

# Judicial Communications Office

12 June 2026

## COURT DELIVERS DECISION ON DECLARATION OF PARENTAGE FOR SAME-SEX COUPLE

### Summary of Judgment

The Court of Appeal<sup>1</sup> today dismissed an appeal against a decision not to grant a declaration of parentage to the non-birth mother in a same-sex female couple. It concluded that granting the declaration would circumvent the statutory scheme and therefore be manifestly contrary to public policy.

#### Background

The appellant and her wife, a same-sex couple, commenced a relationship in 2011 and married in 2021. They conceived a child in 2018 through a private sperm donation arrangement outside the framework of the Human Fertilisation and Embryology Act 2008 (“the HFEA”). It was agreed with the donor that he would have no parental role or legal rights. The child was born in June 2019. The donor initially sought parental responsibility and related orders but subsequently withdrew from proceedings.

The appellant applied in February 2020 for a declaration of parentage to be recognised as a second parent and be registered on the birth certificate. The application was supported by the birth mother but opposed by the Secretary of State for Health and the NI Departments of Finance and Health (“the Departments”). The appellant holds parental responsibility of the child by agreement under the Children (Northern Ireland) Order 1995.

In September 2025, the High Court dismissed the appellant’s application for a declaration of parentage under Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (“the 1989 Order”). The central issue was whether the appellant, the non-biological spouse of the child’s birth mother, should be recognised in law as the child’s parent and have her name entered on the birth certificate, and whether the granting of such a declaration would be “manifestly contrary to public policy” within the meaning of Article 34 of the 1989 Order.

#### Legal Framework

The HFEA establishes a statutory scheme governing legal parenthood in assisted reproduction cases, including specific provisions for same-sex female couples, primarily through sections 42 and 43. Section 42 provides for automatic legal parenthood where the parties are married or in a civil partnership at the time of conception. Section 43 provides an alternative route where treatment occurs in a licensed clinic and agreed parenthood conditions are met. Article 31B of the 1989 Order empowers courts to grant declarations of parentage, subject to Article 34, which provides that such declarations must not be made where they would be “manifestly contrary to public policy.”

#### Parameters of the appeal

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<sup>1</sup> The panel was Keegan LCJ, Treacy LJ and O’Hara J. Keegan LCJ delivered the judgment of the court.

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The appeal concerned whether, notwithstanding non-compliance with the HFEA statutory scheme, it would be manifestly contrary to public policy to grant a declaration of parentage. The appellant contended that the case should be distinguished from *A v O & J* [2022] NICA 3 and that refusal of a declaration would perpetuate unlawful discrimination due to the historical prohibition on same-sex marriage and unequal access to fertility treatment.

The Departments argued that *A v O & J* was dispositive and that the statutory scheme precluded declarations outside its terms.

## Consideration

The court held that the appellant was not excluded from acquiring legal parenthood under the HFEA. At the relevant time, routes were available through civil partnership or licensed treatment, though not pursued. The court said this was not therefore 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. The appellant would have been treated as a parent of the child had the treatment been provided in a licensed clinic in the UK under the HFEA, however, at the time the child was conceived 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. This policy has since been revised, and 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.

At the core of this case was 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 the HFEA. The court emphasised that the HFEA constitutes a carefully devised and comprehensive statutory scheme, requiring certainty, clarity, and consistency in determining legal parenthood. It reaffirmed that public policy requires adherence to the statutory framework and excludes case-by-case exceptions outside it, as established in *A v O & J*. The only instances where courts have been willing to recognise exceptions have been in the context of administrative failures, for example where forms are absent or incomplete or unsigned.

The court commented that an important issue is the position of the child. It was submitted that the grant of parental responsibility in the appellant’s favour has ensured she is recognised as an important parental figure in his life. It was also 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 parenthood existed and that the availability of adoption meant there was no violation of article 8 ECHR.

The court rejected the submission that discrimination arguments justified departure from the statutory scheme, noting that no incompatibility challenge to the HFEA provisions was pursued on appeal. The court further held that section 47 of the HFEA makes clear that parenthood cannot be conferred on a non-biological mother except via the statutory gateways or adoption.

The court acknowledged the child’s welfare and the appellant’s role but held that psychological or social parenthood does not entitle a declaration of legal parenthood:

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“Notwithstanding the sympathies that arise for this family, the court must respect the statutory scheme. That is the simple answer to this case.”

## Conclusion

The court concluded that granting the declaration sought would circumvent the statutory scheme and therefore be manifestly contrary to public policy. It found no error in the reasoning of the High Court judge and declined to distinguish or depart from *A v O & J*.

Accordingly, the appeal was dismissed.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available shortly on the Judiciary NI website (<https://www.judiciaryni.uk/>).

ENDS

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