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| <i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i> | ICOS No: | 20/24845/A01 |
| | Delivered: | 12/06/2026 |

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

C

Appellant

and

M & B

Respondents

THE ATTORNEY GENERAL FOR NORTHERN IRELAND
THE SECRETARY OF STATE FOR HEALTH & SOCIAL CARE
THE DEPARTMENT OF HEALTH
THE DEPARTMENT OF FINANCE

Notice Parties

Ms Quinlivan KC with Ms J Lavery (instructed by McKeown & Co Solicitors) for the Appellant

Ms O’Grady KC with Ms Rice KC (instructed by Phoenix Law) for the Respondent mother

Mr McGleenan KC with Mr Egan KC (instructed by the Crown Solicitor’s Office) for the Secretary of State for Health

P McAteer (instructed by the Departmental Solicitor’s Office) on behalf of the Department of Finance

Ms L Murphy KC with Ms Sloane (instructed by the Official Solicitor for Northern Ireland) for the child as a Notice Party

Before: Keegan LCJ, Treacy LJ and O’Hara J

KEEGAN LCJ (*delivering the judgment of the court*)

This judgment has been anonymised as it involves a child. The ciphers given to the parties are not their initials. Nothing must be published which would identify the child or the adult parties.

Introduction

[1] This is an appeal against the decision of Fowler J (“the judge”) delivered *ex tempore* on 30 September 2025 whereby he dismissed the appellant’s application for a declaration of parentage in respect of a child, pursuant to Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (“the 1989 Order”).

[2] The appellant and her wife are a same-sex female couple who married in 2021. Prior to their marriage, the couple had been in a co-habiting relationship from 2011 and in 2014 decided to take steps to start a family. The couple enquired with medical professionals about IVF through the NHS but were informed at that time they were ineligible for publicly funded IVF treatment due to being in a same sex relationship. They therefore had a child by sperm donation outside of the terms of the Human Fertilisation and Embryology Act 2008 (“the HFEA”).

[3] The central issue for determination in this appeal concerns whether the appellant should be recognised in law as the child’s parent and, consequently, be entitled to have her name entered on the birth certificate. To answer this question, the court must consider whether granting a declaration of parentage would be “manifestly contrary to public policy” pursuant to the 1989 Order in circumstances falling outside the scope of the relevant provisions of the HFEA. It was the appellant’s original submission that the refusal of a declaration of parentage in this case amounts to unlawful discrimination contrary to articles 8 and 12 of the European Convention on Human Rights (“ECHR”) read in conjunction with article 14 ECHR, however, this was not pursued on appeal.

Factual background and procedural history

[4] The couple carried out searches enquiring about sperm donation on the internet as a result of which they met a man who agreed to act as a sperm donor. It was made clear to the donor that he would not play a role in the life of any child conceived or born, nor would he have contact with them. Furthermore, it was agreed that he would not acquire or assert any legal rights in respect of any child and would be a sperm donor only. This was confirmed verbally in February 2018.

[5] The appellant’s wife became pregnant in October 2018, and arrangements were made to have a written agreement to confirm the verbal agreement. This was signed by the parties in March 2019, and the child was born prematurely at the start of June 2019.

[6] Following the child’s birth the donor brought a C1 Application seeking parental responsibility, a specific issue order for his name to be recognised on the

birth certificate and a contact order. Thereafter, the appellant brought proceedings for a declaration of parentage in February 2020 under Article 31B of the 1989 Order seeking to be named as a second parent. This would enable her to be added to the birth certificate.

[7] This application is supported by the appellant's wife, the child's mother, and is no longer opposed by the donor father. He does not seek the original order he applied for and has played no part in these proceedings having been put on notice. The biological mother supports the appellant and so has effectively assumed a watching brief. The application is opposed by the Secretary of State for Health & Social Care ("SoSH&SC") and the Department of Finance and the Department of Health who all make a common case ("the Departments"). The Attorney General for Northern Ireland did not intervene.

[8] The subject child is a child of the family and both the appellant and the biological mother, the appellant's wife, have parental responsibility. This was granted by the High Court by agreement under section 7(1A) of the Children (Northern Ireland) Order 1995 ("the 1995 Order").

[9] Following a further hearing on 23 September 2022, the High Court refused the appellant's application for a declaration of parentage on 4 October 2022, stating that to grant such relief would be "manifestly contrary to public policy" within the meaning of Article 34 of the 1989 Order, having regard to the decision in *Ms J, Ms A and Mr O* [2022] NICA 3. A notice of appeal was lodged with the court on 20 December 2022 and thereafter the appellant lodged a skeleton argument dated 22 January 2023. On 31 January 2023, the Court of Appeal remitted the matter to the High Court, and oral judgment was handed down on 30 September 2025.

[10] Whilst stepparent adoption is also open to the couple, we understand that they do not want to pursue this course at present.

Relevant legal framework

[11] The statutory scheme governing legal parenthood in cases of assisted reproduction is contained in the HFEA. The background to the enactment of this legislation is that in July 1982 a committee chaired by Dame Mary Warnock was established to examine the social, ethical and legal implications of recent and potential developments in the field of human assisted reproduction. It explored issues such as embryo research, the status of the embryo, donor conception, and surrogacy, culminating in the Warnock report published in June 1984 (Cmnd. 9314).

[12] The HFEA amended the Human Fertilisation and Embryology Act 1990 and the Surrogacy Arrangements Act 1985. It made provision about the persons who in certain circumstances are to be treated in law as the parents of a child and extended

those provisions beyond what had been provided for in 1990. This makes provision for same-sex female couples. It is therefore necessary to set out the provisions of the HFEA in some detail.

[13] Section 33 defines “mother” as follows:

“(1) The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child.”

[14] Section 34, headed “Application of sections 35 to 47” provides as follows at sub-section (1):

“Sections 35 to 47 apply, in the case of a child who is being or has been carried by a woman (referred to in those sections as ‘W’) as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child.”

[15] Sections 42 to 47 of HFEA set out who is to be treated in law as the parent of a child born to a woman in a same-sex relationship and are headed “Cases in which woman to be other parent.” These provisions are of direct relevance in the present case as the appellant contends that she should be treated in law as the “other parent.”

[16] Section 42 provides for the automatic acquisition of legal parenthood of a non-biological female partner where the parties are married or in a civil partnership at the time of conception, subject to consent. It is headed “Woman in civil partnership or marriage to a woman at time of treatment” and provides at sub-section (1):

“(1) If at the time of the placing in her of the embryo or the sperm and eggs or of her artificial insemination, W was a party to a civil partnership with another woman or a marriage with another woman, then subject to section 45(2) to (4), the other party to the civil partnership or marriage is to be treated as a parent of the child unless it is shown that she did not consent to the placing in W of the embryo or the sperm and eggs or to her artificial insemination (as the case may be).

(2) This section applies whether W was in the United Kingdom or elsewhere at the time mentioned in subsection (1)."

[17] Sections 43 and 44 enable parenthood to be obtained where same-sex female couples are not in a civil partnership or married but where treatment is provided through a licensed clinic in the United Kingdom and specified consent conditions are satisfied.

[18] Section 43 provides:

"If no man is treated by virtue of section 35 as the father of the child and no woman is treated by virtue of section 42 as a parent of the child but -

- (a) the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, in the course of treatment services provided in the United Kingdom by a person to whom a licence applies,
- (b) at the time when the embryo or the sperm and eggs were placed in W, or W was artificially inseminated, the agreed female parenthood conditions (as set out in section 44) were met in relation to another woman, in relation to treatment provided to W under that licence, and
- (c) the other woman remained alive at that time,

then, subject to section 45(2) to (4), the other woman is to be treated as a parent of the child."

[19] The consequences of sections 42 and 43 are apparent from section 45 which provides:

"(1) Where a woman is treated by virtue of section 42 or 43 as a parent of the child, no man is to be treated as the father of the child.

(2) In England and Wales and Northern Ireland, sections 42 and 43 do not affect any presumption, applying by virtue of the rules of common law, that a child is the legitimate child of the parents to a marriage.

(4) Sections 42 and 43 do not apply to any child to the extent that the child is treated by virtue of adoption as not being the woman's child."

[20] Section 44 is headed "The agreed female parenthood conditions" and requires written consent notices signed by both women that the birth mother has received treatment services by a licence provider. It provides:

"(1) The agreed female parenthood conditions referred to in section 43(b) are met in relation to another woman ("P") in relation to treatment provided to W under a licence if, but only if, —

- (a) P has given the person responsible a notice stating that P consents to P being treated as a parent of any child resulting from treatment provided to W under the licence,
- (b) W has given the person responsible a notice stating that W agrees to P being so treated,
- (c) neither W nor P has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of P's or W's consent to P being so treated,
- (d) W has not, since the giving of the notice under paragraph (b), given the person responsible —
 - (i) a further notice under that paragraph stating that W consents to a woman other than P being treated as a parent of any resulting child, or
 - (ii) a notice under section 37(1)(b) stating that W consents to a man being treated as the father of any resulting child, and
- (e) W and P are not within prohibited degrees of relationship in relation to each other.

(2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.

(3) A notice under subsection (1)(a), (b) or (c) by a person (“S”) who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature.”

[21] Section 46 deals with the issue of embryo transferred after death and is not relevant to this appeal. Section 47, however, provides that:

“47 Woman not to be other parent merely because of egg donation

A woman is not to be treated as the parent of a child whom she is not carrying and has not carried, except where she is so treated –

- (a) by virtue of section 42 or 43, or
- (b) by virtue of section 46 (for the purpose mentioned in subsection (4) of that section), or
- (c) by virtue of adoption.”

[22] From reading the statutory provisions it is evident that Parliament has carefully attempted to devise a comprehensive scheme which seeks to deal with the complexities arising from artificial insemination both within and outside the context of civil partnerships and marriage. It is also evident that this is an area which calls for clear but sensitive lines to be drawn. The legislative intention was to expand the categories of people to whom “parentage” would apply but within the framework of a tightly regulated regime.

[23] This underpinning of the legislation is acknowledged in *AB v CD* [2013] EWHC 1418 (Fam) where the court declined to grant parental status where the statutory regime had not been complied with. At paras [94]-[95] the court stated:

“[94] I must respect the carefully crafted legislative scheme which provides statutory authority for regulating assisted reproduction. As Hale LJ said in *U, Mrs v Centre for Reproductive Medicine* at para [24] (for the fuller quote see para [48](v) above):

‘Centres, the HFEA and the courts have to respect that scheme, however great their sympathy for the plight of particular individuals caught up in it.’

[95] If there is any public policy argument engaged here, it points in favour of upholding the tightly regulated regime of assisted reproduction, not relaxing it.”

[24] The HFEA is the context for the application which was lodged for a declaration of parentage by the non-biological partner. Article 31B of the 1989 Order empowers the court to make a declaration of parentage as follows:

“31B - (1) Subject to the provisions of this Article any person may apply to the High Court, a county court or a court of summary jurisdiction for a declaration as to whether or not a person named in the application is or was the parent of another person so named.”

[25] The effect of such a declaration is set out at section 31B(7) as follows:

“Where a declaration is made by a court on an application under paragraph (1), 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.”

[26] However, pursuant to Article 34, such relief may be refused where it would be “manifestly contrary to public policy” as outlined at para (1):

“Where on an application 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.”

The parameters of this appeal

[27] These have narrowed since the appeal was first issued in that Ms Quinlivan KC does not ask the court to make a declaration of incompatibility against sections 42 and 43 of the HFEA pursuant to the Human Rights Act 1998. Rather she advances various reasons why the making of a declaration of parentage would not be manifestly contrary to public policy under section 31 of the 1989 Order.

[28] The crux of the appellant's argument that it would not be manifestly contrary to public policy to grant a declaration of parentage focussed on distinguishing this case from *A v O & J* [2022] NICA 3. In that case the Court of Appeal held that it would be manifestly contrary to public policy to grant a declaration of parentage in circumstances outside the scope of sections 42, 43 and 44 of the HFEA. The facts bear considerable similarity with this case. The appellant and her partner were not married at the time the child was conceived and had not entered into a civil partnership until after the child's birth so could not come within the ambit of section 42. Section 43 was not applicable either because the appellant did not receive treatment from a licensed clinic. Furthermore, the specified female parenthood conditions in section 44 had not been complied with. The appellant, nevertheless, sought to argue that a declaration of parentage should be granted so that she could be recognised in law as the child's second parent. This was on the basis that the couple had an enduring relationship which, the appellant contended, should be recognised and respected as being equivalent to a civil partnership or marriage. In dismissing the appeal, the Court of Appeal concluded that it would be manifestly contrary to public policy to do so in such circumstances.

[29] Ms Quinlivan argues that the instant case is much more nuanced and can therefore be distinguished from *A v O & J*. Reliance is placed upon *Re Close & Others* [2020] NICA 20 which states as follows:

“[58] We are satisfied that it was clear by the time of the delivery of the first instance judgment in this case in August 2017 that the absence of same-sex marriage in this jurisdiction discriminated against same-sex couples, that a fair balance between tradition and personal rights had not been struck and that therefore the discrimination was not justified.”

[30] The *Close* case concerned whether the prohibition on same sex marriage in Article 6(6)(e) of the Marriage (Northern Ireland) Order 2003 (“the 2003 Order”) amounted to unlawful discrimination against same-sex couples based on sexual orientation contrary to article 8 ECHR and article 12 read in conjunction with article 14. We note that this decision has been criticised in a subsequent Privy Council case of *Day & Anor v The Governor of the Cayman Islands & Anor* [2022] UKPC 6 at para [52], however, it is neither appropriate nor necessary for us to relitigate the points at issue for the purposes of this appeal.

[31] The appellant draws attention to the fact that at the time the child was conceived in October 2018, the prohibition on same-sex marriage amounted to unlawful discrimination. Accordingly, the submission was made that had same-sex marriage been available to the couple at the time, the appellant would have fallen within the ambit of section 42 of the HFEA and been recognised as a second parent.

The appellant therefore contends that it would not be manifestly contrary to public policy to grant a declaration of parentage in circumstances where the couple were being denied their Convention rights and, thus, precluded from falling within section 42. Furthermore, the appellant maintains that it would be inconsistent with public policy to perpetuate unlawful discrimination on the grounds of sexuality. Thus, the appellant urges the court to distinguish this case from *A v O & J* and to cast it as an exception to the statutory scheme set out in the HFEA.

[32] As with the prohibition on same-sex marriage, the appellant further submits that the couple's inability to access publicly funded IVF treatment was discriminatory on the grounds of sexuality, in breach of article 8 ECHR read with article 14 ECHR. Hence, the argument is advanced that a declaration of parentage should be granted as it would be inconsistent with public policy to perpetuate unlawful discrimination.

[33] In reply both Mr McGleenan KC and Mr McAteer made the case that the decision of *A v O & J* is dispositive of this appeal and that it would be manifestly contrary to public policy to grant a declaration outside of the provisions of the statutory scheme. It was submitted that in the absence of a human rights claim this case was simple. An ancillary oral argument was made in relation to the effect of section 6 of the Human Rights 1998, but it has not been necessary for us to determine this given the outcome we reach.

Consideration

[34] While it is accepted that the couple were not permitted to marry at the time of the child's conception, and that this prohibition constituted unjustified discrimination for same-sex couples, it is evident that the appellant was not entirely prohibited from acquiring legal parentage under the HFEA. Indeed, had the couple been in a civil partnership at the time of conception, the appellant would have fallen within the scope of section 42 and would, therefore, have been treated as the second parent (unless it was shown that she had not consented). The couple's decision not to avail of this route was, as acknowledged at first instance, a "a conscious and considered decision based upon principle and their beliefs" which must be respected. This is therefore not a case where the appellant was prohibited from pursuing a route to legal parenthood as the HFEA provided a mechanism through which the "other woman" in a same-sex relationship could become the child's legal parent.

[35] Section 43 of the HFEA provides that civil partnership, or marriage is not the sole route through which legal parenthood can be obtained under the HFEA framework. Pursuant to that section, there is a second gateway to recognition. The appellant would have been treated as a parent of the child had the treatment been provided in a licensed clinic in the United Kingdom (subject to agreed female

parenthood conditions set out in section 44). At the time the child was conceived, however, access to publicly funded IVF treatment on the NHS was only available to heterosexual couples and was therefore unavailable to the appellant and her partner as a same sex couple. Financial constraints ultimately prevented the couple from accessing treatment through a licensed clinic, which would have brought them within the remit of sections 43 and 44 of the HFEA.

[36] This policy has since been revised. The current eligibility criteria for publicly funded IVF treatment were established by the Department of Health and took effect from 1 June 2019. As is recognised in *JR176(2)* [2022] NIKB 21, the 2019 criteria created the opportunity for same sex couples to avail of publicly funded IVF treatment (at para [16]). The updated criteria were introduced following consideration of the National Institute for Health and Care Excellence (“NICE”) guideline (NG257) and engagement with Northern Ireland Human Rights Commission. It is now the position that publicly funded IVF treatment can be provided to same-sex couples when/if a medical fertility issue can be demonstrated.

[37] As is stated in *A v O & J* at para [26]:

“[26] It is regrettable that artificial insemination by donor was not available in this jurisdiction on the National Health Service until 2019. In her statement of evidence the appellant indicated that she and the mother considered going through a clinic but unfortunately felt it was prohibitively expensive at the time. In her statement she does not identify the cost although we were told in the course of the hearing by counsel that it was £1400. There is no evidence about the means of the appellant or J or whether their researches caused them to consider approaching charities or other sources of funding. It remains the position, however, that the objective that the appellant now seeks to secure was available to her under the statutory scheme.” [Emphasis added]

[38] At the core of this case is the question of whether it would be manifestly contrary to public policy to grant a declaration of parentage in circumstances where the appellant has fallen outside the scope of the relevant provisions of HFEA.

[39] It is the appellant’s argument that failing to do so would serve to perpetuate unlawful discrimination contrary to ECHR rights. It is, however, evident that it is not in the nature of the HFEA to be flexible and that it does not provide for exceptions in circumstances falling outside its framework. Instead, the carefully devised nature of the statutory scheme illustrates that there is no room for exceptions outside its framework.

[40] It is for this reason that in the context of the HFEA, public policy must promote certainty, clarity and consistency in relation to legal parentage. This is, in essence, the crux of the argument in support of what the trial judge found and what authorities such as *A v O & J* hold. In this sense, public policy is to be understood as upholding the integrity of the HFEA statutory scheme and maintaining certainty in relation to legal parentage.

[41] The strict parameters of the HFEA are outlined in para [17] of *A v O & J*:

“The scheme of the 2008 Act is to recognise first the commitment to family life made by those entering into a marriage or civil partnership by treating the parties to the relationship as the parents unless it is demonstrated that the other person did not consent. Secondly, in cases where the same-sex couple not in a civil partnership or marriage wish to parent the child without reference to the donor the option of using a licensed clinic satisfies that requirement. Thirdly, there are various reasons why those involved may want to take a different approach in relation to the identity of the donor and the role that the donor should play in the child’s life. The legislation permits such a course and in light of the circumstances which may cause parties to go down that route there is no attempt to alter the legal position of the donor.”

[42] Furthermore, that case rejected the view that there was a degree of flexibility in the statutory scheme to allow for the making of a declaration of parentage outside the statutory route at para [35]:

“We have already spent some time setting out the public policy arrangements in the 2008 Act and in light of those Article 34 appears to prevent the making of a declaration. The appellant submitted, however, that case law supported the view that there was a degree of flexibility in the statutory scheme which could allow for the making of the declaration. We now turn to those cases.”

[43] The court went on to state that it would be directly contrary to the public policy approach established by the HFEA Act “to make declarations on a case-by-case basis” stating at para [40]:

“In our view neither of these cases justify any departure from the public policy approach established by the 2008

Act. It would be directly contrary to that public policy to make declarations on a case-by-case basis introducing the uncertainty and confusion which the statutory scheme sought to avoid. Public policy prevents the making of a declaration of parentage.” [Emphasis added]

[44] Furthermore, the Court of Appeal expressly found sections 42 and 43 of the HFEA remain Convention compliant (at para [41]), concluding that the trial judge was correct not to make a declaration of parentage in that case. In this regard, the appellant’s argument that the court should engage in a case-by-case exercise and declare this case an exception to the general rule must be considered impermissible.

[45] This is the explicit consequence of section 47 of HFEA (see para [21] above).

[46] Whilst there was some debate before us about the heading of section 47 to our mind the meaning is clear and that the intention of Parliament was that, unless the express conditions set out in section 47 are satisfied, the appellant cannot be treated as the parent of the child. There is no challenge to the compatibility of section 47.

[47] It is only where there have been administrative failures such as when the requisite forms are absent or otherwise incomplete, unsigned or completed after treatment began that the courts have been willing to grant a declaration of parentage in order to recognise the legal parenthood of the non-birth parent (see *X v Y* [2023] EWFC 217). This has been an approach adopted by the courts following recent exposure of the failings of many clinics in relation to the proper record-keeping (*AB v CD and the Z Fertility Clinic* [2013] EWHC 1418 (Fam)). Cases such as *Re A and Others* [2015] EWHC 2602 (Fam), *A&B v Bourne Hall Clinic* [2021] EWHC 1750 (Fam) and *A v B* [2025] EWFC 43, for example, illustrate this. Although these authorities provide a route to birth registration in such circumstances the facts of these cases are entirely different from the present case. That is because the criteria under section 43 cannot be met in this case as treatment did not take place in a licensed premises pursuant to section 43(a).

[48] A remaining important issue is the position of the child who has been ably represented by Ms Louise Murphy KC in this appeal. Whilst the Official Solicitor rightly draws attention to the concept of psychological parenthood, it is nevertheless accepted that this does not entitle a declaration of parentage to be made. Although it should be acknowledged that the appellant plays a clear role in the upbringing of the child, as is recognised through the grant of parental responsibility in this case, the authorities are consistent in their application of the HFEA scheme.

[49] With respect to the child’s article 8 rights, the Official Solicitor considers that his legal parentage should be consistent with the authorities detailed above and is

satisfied that grant of parental responsibility in her favour has ensured the appellant is recognised as an important parental figure in his life.

[50] Helpfully, Ms Murphy also referred us to a recent decision *X v Italy* (Application No. 42247/23) where the ECtHR considered whether the removal of a non-biological mother from a child's birth certificate under Italian law constituted a violation of his private and family life under article 8 ECHR. In that case, the child had been born in Italy in 2018 as a result of fertility treatment received abroad. It was contended that the annulment of his birth certificate, in which two women were recognised as mothers, constituted an unjustified interference with the child's article 8 ECHR rights on account of the loss, five years after his birth, of the parent-child relationship between him and his intended mother. Furthermore, it was argued that it deprived the child of the personal and social identity he had built, since his birth, in an environment where he had always been recognised as the son of his two mothers.

[51] The decision draws attention to the relationship between legal parentage and the identity of the child, noting at para [61]:

“The court notes at the outset that respect for private life requires that every child be able to establish the details of his or her identity as a human being, which includes his or her parentage (Mennesson France, no. 65192/11, §§ 46 and 96, ECHR 2014).”

[52] However, it was acknowledged that recognition of the appellant on the birth certificate was not the only route through which the child's identity could be recognised where an alternative legal route to legal parentage existed. The availability of adoption meant that there was no violation of article 8 ECHR.

[53] In England and Wales, the Court of Appeal in *P v Q and F (Child: Legal Parentage)* [2025] 2 WLR 75 considered the HFEA in circumstances where the two female parents were married. While that case turned on the mode of conception, the following paragraphs are material to the present case particularly in relation to the position of the child as follows:

“[1] Few things in life are more important than parentage for a child and parenthood for a parent, with all the wider family relationships thereby created. Parenthood can be manifested in a number of ways: genetic, gestational and psychological, as explained in *Re G (Children) (Residence: Same-sex Partner)* [2006] UKHL 43, [2006] 1 WLR 2305 at [32-37]. However, at a more formal level the law needs to identify who a child's legal

parents are, because legal parenthood brings many rights and responsibilities and creates legal relationships across generations.”

...

[8] Similarly, the question of law that arises here cannot be determined by the deserts of the adults. As Hale LJ said in *Mrs U v Centre for Reproductive Medicine* [2002] EWCA Civ 565, [2002] Lloyd’s Rep Med 259, at [24]:

‘Parliament has devised a legislative scheme and a statutory authority for regulating assisted reproduction in a way which tries to strike a fair balance between the various interests and concerns. Centres, the HFEA and the courts have to respect that scheme, however great their sympathy for the plight of particular individuals caught up in it.’

[9] The identification of X’s parentage does not of course determine the welfare decisions that remain to be made by the judge. These include the question of whether Q should be granted parental responsibility for X.”

...

[11] Where a dispute about **legal** parentage arises, there is a specific statutory remedy ...”

[19] The registration of a birth under the Births and Deaths Registration Act 1953 will, for important practical purposes, identify a child’s legal parents. A birth certificate is perhaps the most fundamental of all documents concerning personal status.”

[Emphasis added]

[54] At para [11], Lord Justice Peter Jackson applied *Re R (A child) (IVF: Paternity of Child)* [2005] 2 AC 621, where it was stated by Lord Walker at para [42]:

“... But important though legal certainty is, it is even more important that the very significant legal relationship of parenthood should not be based on a fiction ...”

[55] In addressing the equivalent statutory scheme for declarations of parentage in England and Wales, para [38] states:

“Section 55A FLA 1986 empowers the court to make one or more declarations as to whether or not a named person is or was the child's legal parent. In order to reach a conclusion, the court may have to decide issues both of fact and law, as it did in this case. Its focus is on the relationships identified in the application, but it must reach its conclusion by normal processes of fact-finding and legal analysis, leading to a conclusion that a named person is or is not the legal parent of the child.”

[56] Furthermore, at para [47] the following clear dicta is found:

“Policy arguments cannot alter the analysis. Notwithstanding Q’s commitment to X, her understood status as a legal parent arose from informal arrangements, with all their inherent risks.” [Emphasis added]

[57] In *M v F & H* [2014] 1 FLR 35, it was likewise stated at paras [27]–[28]:

“27. Nor do I accept the argument on behalf of Mr F that the HFEA is an exclusive code governing parentage in all cases, so that if Mr H is ruled out as a parent because he did not consent to AI, the child will have no father. The statute only governs situations that fall within its footprint: the situation described would fall outwith the footprint, and the common law would continue to apply. As a result Mr F would be the legal parent.

28. Lastly, I do not accept Mr Persson’s interesting but ambitious submission that the HFEA does not apply to unlicensed AI at all. While this is not the occasion to do justice to the detail of the submission, I do not read s.35 in this way. If unlicensed AI is becoming more prevalent as a result of the internet, there may be a strong argument for reviewing a statutory scheme that has licensed AI as its paradigm. But what the law is and what it ought to be are two different questions.”

[58] The consistent thread of the jurisprudence we have just discussed is that there must be adherence to the statutory scheme, that there are no substantive exceptions and absent the satisfaction of the gateway provisions in section 42 and 43 HFEA,

making a declaration of parentage is manifestly contrary to public policy as it would offend the statutory scheme.

Conclusion

[59] At first instance the judge declined to grant a declaration of parentage relying on *A v O & J*. We find no error in his reasoning. *A v O & J* is a recent decision of this court which covered the same territory as this case and accords with other jurisprudence in this area discussed above. Ms Quinlivan's skilful attempts to distinguish it or depart from it do not persuade us. Nor are we convinced by the arguments that we should make an exception for this couple because same sex marriage or publicly funded IVF were not available when the child was conceived. That is because the HFEA created a statutory scheme for assisted parentage following considerable debate to provide certainty and security for families and children who enter this arena. The provisions were not retrospective. It would be wrong in law and therefore manifestly contrary to public policy for us to effectively circumvent the clear provisions of the HFEA by granting a declaration of parentage in the circumstances of this case.

[60] Notwithstanding the sympathies that naturally arise for this family the court must respect the statutory scheme. That is the simple answer to this case. While the appellant is undoubtedly well motivated in bringing this application we affirm the judge's decision. We do so, recognising the fact that this child is clearly well loved and settled in his family. We do not criticise the fact that adoption is not on the agenda at present, however, that may be something for the family to think about in the future.

[61] Accordingly, we dismiss the appeal.