sitting at the Royal Courts of Justice**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 29/02/2024

**Before :**

**MRS JUSTICE THEIS**

**Between :**

	<b>Mr and Mrs J</b>	<b><u>Applicants</u></b>
	<b>- and -</b>	
	<b>Mr and Mrs P</b>	<b><u>1<sup>st</sup> and 2<sup>nd</sup> Respondent</u></b>
	<b>- and -</b>	
	<b>N</b>	<b><u>3<sup>rd</sup> Respondent</u></b>
	<b>- and -</b>	
	<b>Local Authority</b>	<b><u>4<sup>th</sup> Respondent</u></b>

**Ms Sharon Segal** (instructed by **Osbornes Law**) for the **Applicants**  
**Ms Dorothea Gartland K.C** (instructed by **Dawson Cornwell**) for the **1<sup>st</sup> Respondent**  
**The 2<sup>nd</sup> Respondent did not attend the hearing**  
**Ms Deirdre Fottrell K.C** (instructed by **Goodman Ray**) for the **3<sup>rd</sup> Respondent**  
**Ms Laura Williams** (instructed by **the Local Authority**) for the **4<sup>th</sup> Respondent**

Hearing date: 27 February 2024  
Judgment: 29 February 2024

**Approved Judgment**

This judgment was handed down remotely at 12.00 Noon on 29<sup>th</sup> February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**MRS JUSTICE THEIS**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

**Mrs Justice Theis DBE :**

**Introduction**

1. This matter concerns an application for adoption made by Mr and Mrs J in respect of N, now age 18 years. N was born as a result of a surrogacy arrangement in 2005 between Mr and Mrs J and Mr and Mrs P. Mr J is N's genetic father. Mrs P is N's genetic mother, she and her husband, Mr P, are N's legal parents for all purposes as a consequence of ss 33(1), 35(1), 48(1) and (2) Human Fertilisation and Embryology Act 2008 (HFEA 2008).
2. N is a party to the adoption application and supports it, as does the local authority who undertook the Annex A assessment. Mr and Mrs P oppose the adoption application and do not provide their consent. The central question for the court is whether N's welfare requires Mr and Mrs P's consent to be dispensed with under s52(1)(b) Adoption and Children Act 2002 ('ACA 2002').
3. The court is very grateful for the detailed documents submitted on behalf of the parties. By Ms Segal on behalf of Mr and Mrs J, Ms Fottrell K.C., on behalf of N, Ms Gartland K.C. on behalf of Mr P and Ms Williams on behalf of the local authority. As Ms Gartland set out, Mrs P did not feel able to participate in the hearing, due to her distress as a result of this application. Mr P has taken the lead for them, he confirms in his statement it is filed on behalf of them both.
4. The court heard oral evidence from Mr and Mrs J, Mr P and N.

**Relevant background**

5. Mr and Mrs J have two children, N and A, who were born following separate surrogacy arrangements with different surrogates. A is just over a year younger than N. Mr and Mrs J secured a parental order in relation to A, with the full co-operation and consent of A's surrogate. As a result, Mr and Mrs J are A's legal parents.
6. That was not the case in relation to N. There was extensive litigation following N's birth in 2005 as a result of what the court subsequently found was deliberate, prolonged and premeditated deceit by Mr and Mrs P in entering into the surrogacy arrangement in 2005 when they never intended to hand over the child to Mr and Mrs J's care.
7. The conclusions of the court are set out in the judgment of Coleridge J in *Re P (Surrogacy: residence)* [2008] 1 FLR 177, following a five day contested hearing. In his judgment he described the extent of the deception by Mr and Mrs P surrounding the surrogacy arrangement as 'wicked', 'cruel' and 'inhuman' and the court made detailed findings about Mr and Mrs P's behaviour (see [192]-[212]). Coleridge J determined on 10 July 2007 that N should move to live with Mr and Mrs J, arrangements were set out for contact as recommended by Dr Asen, the jointly instructed expert.
8. Mr and Mrs P sought a stay and appealed Coleridge J's order. That appeal was dismissed a few weeks later, reported as *Re N* [2007] EWCA Civ 1053. N moved to Mr and Mrs J's care on 25 July 2007 and has remained there since.

9. The final welfare order was made on 25 May 2010, nearly four years after the proceedings were commenced. That order included provision for indirect contact between N and Mr and Mrs P six times a year via Skype, with presents at Christmas, Easter and N's birthday. In accordance with the order, Mr and Mrs J sent updates to Mr and Mrs P about N just prior to each period of indirect contact. According to Mr and Mrs J, as N got older it became increasingly difficult to get him to engage with the indirect contact, although there is no dispute he was always available for that contact. Mr P suggests in his statement that if there were any difficulties it was because Mr J was present during such contact.
10. The skype contact ceased in December 2021. Since then there have only been very limited messages from Mr P to N. Mr and Mrs P last saw N for direct contact when he was four years old.
11. Mr and Mrs J gave the requisite notice to the local authority that they were going to make an application for adoption on 21 April 2023. They issued their application on 8 November 2023. The court made directions on the papers on the same day and then further directions on 23 November 2023. That later order set out directions for service on Mr and Mrs P and listed the matter for this hearing.
12. On 12 December 2023 the court directed that there was no need for the appointment of a Guardian in this case.
13. A remote hearing was convened on short notice on 16 February 2024, to consider the issues raised in the Annex A report about Mr and Mrs P engaging in the proceedings and being unable to attend the hearing in person, due to Mr P's health and their caring commitments. Mr P attended that hearing remotely and was able to fully engage with the proceedings. Arrangements had been put in place for legal representation, if Mr and Mrs P wanted it. The court is very grateful to Ms Gartland and her solicitor, Ms Shah, in being able to take this case on. Mrs P informed Ms Gartland's solicitor that she did not wish to participate in the proceedings.
14. At the start of this hearing Ms Gartland raised the issue of Mr P's participation, including his ability to give evidence due to his health without special measures being in place under Part 3 Family Procedure Rules 2010 ('FPR 2010'), such as Mr P only being able to answer questions from the court. Following further discussion, Mr P was content for questions to be put by the advocates. He was able to give his evidence clearly and participate fully by joining the hearing remotely, as he had done when he was unrepresented at the earlier directions hearing.
15. Ms Gartland also raised the question of whether the Secretary of State for the Department of Health and Social Care should be given the opportunity to intervene due to the public policy issues in this case. She submitted that was because of the context of this adoption application, being made where there was a background of a disputed surrogacy arrangement. I refused that application. The statutory framework that governs adoption applications is clearly set out. No party was suggesting that the court could not, in principle, make an adoption order. The issues centred, as they so often do, on the particular facts of the case and whether the child's lifelong welfare needs (s 1 ACA 2002) are met by an adoption order being made. As this court has made clear in previous cases (such as *B v C* [2015] EWFC 17; *J v K* [2021] EWFC 115; *E v R* [2023])

EWFC 214 and *Re Z (Surrogacy: Step-parent adoption)* [2024] EWFC 20) the court must assess each case on its own facts.

## Evidence

16. In their joint statement in support of their application Mr and Mrs J outline the history. They describe the earlier proceedings as *'litigious and acrimonious'*, although recognised that despite their own feelings about Mr and Mrs P's behaviour that N needed a relationship and contact with them as it was important for him to be able to maintain relations and a sense of identity and belonging. They describe their relief when the proceedings finally concluded in May 2010.
17. Over the years they have sent 69 reports to Mr and Mrs P, recognising that they wanted Mr and Mrs P to be kept updated on N's welfare and development and *'have a sense of the child he was turning out to be'*. The last update was sent in December 2021, just before N's 16<sup>th</sup> birthday. Over time they describe the skype calls as sometimes being problematic due to N's age stating that Mr and Mrs P *'always acted appropriately but at time they struggled to fully engage and converse with N during the calls'*. As N got older there was more of a dialogue around his school life and other activities.
18. Mr and Mrs J describe how N's understanding of his situation evolved over time, which accorded with the advice they had received from Dr Asen. The letters and cards sent by Mr and Mrs P were always signed off as from 'Mum and Dad' which confused N, this resulted in Mr and Mrs J explaining to him his parentage from an early age.
19. They are clear they would support any contact N wished to have with Mr and Mrs P and will be guided by his wishes and feelings.
20. They are aware N had been in contact with one of Mr and Mrs P's children and through that route Mr and Mrs P have N's phone number. N has informed them he has received Christmas and Birthday greetings from Mr and Mrs P but does not take direct calls from them. Mr and Mrs J state the last time they had contact with them was in September 2023 when Mr P called Mr J about whether N was in a car being driven recklessly, which Mr J sought to reassure him was not the case. When Mr J sought to end the call Mr P *'continued that he was his real father and that if N had remained with them this sort of thing would never happen'*.
21. Mr and Mrs J describe how N flourished in their care and how *'exceptionally proud'* they are of the young man he has become.
22. In their statement they describe being conscious that they do not have legal parenthood for N and that parental responsibility has its limitations, for example in relation to inheritance. As they note *'There is a disparity between our lived experiences as a family and the legal recognition of our roles'*. The residence order expired in December 2021 and they currently have no legal relationship with N, yet he has a legal relationship with Mr and Mrs P who have not seen N for fourteen years and have not been involved in his day to day care for over sixteen years.
23. They set out how they have become more concerned over the years about the impact of this on N. This is compounded by the fact that with their younger child, A, who was also born following a surrogacy arrangement, they have a secure legal parental

relationship with as a parental order was made in their favour in relation to him. They want N to go into his adulthood with a permanent and lifelong link to them, which can only be provided by an adoption order.

24. Both Mr and Mrs J gave oral evidence, Mrs J confirming her agreement with the oral evidence Mr J had given. Mr J described in a clear and measured way their reasons for making the adoption application, of the importance for their family to secure the legal relationship with N as he becomes an adult and, in particular, his legal relationship with A, so they both have an equal legal relationship within their family. Whilst Mr J displayed empathy and understanding for Mr and Mrs P's position it did not detract from the need for an adoption order to secure N's lifelong welfare needs.
25. In Mr P's statement he makes clear that his and Mrs P's position is they cannot agree to the making of an adoption order as they *'simply cannot agree to sever all legal ties'* between N and them. He details their family background and their updated position where they are currently caring for one of their grandchildren under a special guardianship order following a positive assessment of them to be able to care for him. Sadly, Mr P does not enjoy good health. He was diagnosed with pulmonary fibrosis and is currently under medical support for that.
26. Mr P described the contact he had with N in accordance with the 2010 order which stopped in 2021. He said he would still message on snapchat up until October 2023, which he said coincided with N's 18<sup>th</sup> birthday and the adoption application. Mr P states he raises this as he is *'worried about what will happen next in terms of the change in behaviour towards [them] if we are denounced as N's legal parents'*.
27. Mr P sets out the reasons for contesting the adoption application as it would cut their legal connection with N, including with their large wider family. They both want to maintain their legal relationship with N, they don't wish for that to be *'taken away from them'*. Mr P states he recognises what N's wishes are and he respects that and whatever order is made they seek as much contact with N as possible.
28. In his oral evidence Mr P showed no hesitation or lack of ability to express his views. He explained that Mrs P had gone out and confirmed she did not wish to take part in the proceedings. He maintained his position in opposing the adoption order. When asked if he had anything more to say he expressed what he considered was the injustice in N being removed from his and his wife's care in 2007. When asked whether he could see the position from N's viewpoint, Mr P said he felt if they had more time with N it would have been different.
29. In N's statement he describes why he supports the adoption order being made, the strength of his relationship with Mr and Mrs J, the support he has received from them and his close relationship with A. He describes his relationship with Mr and Mrs P as being *'not easy'*, referring to the fact that despite the court having made the decision for him to be brought up by Mr and Mrs J, Mr and Mrs P still refer to themselves as his parents.
30. N confirmed it was his decision to stop the contact when he was sixteen years old and in the last two years he has only had limited contact with Mr P. He attaches a recent example from Mr P in early September 2023 which reads as follows *'Hi N your mum had a word with [the social worker] and she is not going to agree with the adoption*

*process has the high courts said no and she never wanted them to have you in the first place*'. N confirmed he currently has no contact with Mr and Mrs P's children, but if he wanted to he would know how to initiate that.

31. In his statement he sets out why he wants to have his relationship with Mr and Mrs J legally recognised. He describes in powerful terms the implications for him of having to explain the situation each time he uses his birth certificate and why Mr and Mrs J are not named on there as his parents. As he sets out *'This has to be explained and everything takes longer than it needs to take and is more complicated for me'*.
32. N gave compelling oral evidence about the reasons why he wants and supports an adoption order being made. He described it as being a big part of his life and his identity saying *'Things don't add up for me at the minute. I have always considered myself a J and everything says P'*. He described how close he is to his brother, A, but said *'I am not legally his brother, not feel right to me...I want to be able to legally say I am his brother for the rest of my life'*. When asked about how he felt that A has a legal relationship with Mr and Mrs J, he said they always treated them equally but part of him did not feel completely part of the family. He was very clear his views were his own stating *'I would like this to happen'*. He said he hoped Mr and Mrs P would have been supportive of the application once they knew his views.
33. Mr Egan prepared the Annex A report. It is a comprehensive report compiled in accordance with the requirements of Part 14 and PD14C FPR 2010. Mr Egan records the contact and discussions he had with Mr and Mrs J and N. In his discussions with N he was able to articulate who Mr and Mrs P are to him stating that Mrs P *'is his birth mother, but not his mum. He said he does not have anything against them but also does not feel he has any strong connection to them'*. He said he *'understood why they would not want the adoption to go ahead but from his perspective they have not raised him, they do not know him, and they are not now taking into account his wishes. He said he knows they are aware that he wants this adoption to happen, and they are not listening to him'*. N explained how he had considered the issue of adoption and researched it himself.
34. Mr Egan first made contact with Mr and Mrs P in early September 2023 when he explained his role in the context of Mr and Mrs Js application to adopt N. He describes Mr and Mrs P making it clear in that early discussion that they would not support Mr and Mrs Js adoption application and would *'fight it all the way'*. That is supported by the message sent to N's phone by Mr P soon after their discussions with Mr Egan, confirming their opposition to adoption by Mr and Mrs J. Mr Egan then sets out in his report the various attempts to make contact with Mr and Mrs P, sending emails to the two email addresses Mr P uses in early January and a hand delivered letter which resulted in a phone call from Mr P on 21 January 2024. Mr P stated they had not felt emotionally strong enough to respond and Mr Egan's request to speak directly to Mrs P was refused, she was reported as saying that she did not want to be involved in discussions. Mr Egan reports he could hear her in the background.
35. Mr Egan reported that Mr P considered N had been brainwashed by Mr and Mrs J into his view in supporting the adoption, that N had strong family ties to him and his wife and they would want regular contact to continue and to have him as part of their family.

36. Mr Egan concludes his report with his welfare assessment and recommendation in support of an adoption order being made. He considers *‘The order will give N the sense of belonging and equality within his family he seeks; it will create a lifelong legal connection to the people who have acted as his parents throughout the majority of his life; it is also considered it will provide a sense of closure and finality, as he enters adulthood...’*.

### **Legal framework**

37. The legal framework that governs this application is clear. The court needs to satisfy itself that the criteria within the ACA 2002 are met.
38. The key gateway criteria are met, namely: (i) it is a non-agency adoption by a couple (s 49(1)(a) ACA 2002); (ii) both applicants are over the age of 21 years (s50(1) ACA 2008); (iii) both applicants are domiciled in this jurisdiction (s49(1)(2) ACA 2008); (iv) both applicants have been habitually residence here for a period of not less than one year ending with the date of the application (s49(3) ACA 2002); (v) N was a child at the date of the application (s49(4) ACA 2002), and (vi) N has had his home with Mr and Mrs J for no less than three years during the five years preceding the application (s42(7) and 44(5) ACA 2002).
39. An adoption order may not be made unless the court is satisfied that the parent consents to the making of any adoption order, or that the parent’s consent should be dispensed with (s47(1) and (2) ACA 2002). The court cannot dispense with the consent of any parent unless it is satisfied that the parent cannot be found or lacks capacity (s52(1)(a) ACA 2002), or the welfare of the child requires the consent to be dispensed with (s52(1)(b) ACA 2002).
40. The term ‘requires’ in s52(1)(b) ACA 2002 should be given its ordinary meaning in the context of any Article 8 rights which are engaged. As stated in *Re P (Placement orders: Parental Consent)* [2008] 2 FLR 625 it conveys the *‘essence of the Strasbourg jurisprudence. And viewed from that perspective ‘requires’ does indeed have the connotation of the imperative, what is demanded rather than what is merely options or reasonable or desirable’*.
41. As a result of ss 33(1), 35(1) and 48(1) and (2) HFEA 2008 Mr and Mrs P are N’s legal parents, as Mrs P is N’s birth mother and she and Mr P were married at the relevant time.
42. In determining whether to dispense with parental consent, the child’s welfare throughout the child’s lifetime must be the court’s paramount consideration, having regard to the matters set out in s 1(4) ACA 2002, namely
- (a) the child’s ascertainable wishes and feelings regarding the decision (considered in the light of the child’s age and understanding),*
  - (b) the child’s particular needs,*
  - (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,*

*(d)the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,*

*(e)any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,*

*(f)the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—*

*(i)the likelihood of any such relationship continuing and the value to the child of its doing so,*

*(ii)the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,*

*(iii)the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.*

43. *Re P (Step-Parent Adoption)* [2015] 1 FLR 1327 sets out that although the ACA 2002 makes no distinction between the circumstances in which an adoption order is sought, there is a difference in the approach of the court depending on the context of the application, in particular the impact of the adoption on the Article 8 rights of the child and their parents.
44. Article 8 provides *'Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'*.
45. Article 8 rights are clearly engaged in this case due to the nature of an adoption order. Mrs and Mrs J rights are established due to N's home having been with them since 2007, pursuant to the child arrangements order. The same position applies to N who has lived with Mr and Mrs J since 2007, they have exercised parental responsibility in relation to him pursuant to the 2007 order and he identifies himself as their child. Mr and Mrs P have retained their legal relationship with N, have not seen him in person since 2009 although have continued indirect video contact until 2021.
46. There is a positive obligation on the State to ensure de facto relationships are protected and recognised by law and for such protection to be real and effective and not theoretical and illusory (see *Marckx v Belgium* 2 EHRR 330 [31]).
47. In determining whether any interference with the Article 8 rights is proportionate it is necessary to consider the context. For example, in a situation that involves a choice as to whether a child is adopted by strangers the interference with the Article 8 rights are likely to be more significant than in a situation such as this, where all parties are known to each other and the order sought simply reflects in legal terms the reality in which the child's family life and relationships have been conducted for some significant time.

## **Submissions**



48. Ms Segal submits that any suggestion by Mr P that he had only had limited time to consider the application is not supported by the evidence. As she set out, Mr and Mrs P have known about this application since early September 2023, when they were spoken to by Mr Egan. They followed that up with a direct message to N about the adoption. The order dated 23 November 2023 was personally served on them on 5 December 2023. As a result, the suggestion in Mr P's statement that receipt of the email from Mr and Mrs Js solicitor on 22 January 2024 was the first they knew of the application is simply wrong.
49. Ms Segal makes clear that whilst the background of the surrogacy arrangement is a factor, there is nothing in the ACA 2002 which prevents the court from making an adoption order in circumstances where the route of legal parentage through an application for a parental order is not open to them. In this case because Mr and Mrs P would not consent to such an order.
50. She recognises that s 67(1) ACA 2002 provides that '*An adopted person is to be treated in law as if born as a child of the adopters or adopter*' does not reflect the circumstances of N's birth in the way a parental order would, as it does not recognise Mr J genetic connection to N. However, an adoption order is an order by which the applicants can be legally recognised as N's parents. As Ms Segal submits, an adoption order is the '*optimum (and only) legal and psychological solution for securing N's lifelong welfare needs*'. Each case is fact sensitive as to what order best meets the lifelong welfare needs of the child.
51. When considering N's lifelong welfare needs, Ms Segal submits he has expressed clear, cogent and informed wishes and feelings as to why he supports the application. She does not suggest these views have decisive weight however the depth of his feelings and the fact that he is now an adult means his views should be given significant weight.
52. Ms Segal relies on the following considerations as being relevant: Mr and Mrs J have an established family life with N which has been in existence for a number of years; it is a settled family unit with de facto family ties well established. The child arrangements order was time limited, has expired and when effective Mr and Mrs J exercised all aspects of parental responsibility. N is Mr J's genetic child. The legal relationship that exists between Mr and Mrs P and N does not reflect N's day to day life and the legal and practical consequences for N if an adoption order is not made are real and stark e.g. the impact on inheritance rights. Due to the care taken by Mr and Mrs J, N is fully aware of his origins and his own background.
53. The court is required to consider any existing or proposed contact arrangements (s 46(6) ACA 2002). In reality there is likely to be no change to N's relationship and contact with Mr and Mrs P if an adoption order is made.
54. On behalf of Mr P, Ms Gartland submits the court should carefully consider the reasons why Mr P is unable to provide his consent. She submits N's welfare does not require the consent to be dispensed with. N was born as a result of a surrogacy arrangement with him having two sets of parents who wished to bring him up. Mr P believes N's welfare needs are met if his legal relationship with Mr and Mrs P is maintained and considers it could have been enhanced if there had been more contact between N and Mr and Mrs P. Ms Gartland relies on the observation made by Mr Egan in the Annex A report when he states '*It is unfortunate that the law does not allow for Mr and Mrs J*

*to be recognised as N's legal parents without removing that privilege from his birth mother, and her husband. The idea, in these specific circumstances, might be that all four adults could be 'parents', but this is not possible'.*

55. Ms Gartland submits the legal relationship between N and Mr and Mrs P has existed throughout his life, they cared for him for his first eighteen months and the intention behind the 2007 order was that N would benefit from ongoing regular contact with Mr and Mrs P, which happened until 2021. To their credit, Ms Gartland submits, Mr and Mrs P have not sought to undermine N's placement with Mr and Mrs J and do not suggest that N's living arrangements going forward should be changed. Ms Gartland submits all four adults could be considered as N's parents in accordance with the observations made by Baroness Hale in *Re G* [UKHL 43 at [33]] where she set out the three ways a person can become a parents, namely a genetic parent, a gestational parent and a social/psychological parent. She recognises that at the moment N does not wish to have an ongoing relationship with Mr and Mrs P but Mr P hopes that N will continue to be part of their family.
56. In the circumstances of this case, she submits, it is a disproportionate interference with Mr and Mrs P's Article 8 rights as the legal parents of N where the 2007 order envisaged an ongoing role by them in circumstances where removal was not as a result of any parenting deficit, such as when the court is considering orders made in care proceedings.
57. Ms Fottrell makes the following additional points, whilst agreeing with Ms Segal's submissions. She submits there is a disconnect between N's legal and factual position. Mr J is N's genetic father. Mr and Mrs J are his de facto, social and psychological parents but he now has no legal tie with them. Mrs P is his genetic and gestational mother who he has not seen for fourteen years. Mr and Mrs P are his legal parents who N has exercised his choice not to have a relationship with either of them. The divergence between the legal and factual position is, Ms Fottrell submits, stark and N was clear in his evidence it should be corrected.
58. Ms Fottrell emphasises that the obligation of the court to establish a legal tie between N and Mr and Mrs J is as a result of the requirement that N should have the *'fullest possible protection of his family life with his parents and his sibling'* and that protection should be, in accordance with the principles set out in *Marckx (ibid)*, *'real and effective, rather than theoretical and illusory'*.
59. Ms Fottrell submits an unusual feature of this case is that the court can and should take into account is that an adoption order will *'create lifelong legal ties to N's genetic and de facto family which do not currently exist. The transformative effect of the order will establish, as well as sever, a tie to the genetic family'*. By making an adoption order in this case it will *'create, maintain and strengthen'* the tie to his genetic father, Mr J.
60. The making of an adoption order is the only route by which a lifelong legal tie can be established and N is entitled to be recognised as a matter of law as the child of his genetic father and his de facto mother with whom he has lived for most of his life. In addition, he is entitled to be placed on an equal footing with his sibling, A, which should last for the rest of N's life.

61. Ms Williams on behalf of the local authority supports the adoption order being made. In her comprehensive position statement she agrees with the framework set out above and echoes many of the submissions made by Ms Segal and Ms Fottrell.

### **Discussion and decision**

62. It is now nearly seventeen years since the order was made transferring N's care to Mr and Mrs J and fourteen years since Mr and Mrs P have seen N in person.
63. All parties, including N, have complied with the indirect contact order made by Coleridge J in July 2010 until N attained the age of 16 years, when the order lapsed. N has not continued that contact, through his own choice although has had intermittent WhatsApp communication with Mr P.
64. What was so powerful about Mr and Mrs Js written and oral evidence was the obvious care they have taken in talking to N about his own particular background and making this application. Through their sensitive and loving parenting N's knowledge about his background is known and fully understood by him.
65. N's wishes and feelings are clear, thoughtful, carefully considered and obviously based on his own independent thoughts.
66. What is so striking about the facts of this case is the disconnect between N's factual and legal position. In his compelling and articulate oral evidence, which the court accepts, N said that he had always considered himself a member of the J family, yet everything (such as his birth certificate) says the surname P. He described how a big part of his life is his identity and as he so accurately described *'Things don't add up for me at the minute'*. He said his relationship with Mr and Mrs J is important, he considers them his only parents and wants them to be his legal parents. As regards his relationship with his brother, A, he said, whilst recognising that Mr and Mrs J had always treated him and A equally, *'I want to be able to legally say I am his brother for the rest of my life'*.
67. N expressed his concern that despite having made his wishes and feelings clear to Mr and Mrs P they have ignored them and struggles to understand how they can say that they love him but then shut him down. He had sincerely hoped they would be supportive of what he wants.
68. In the written and oral evidence it appears that Mr and Mrs P remain locked in what they consider are the injustices of the past. Although Mrs P did not take any active part in these proceedings, Mr P confirmed he had discussed what he set out in his statement with her. That replicates what happened in September 2023 when he sent a message setting out Mrs P's views about opposing the adoption. What was so noticeable about Mr P's statement and his oral evidence was the sole focus by him only on his and his wife's position. At no stage was he able to consider the issues from N's perspective or how it must feel for him, now age 18 years. That also reflected what he said about notice of these proceedings, he clearly had known of them since September 2023.
69. The difficult factual background to this case is a reality but it should not distract the court when considering this application under the relevant statutory framework in the ACA 2002, where the court is required to consider the lifelong welfare needs of the

child in considering this adoption application. It is within that context that the consent of Mr and Mrs P and the relevance of any other public policy considerations are to be evaluated.

70. There is no issue that the relevant gateway criteria under the ACA 2002 are met in this case. The only issue that requires determination is whether N's lifelong welfare needs require the consent of Mr and Mrs P to be dispensed with.
71. The context in which that is being considered is relevant. In particular, the strong family ties that exist between Mr and Mrs J and N. N has lived with them for the last sixteen years, he regards them as his parents and A as his brother. They are his family in every sense of the word. N is very clear he wants those important relationships to be secured in a legal and lifelong way, which an adoption order would do. Mr and Mrs P remain his legal parents but have had only limited indirect contact with N, which ceased in 2021, with only intermittent indirect contact since then. The evidence demonstrates that they are unable to properly consider N's welfare needs, remaining focussed only on their own needs with, sadly, absolutely no insight into the impact of that position on N.
72. N is now 18 years of age, an adult. He was described by Mr Egan as an intelligent and articulate young man. I agree with that description. In his oral evidence he displayed a maturity about these difficult issues that was beyond his years. He was able to explain why this order is so important to his identity and how deeply upsetting it would be for him if the order was not granted. The reality in this case is the loss of his legal relationship with Mr and Mrs P and their wider family is a relatively low interference in their family life due to the history, their limited involvement with N and the situation on the ground is unlikely to change. Due to the care taken by Mr and Mrs J N is clear about the position of Mr and Mrs P in relation to his background.
73. On the other side it would, in my judgment, be a significant interference in N and Mr and Mrs J family life if this order was not granted. It would mean the disconnect between the factual and legal position would remain, it would adversely impact on the lifelong stability and security of N due to the continued uncertainty regarding the important and lifelong relationships in his life and it would be against his express and carefully considered wishes. Whilst such wishes are not determinative on their own, in this case the court does and is entitled to attach significant weight to them due to N's age, maturity and the rational and measured way he expresses them.
74. An adoption order would secure his lifelong legal relationship with the key people in his life, Mr and Mrs J and A. It would remove the disconnect N so keenly feels between his day to day life and his legal relationships with these important people in his life.
75. The lodestar that governs this decision remains the lifelong welfare needs of N. In my judgment, the evidence overwhelmingly establishes that N's welfare needs require an adoption order to be made, and, in those circumstances, Mr and Mrs P's consent should be dispensed with.
76. An adoption order will be made.