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Case numbers omitted

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19 January 2017

**Before :**

**SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION**

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**In the Matter of the Human Fertilisation and Embryology Act 2008**  
**(Cases P, Q, R, S, T, U, W and X)**

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**Ms Deirdre Fottrell QC** (instructed by Goodman Ray Solicitors LLP in Cases P, Q, R, S, T and U and by Natalie Gamble Associates in Cases W and X) for the applicants  
**Ms Sarah Morgan QC and Ms Lucy Sprinz** (instructed by DAC Beachcroft LLP) for Care Fertility Group Manchester in Cases P, Q, R, S, T and U

Hearing date: 6 October 2016 (Cases P, Q and R)  
Hearing date: 10 October 2016 (Cases S, T and U)  
Hearing date: 16 December 2016 (Cases W and X)

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

**This judgment was handed down in open court**

**Sir James Munby, President of the Family Division :**

1. Since I handed down judgment in *In re A and others (Legal Parenthood: Written Consents)* [2015] EWHC 2602 (Fam), [2016] 1 WLR 1325, I have had to consider a number of cases raising issues very similar to those which confront me here. The most recent judgments were in *Re the Human Fertilisation and Embryology Act 2008 (Case O)* [2016] EWHC 2273 (Fam) and *Re the Human Fertilisation and Embryology Act 2008 (Case V)* [2016] EWHC 2356 (Fam). They were the fourteenth and fifteenth of these cases in which I have given a final judgment. This judgment relates to another eight cases, Cases P, Q, R, S, T, U, W and X. A separate judgment will deal with Case K. That amounts to 24 cases in all. A further five cases have recently been issued. I am told that at least another two cases are in the pipeline and likely to be issued in the near future.
2. For the purposes of this judgment I shall take as read the analysis in *In re A* and the summary of the background to all this litigation which appears in *Case O*.

The facts

3. For reasons which will by now be familiar, I propose to be extremely sparing in what I say of the facts and the evidence in these cases.
4. Cases P, Q, R, S, T and U relate to treatment provided by Care Fertility Group Manchester. Case W relates to treatment provided by Complete Fertility Centre Southampton, operated by Southampton University Hospitals NHS Trust. Case X relates to treatment provided by Oxford Fertility. Each of the clinics is and was regulated by the Human Fertilisation and Embryology Authority. I shall refer to the applicant in each case as X, the respondent as Y and the child or children as C. In each case X seeks a declaration pursuant to section 55A of the Family Law Act 1986 that he or she is, in accordance with sections 36 and 37 or, as the case may be, sections 43 and 44 of the Human Fertilisation and Embryology Act 2008, the legal parent of C. In each case Y is wholeheartedly supportive of X's application. In each case the clinic, the HFEA, the Secretary of State for Health and the Attorney General have all been notified of the proceedings. With the exception of Care Fertility Group Manchester, which was represented, although not joined, and the HFEA, which attended court though not the hearing, in Cases P, Q, R, S, T and U, none has sought either to be joined or to attend the hearing. In each case, given the nature of the issues (see below) I decided that there was no need for C to have a guardian appointed.
5. The hearings took place in Cases P, Q and R on 6 October 2016, in Cases S, T and U on 10 October 2016, and in Cases W and X on 16 December 2016. In each case X was represented by Ms Deirdre Fottrell QC. At the hearings on 6 and 10 October 2016, the clinic was represented by Ms Sarah Morgan and Ms Lucy Sprinz. At the end of each of the hearings I indicated that I was making the orders sought. I now (19 January 2017) hand down judgment explaining my reasons.
6. An additional point arises in Cases P, Q, R, S, T and U. It does not bear on the primary relief sought in any of those cases. It was accordingly agreed, with my approval, that the point should be dealt with at a separate hearing, which has not yet taken place. I therefore say no more about it.

7. Although I am acutely conscious of the stress, worry and anxiety burdening all the parents in these cases, and of the powerful human emotions that are inevitably engaged, each of these cases is, in terms of the applicable legal analysis, straightforward and simple. With the exception of Case U, they raise no new points. In each case the evidence, which there is no need for me to rehearse in detail, is compelling. In each case the answer is clear.
8. Just as in each of the other cases I have had to consider, so in each of these cases, having regard to the evidence before me, I find as a fact that:
  - i) The treatment which led to the birth of C was embarked upon and carried through jointly and with full knowledge by both the woman (that is, Y) and her partner (X).
  - ii) From the outset of that treatment, it was the intention of both X and Y that X would be a legal parent of C. Each was aware that this was a matter which, legally, required the signing by each of them of consent forms. Each of them believed that they had signed the relevant forms as legally required and, more generally, had done whatever was needed to ensure that they would both be parents.
  - iii) From the moment when the pregnancy was confirmed, both X and Y believed that X was the other parent of the child. That remained their belief when C was born.
  - iv) X and Y, believing that they were entitled to, and acting in complete good faith, registered the birth of their child, as they believed C to be, showing both of them on the birth certificate as C's parents, as they believed themselves to be.
  - v) The first they knew that anything was or might be 'wrong' was when, some while later, they were contacted by the clinic.
9. I add that there can be no suggestion that any consent given was not fully informed consent. Nor is there any suggestion of any failure or omission by the clinic in relation to the provision of information or counselling.

The facts: the individual cases

10. In each of Cases P, Q, R, S, T and U the applicant is a woman. In each of Cases W and X the applicant is a man. Except in Case X, where the parties have subsequently married, none of them was either in a civil partnership with or married to the respondent mother.
11. Case P: Adopting the terminology I have used in previous cases, the problem in this case is very shortly stated. The Form WP was signed but not dated. The Form PP was signed but not dated, nor was the consent box in section 3 on the second page ticked. In my judgment, none of these omissions matters. The validity of a Form WP or Form PP is not dependent upon the correct date being inserted; what matters is proof that the form was signed, as in this case I am satisfied each form was signed, *before* the treatment: see *In re A*, para 78. Nor is the omission of the  $\surd$  in the consent box fatal to

the validity of a Form PP: see *Re the Human Fertilisation and Embryology Act 2008 (Case J)* [2016] EWHC 1330 (Fam), para 15, followed by Peter Jackson J in *D v D (Fertility Treatment: Paperwork Error)* [2016] EWHC 2112 (Fam). In these circumstances X is entitled to the declaration she seeks.

12. There is a quite separate ground on which X is entitled to the relief she seeks. Both Y and X signed a Form IC which, in all material respects, was in the same form as the Forms IC I have considered in previous cases. I need not go into the details. In the circumstances, X is, in principle, entitled to the declaration she seeks on this ground also: see *In re A*, para 63(iii).
13. Case Q: Again, the problem in this case is very shortly stated. The Form WP was properly completed. The Form PP was signed and dated at the foot of the second page (which contains the statement in section 3 “I consent to being the legal parent of any child born from my partner’s treatment (named in section 2)” and the consent box was ticked, but the declaration on the third page was not signed. In my judgment this omission does not invalidate the relevant consent, which is plainly recorded and signed on the second page. Where, as in this case, Sections 1, 2, and 3 of the Form PP have been properly completed (for a description of these see *In re A*, para 28) and the second page, which contains section 3, has been signed at the foot, that is sufficient to satisfy the statutory requirements. The completion of section 5 on the third page is not a pre-requisite to the validity of the Form PP for the purpose with which, alone, I am here concerned. In these circumstances X is entitled to the declaration she seeks.
14. Moreover, both Y and X signed a Form IC which, in all material respects, was in the same form as the Forms IC I have considered in previous cases. I need not go into the details. In the circumstances, X is, in principle, entitled to the declaration she seeks on this ground also.
15. Case R: Again, the problem in this case is very shortly stated. The Form WP was properly completed. The Form PP was signed and correctly dated at the foot of the second page but the declaration on the third page, although signed, was incorrectly dated. There are two reasons why, in my judgment, this error is immaterial. First, and as set out in paragraph 11 above, an error in the date does not matter so long as it is proved that the form was signed, as in this case I am satisfied the Form PP was signed, *before* the treatment. Secondly, and as set out in paragraph 13 above, the completion of section 5 on the third page is not a pre-requisite to the validity for present purposes of the Form PP. In these circumstances X is entitled to the declaration she seeks.
16. Moreover, both Y and X signed a Form IC which, in all material respects, was in the same form as the Forms IC I have considered in previous cases. I need not go into the details. In the circumstances, X is, in principle, entitled to the declaration she seeks on this ground also.
17. Case S: Again, the problem in this case is very shortly stated. The Form PP was properly completed by X. The Form WP, to be completed by Y, was defective in two respects. First, the consent box in section 3 was not ticked. Secondly, and more fundamentally, although the first page was indeed a Form WP, the second and third pages were actually parts of a Form PP. (How this astonishing mistake came about

has not been explained.) The names of X and Y were correctly set out in the Form WP, which was signed by Y, both at the foot of the second page and after the declaration on the third page. So, to put the matter shortly, the correct person, Y, signed the Form WP but parts of the text in sections 3 and 5 were wrong. In my judgment it is clear that there was a mistake, even if we are in the dark as to how that mistake came about; it is clear what both X and Y intended when Y signed the Form W; and it is clear how the Form WP needs to be rectified to accord with the parties' intentions. In these circumstances, rectification is both an available and the appropriate remedy: see *In re A*, para 47, and, more particularly, *Re the Human Fertilisation and Embryology Act 2008 (Case G)* [2016] EWHC 729 (Fam). X is entitled to a decree of rectification and the declaration she seeks.

18. Case T: Again, the problem in this case is very shortly stated. The Form PP was properly completed by X. There is no Form WP nor, it is accepted, any clear evidence that a Form WP was ever completed. There is a Form IC which, in all material respects, was in the same form as the Forms IC I have considered in previous cases. But X and Y each signed the wrong part of the Form IC: X signed the part that should have been signed by Y, and Y signed the part that should have been signed by X. Ms Fottrell submits that there are two alternative solutions to the problem. First, and relying upon *In re A*, para 98, that the mistake is so obvious, as also the 'correction' required to remedy it, that the problem can properly be overcome by a process of construction, without the need for rectification. Secondly, and relying upon *Re the Human Fertilisation and Embryology Act 2008 (Case G)* [2016] EWHC 729 (Fam), that the Form IC can and should be rectified. For much the same reasons as I set out in *Case G*, paras 20-21, I prefer to proceed here by way of rectification. In my judgment it is clear that there was a mistake, even if we are in the dark as to how that mistake came about; it is clear what both X and Y intended when they signed the Form IC; and it is clear how the Form IC needs to be rectified to accord with the parties' intentions. In these circumstances, rectification is both an available and the appropriate remedy. X is entitled to a decree of rectification and the declaration she seeks.
19. Case U: Case U relates to a second child born to the same parents as in Case T, following a later cycle of treatment. The problem is shortly stated. The Form WP was properly completed. There was no Form PP. The question is whether the Form PP that X had completed prior to the treatment which led to the birth of their first child continued to operate as a valid PP in relation to the later cycle of treatment leading to the birth of their second child. Both Ms Fottrell and Ms Morgan submitted that it did. That was also the stance of the HFEA in the evidence it had helpfully filed. Ms Fottrell and Ms Morgan took me painstakingly through section 44 of the 2008 Act, through my analysis in *In re A*, paras 23-25, and through the Form PP itself. I need not follow them through the exercise in detail, grateful though I am to them for their submissions. At the end of the day, the key point is the language of section 44(1)(a), referring to consent in relation to "any child resulting from treatment provided." That language, unsurprisingly, is tracked in the relevant part of the Form PP (see *In re A*, para 28): "any child born from my partner's treatment." The point, in my judgment, is a short one. "Any" means any; and, so long as the consent has not been withdrawn (and that manifestly did not happen here), there is no temporal or other limitation to the quite general expressions referring to the "treatment." So the Form PP completed before the first cycle of treatment continued to operate for the subsequent cycle of

treatment, and notwithstanding the birth of the first child. In these circumstances, X is entitled to the declaration she seeks.

20. Case W: In this case there was neither a Form WP nor a Form PP. However, there was a Form IC which, in all material respects, was in the same form as the Forms IC I have considered in previous cases. The Form IC was signed *before* 6 April 2009 (the date when the 2008 Act came into force) though the relevant treatment took place *after* that date. That latter fact is neither here nor there: see *Re the Human Fertilisation and Embryology Act 2008 (Case I)* [2016] EWHC 791 (Fam), paras 16-20, and *Re the Human Fertilisation and Embryology Act 2008 (Case M)* [2016] EWHC 1572 (Fam), para 15. In the circumstances X is entitled to the declaration he seeks.
21. Case X: In this case the Form PP was properly completed but no Form WP can be found. The clinic speculates that there was a Form WP, which has been lost, but Ms Fottrell makes clear that there is no evidence to support this and disavows the point. However, there was a Form IC which, in all material respects, was in the same form as the Forms IC I have considered in previous cases. In the circumstances X is entitled to the declaration he seeks.
22. Ms Fottrell very properly drew my attention to the fact that, shortly before the proceedings were issued, X and Y had moved to Scotland. The question accordingly arose as to whether X and Y could satisfy the requirements of section 55A(2) of the 1986 Act. I need not go into the details. I am satisfied that X and Y have not acquired a domicile of choice in Scotland and have not lost their domicile of origin in England and Wales. Accordingly, the court has jurisdiction in accordance with section 55A(2)(a).

### Outcome

23. It was for these reasons that at the conclusion of the hearing of each case I made a declaration in the terms sought by X.

### Costs

24. In each case the clinic has very properly agreed to pay the applicant's reasonable costs.