



Neutral Citation Number: [2025] EWFC 366

Case No: LU24P03031

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 October 2025

Before:

MRS JUSTICE THEIS DBE

Between:

(1) B

Applicants

(2) C

-and-

(1) D

Respondents

-and-

(2) H (by her Children's Guardian)

Ralph Marnham (instructed by **Collyer Bristow LLP**) for the **Applicants**

The First Respondent did not attend

Mai-Ling Savage (instructed by **Dawson Cornwell**) for the **Second Respondent**

Hearing date: 14th October 2025

Judgment date: 29th October 2025

Approved Judgment

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This judgment was delivered in private. Nobody may be identified by name or location. The anonymity of everyone other than the legal representatives must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mrs Justice Theis DBE:

Introduction

1. Once again this court is faced with an application for a parental order in relation to a young child, H, now 18 months, following a surrogacy arrangement in circumstances where the applicant intended parents have not met the gestational surrogate and have no information regarding her identity. Additionally, the evidence raised a question as to who had carried the child, due to information that more than one surrogate was used.
2. The consequences of this has been considerable delay in determining this application and resulted in immigration complications for H. Such delay and complications have been detrimental to H through the continuing uncertainty, and caused significant distress and anxiety for the applicant intended parents.
3. The applicants, B and C, made their application for a parental order in June 2024. It has taken over 15 months and required four court hearings before the court was in a position to determine the application. Due to the complexity, it has been necessary to join H as a party.
4. Similar circumstances arose in *Re H (Anonymous Surrogacy)* [2025] EWHC 220 where Sir Andrew McFarlane, President of the Family Division set out in clear terms the inherent risks in entering into a surrogacy arrangement without having any information about the surrogate. This case involves the same clinic as in *Re H (ibid)*. Put simply, intended parents should avoid embarking on a surrogacy arrangement where they do not meet, have any knowledge of or means of contacting the surrogate who carries their much wanted child.
5. Each case that raises these issues will need to be carefully considered and scrutinised by the court on its own particular facts. Whilst the steps outlined by Gwynneth Knowles J in *Re QR (Parental Order: Dispensing with Consent: Proportionality)* [2023] EWHC 3196 summarises the approach the court has taken for some time when the court is asked to conclude that the surrogate cannot be found, there may come a time when that approach will need to be reconsidered.
6. This court has made clear in a number of recent cases the importance of the intended parents meeting the surrogate and, if possible, having an independent means of contacting the surrogate so that steps can be taken to serve her with any proceedings issued here and to take any necessary steps to obtain the necessary consent to meet the requirements of s 54 Human Fertilisation and Embryology Act 2008 (HFEA 2008) that enable the court to make a parental order.
7. If, for example, there is evidence that the intended parents embarking on such a surrogacy arrangement were aware of these concerns but nevertheless continued with such an arrangement (where they did not meet or have means of contacting the surrogate) knowing of the risks, that may be grounds for the court to consider whether

it can, in such circumstances, determine the surrogate cannot be found. The court may also need to consider whether there are wider public policy issues engaged in such a situation. The court in those circumstances may have to consider whether it can or should make a parental order.

8. The message delivered by the President in *Re H (ibid)* at paragraph 20 should be heard loud and clear by intended parents considering whether to embark on a surrogacy arrangement that they “...would be well advised to avoid engaging with an anonymous surrogate”.
9. This judgment gives another opportunity to provide a reminder of the helpful checklist set out by Gwynneth Knowles J in *Mr and Mrs K v Mr and Mrs Z* [2025] EWHC 927 at paragraph 37:

- (1) What is the relevant legal framework in the country where the surrogacy arrangement is due to take place and where the child is to be born? Put simply, is such an arrangement permitted in that country?
- (2) When the child is born, will the intended parents be recognised as parents in that country, if so how? By operation of law or are the intended parents required to take some positive step and, if so, what steps need to be taken and when (pre or post birth)?
- (3) What is the surrogate’s legal status regarding the child at birth?
- (4) If the surrogate is married at the time of the embryo transfer and/or the child’s birth, what is the surrogate’s spouse’s legal status regarding the child at birth?
- (5) If an agency is involved what role do they play in matching the surrogate with the intended parents?
- (6) What information, preparation or support has the surrogate had about any proposed surrogacy arrangement?
- (7) Does the surrogate speak and/or read English? If not, what arrangements are in place to enable her to understand any agreement signed?
- (8) Will the intended parents and the surrogate meet and/or have contact before deciding whether to proceed with a surrogacy arrangement?
- (9) When will the agreement between the intended parents and surrogate be made, before or after the embryo transfer, and what are the reasons for it being at that time?
- (10) What arrangements are proposed for contact between the intended parents and the surrogate during the pregnancy and/or after the birth? For example, is it only via the agency or can there be direct contact between the intended parents and the surrogate?
- (11) In which jurisdiction will the embryo transfer take place and in which jurisdiction will the surrogate live during any pregnancy?
- (12) Can the jurisdiction where the child is to be born be changed at any stage and, if so, by whom and in what circumstances?
- (13) What nationality will the child have at birth?
- (14) Following the birth of the child, what steps need to be taken for the child to travel to the United Kingdom? What steps need to be taken to secure any necessary travel documentation for the child and how long does that take?
- (15) Will the intended parents need to take any separate immigration advice to secure the child’s travel to the United Kingdom and what is the child status once the child has arrived in this jurisdiction?

(16) Keeping a clear and chronological account of events and relevant documents is not only important for the purposes of a parental order application but also, importantly, retains key information regarding the child's background and identity.

(17) Parties should consider early and meaningful engagement with either or all of HD, DfE and/or DHSC (depending on what the particular issues which have arisen are and bearing in mind the different responsibilities of each), especially where there are, or there are intimated proceedings, in some court or tribunal (for example, the First-tier Tribunal (Immigration and Asylum Chamber));

(18) In particular, that if proceedings are issued in the Family Court, early consideration should be given to the addition of either or all of HD, DfE and/or DHSC (again depending on what the particular issues which have arisen are and bearing in mind the different responsibilities of each) as a party;

(19) What steps have been taken by the intended parents in relation to estate planning (before and after a parental order is made) in respect of the child's future welfare?

(20) What steps have been taken by the intended parents in respect of future care and financial arrangements for the child in the event of the incapacity of one (or both) of the intended parents?

(21) What steps have been taken by the intended parents in respect of future care and financial arrangements for the child in the event of the death of one (or both) of the intended parents?

10. These are essential safeguards and steps that anyone thinking about embarking on a surrogacy arrangement, whether here or abroad, should carefully consider before entering into such an arrangement, in particular one where the arrangement and the birth of the child is in another jurisdiction.
11. The court is extremely grateful to Mr Ralph Marnham and his instructing solicitors, Ms Pippas and Mr Burrows of Collyer Bristow LLP, who have been able to represent the applicants pro bono. Their expertise and advice have been invaluable for the applicants and the court.
12. Having read the court bundle and heard the oral submissions on behalf of the applicants and H on 14 October 2025 I was able to announce the court's decision that a parental order would be made in favour of the applicants in relation to H. The reasons for making that order are set out below.

Relevant background

13. B, age 41 years, and C, age 36 years, were both born in Nigeria. C came to this country age 8 and has lived here ever since. C acquired British nationality in 2003.
14. In 2012 B came to study here. The intended parents married in 2014 and purchased their family home in 2017. In 2019 B acquired British nationality. They both work full time.
15. In 2017 C had an ectopic pregnancy and between 2018 – 2023 underwent three failed IVF procedures, two here and one in Nigeria.

16. In early 2023 the applicants decide to embark on a surrogacy arrangement with a clinic in Nigeria, Lifelink Fertility Centre (“the Clinic”). Embryos were created using donor eggs and B’s gametes.
17. In April 2023 the applicants entered into a surrogacy agreement with a surrogate who was referred to in the agreement as ‘G.D’. They did not meet the surrogate and were given no information about her.
18. In July 2023 the first embryo transfer took place with GD, which was reported by the clinic to be unsuccessful on 1 August 2023.
19. On 2 August 2023 the applicants spoke with Dr Kemi at the Clinic and agreed to using two surrogates to increase their chances of a successful embryo transfer. No information is given about the second surrogate or any separate agreement entered into with her or discussion about that. She is referred to in the messages exchanged between the applicants and Dr Kemi as ‘GH2’, which the applicants understood to mean gestational host two.
20. On 26 August 2023 the Clinic confirmed that further embryo transfers had taken place.
21. On 11 September 2023 the applicants were informed there had been a negative pregnancy test for GH2 and a positive pregnancy test for GH1. The applicants believe GH1 is the original surrogate. During the pregnancy the applicants were kept updated and C attended the scans by video link, but the surrogate’s face was never seen or identified.
22. In March 2024 the applicants travelled to Nigeria for H’s birth and H was placed in their care soon after her birth. H has remained in their care since then.
23. B came back to England in May 2024 due to work commitments and in June 2024 C and H followed. H was granted a certificate of Right of Abode on 14 May 2024.
24. The C51 application for a parental order in relation to H was made by the applicants in June 2024.
25. In July 2024 the applicants made an application for a British Passport for H. Between August 2024 and May 2025 HMPO made a number of requests regarding the progress of the parental order application.
26. In September 2024 the applicants contacted the Clinic for further details about the surrogacy arrangement. They received no response.
27. The first hearing before me took place on 6 February 2025 when directions were made for the applicants to file further evidence in relation to the s54 HFEA 2008 criteria.
28. In May 2025 the applicants were contacted by UKVI confirming they had been contacted by HMPO and stating that it appeared H’s certificate of entitlement to the Right of Abode may have been granted in error and requested further documents,

including a copy of a parental order. Two days later HMPO withdrew H's passport application due to delays in the parental order proceedings. The applicants have made a separate complaint to HMPO about that as they had kept them updated about the progress of the proceedings. Their application fee has been refunded as a gesture of goodwill but HMPO made clear they required a copy of the parental order to support the passport application and could not keep the passport application open indefinitely until documents were received.

29. A further hearing took place on 13 June 2025. Further directions were required, again directing the applicants to file further evidence related to establishing the s54 criteria.
30. On 23 June 2025 the Home Office wrote to the applicants to inform them that H's Certificate of Entitlement had been refused due to the surrogate being anonymous therefore *'we are unable to determine for nationality purposes the marital status of the surrogate mother in order to confirm if she is married or unmarried at the time of [H's] birth. In turn this means that we cannot be satisfied that the commissioning father [B] can be considered the father in line with UK nationality laws. As we cannot be satisfied that he is the legal father, we cannot be satisfied that he can pass his British status onto the customer at the time of the adoption. Furthermore, we are not certain that there has been a transfer of parental responsibility. Therefore, it has not been confirmed that the commissioning parents have parental responsibility over [H]. Consequently, as [H] does not currently hold an entitlement to the Right of Abode, we have revoked the certificate of Entitlement and so it is no longer valid for travel.'*
31. Following the applicants securing pro bono legal representation their solicitors wrote to the Clinic on 7 July 2025 asking for the C51 and A101A to be sent to the surrogate. At the same time the applicants spoke to Dr Kemi by telephone. They report she told them she had been in touch with the surrogacy agency and the surrogate had confirmed she wished to remain anonymous and threatened to sue the Clinic. Dr Kemi told them they would not be responding to the solicitors. The solicitors sent a chasing email a few days later. Again Dr Kemi did not respond.
32. On 22 July 2025 the applicants' solicitor wrote to Dr Kemi to ask if the nurse who acted as a witness for the surrogacy agreement could confirm in writing that the surrogate had freely and voluntarily signed the agreement. B reports that Dr Kemi telephoned B the same day and told him that she had already confirmed what she could and she would not be responding any further.
33. I made final directions at the hearing on 6 August 2025 due to gaps that remained in the evidence and the issues raised from the papers about the existence of a second surrogate, which had not been known previously.
34. On 8 August 2025 the applicants' solicitors wrote again to Dr Kemi asking for information about the surrogate, and whether the nurse who witnessed the surrogacy arrangement was available. There was no response. The applicants followed up with a phone call to the Clinic, again there was no response.
35. Due to the level of concern regarding the circumstances surrounding this surrogacy arrangement I directed on 6 August 2025 that the Secretary of State for the Home Department (SSHD) was given notice of this application and that she informs the

applicants and the court whether she wishes to intervene or make any representations. On 26 September 2026 the SSHD informed the court that she did not wish to intervene or make any representations.

Section 54 HFEA 2008 criteria

36. To make a parental order the court must be satisfied that each of the relevant criteria under s 54 HFEA 2008 are met and, if they are, consider whether making a parental order will meet the lifelong welfare needs of the child.
37. The court now has five statements from the applicants setting out the evidence they rely upon.
38. I can deal relatively briefly with some of the criteria as the evidence is clear. H was not carried by one of the applicants and has a biological link with B, one of the applicants, as established by a DNA test (s54(1)). The applicants married in 2014 (s54(2)(a)), they issued the application within 6 months of H's birth (s54(3)), H has had her home with them at the relevant time (s54(4)(a)) and both applicants are over the age of 18 years (s54(5)).
39. In accordance with s54(4)(b) I am now satisfied on the evidence that B's domicile of choice is in this jurisdiction in accordance with the factors summarised in *Z v C (Parental Order: Domicile)* [2011] EWHC 3181 at [13]. B has lived in this jurisdiction since 2012, he married C here in 2014, acquired British citizenship in 2019, has worked and paid taxes here for 13 years, has purchased a property with C, owns two other properties here and has no property or other assets in Nigeria. B is unable to vote in Nigeria and doesn't pay any taxes there. B with C have made their family life here, they intend to bring H up here and have formed and evidenced an intention to indefinitely and permanently reside in this jurisdiction.
40. Turning to the more difficult question of consent under s 54(6) the cases have made clear (see *Re C (Surrogacy: Consent)* [2023] EWCA Civ 16 at [61]) consent is the cornerstone of the statutory framework. The court can proceed to make an order if it is satisfied that the person who is to give the consent cannot be found (see s54(7)).
41. In *Re QR (Parental Order: Dispensing with Consent: Proportionality)* [2023] EWHC 3196 Gwynneth Knowles J set out the matters the court needs to consider at [26] following in large part the decision of Baker J (as he then was) in *Re D and L (surrogacy)* [2012] EWHC 2631 as follows:

"26. Baker J went on to find that three matters must be scrutinised by the court when a court is invited to dispense with consent:

"First, when it is said that the woman who gave birth to the child cannot be found, the court must carefully scrutinise the evidence as to the efforts which have been taken to find her. It is only when all reasonable steps have been taken to locate her without success that a court is likely to dispense with the need for valid consent. Half-hearted or token attempts to find the surrogate will not be enough. Furthermore, it will normally be prudent for the applicants to lay the ground for satisfying these requirements at an early stage. Even where, as in this case, the applicants do not meet the surrogate, they

should establish clear lines of communication with her, preferably not simply through one person or agency, and should ensure that the surrogate is made aware during the pregnancy that she will be required to give consent six weeks after the birth.

“Secondly, although a consent given before the expiry of six weeks after birth is not valid for the purposes of section 54, the court is entitled to take into account evidence that the woman did give consent at earlier times to giving up the baby. The weight attached to such earlier consent is, however, likely to be limited. The courts must be careful not to use such evidence to undermine the legal requirement that a consent is only valid if given after six weeks.

“Thirdly, in the light of the changes affected by the 2010 regulations, the child’s welfare is now the paramount consideration when the court is ‘coming to a decision’ in relation to the making of a parental order. Mr Ford submits, and I accept, that this includes decisions about whether to make an order without the consent of the woman who gave birth in circumstances in which she cannot be found or is incapable of giving consent. It would, however, be wrong to utilise this provision as a means of avoiding the need to take all reasonable steps to attain the woman’s consent.”

27.As well as applying the approach that Baker J identified in Re D and L, proportionality must also be a relevant consideration when the court is invited (a) to dispense with the consent of the surrogate and/or her husband and (b) to approve the reasonable steps that the applicants have taken to locate a surrogate. I will refer to that later in my judgment.

42. In another recent case with similar facts to this case *Re H (Anonymous Surrogacy)* [2025] EWHC 220 Sir Andrew McFarlane, President of the Family Division, referred to the restrictions imposed on adoptions from Nigeria due to the specific concerns relating to adoptions there and observed in relation to surrogacy at [19]:

“...Whilst there is no comparable statutory restriction on surrogacy cases originating from Nigeria, the need for care as to the reliability of documentation and the potential for the involvement of organised child traffickers underscores the need for caution in parental order applications involving a Nigerian surrogacy.”

43. At [20] the President also warned against using an anonymous surrogate:

*“A further cause for concern in the present case is the anonymity of the surrogate mother. Not only does anonymity prevent the court from being able to be satisfied that the mother knows of the application and consents to it, it also raises the level of suspicion that the arrangement may have been otherwise than it is said to be. Whilst Mr and Mrs H have explained their motivation for opting for an anonymous surrogacy, their decision has, in fact, caused them a great deal of difficulty in presenting the present application. **Those who follow in their footsteps in the future would be well advised to avoid engaging with an anonymous surrogate.**”*[emphasis added]

44. Ultimately in that case, the President made a parental order on the basis that the court was satisfied that the surrogate could not be found for the purposes of HFEA 2008 s.54(7) stating at [22]:

“On the balance of probability, on the basis of the material that has now been filed and on the basis of the insightful reports of Ms Houldsworth, I am satisfied that Mr and Mrs

H did enter into a surrogacy arrangement with the Lifelink Fertility Clinic run by Dr Kemi in Nigeria. I am satisfied that Mr H is A's genetic father and that the surrogate mother was a woman known only as 'O.S.' in the agreement. I am satisfied that she is probably the person whose identity details were shown by Dr Kemi to Ms Houldsworth. I am further satisfied that the prospects of tracing her and securing her engagement with these proceedings are so remote as to hold that the reality is that she 'cannot be found'. HFEA 2008 s 54(7) is therefore satisfied on that basis, with the consequence that the application can proceed without the need to obtain her agreement under s 54(6)."

45. Turning to the facts of this case Mr Marnham places reliance on the following matters in the evidence:

- (i) The applicants have filed the gestational surrogacy arrangement which has the surrogate's initials as "G.D", the agreement confirms she is not married and provides that the surrogate agrees to relinquish all legal, parental and custodial rights over the child. The agreement has the surrogate's signature, which appears to be more than the initials "G.D" and the signature has been witnessed by a named nurse.
- (ii) As detailed above the applicants have taken steps themselves and through their solicitor to make contact with the surrogate through the Clinic which has been prevented by the Clinic.
- (iii) In their most recent statement the applicants have provided more details about the circumstances in which a second surrogate was used, and the basis on which they believe that the successful embryo that resulted in H's birth related to the first surrogate. The detailed messages exchanged between C and Dr Kemi refer to only one positive pregnancy test and it refers to GH1 described as a 27 year old woman, which is a consistent description in the pregnancy test when there was only one surrogate. The second surrogate is referred to as GH2 and the negative pregnancy test result refers to her being 28 years. In addition, the invoice from the Clinic dated 24 August 2023 refers to GH2 as "new GH2"
- (iv) In their fourth statement the applicants report a conversation between C and Dr Kemi on 7 July 2025 after the Clinic had been sent an email request by the applicants' solicitors to make contact with the surrogate, C followed that up with a direct WhatsApp message to Dr Kemi which resulted in Dr Kemi calling C to inform her she had received the email from the solicitors, she would not be responding to it as the surrogate did not want to have anything to do with the process due to the anonymity of the process. Dr Kemi confirmed she had been in touch with the surrogacy agency and the surrogate was unhappy to be involved as she had signed up to a fully anonymous process and had threatened to sue the Clinic. The statement continues that the applicants understand this is a current "*hot topic*" due to the stigma that can attach to the process as not everyone understands how it works.

46. Having stood back and considered all the evidence, and not without some hesitation, I am satisfied on the balance of probability that the surrogate mother was a woman known as "G.H" in the surrogacy agreement and "G.H 1" in other documents, that she carried H and the prospects of tracing her, giving her notice of and securing her engagement in these proceedings are very unlikely with the consequence that she

'cannot be found' in accordance with s54(7) and the application can proceed without the need to obtain her agreement under s54(6).

47. The final criteria under s 54 is s54(8) the court needs to consider whether any payments have been made other than for expenses reasonably incurred. In their evidence the applicants have set out that payments were made to the Clinic totalling 13,888,525 Naira, estimated to be just over £6,600. Some of the invoices detail that the surrogate was compensated for expenses via the Clinic and detail other expenses incurred in connection with the surrogacy arrangement. It is unclear whether any element of the payments made were other than for expenses reasonably incurred as there is such a paucity of information from the Clinic and no information about the surrogate for the reasons set out above. However, I am satisfied on the evidence in this case that the applicants acted in good faith and that on the very limited information the court has, payments were made for expenses related to the surrogacy and the pregnancy and in so far as they were not so related they are authorised by the court.

Welfare

48. The final matter the court need to consider is H's welfare in accordance with s 1 Adoption and children Act 2002. In their written evidence the applicants describe their close and loving relationship with H and how she is thriving in their care. That reflects what the Guardian observed when he visited the family home. The Guardian has filed three reports and supports the parental order being made. He has visited the family, carried out his own welfare assessment and undertaken the necessary safeguarding checks.
49. A parental order will meet H's lifelong welfare needs. It will recognise her biological relationship with B, and provide for H to have a secure lifelong legal parental relationship with both the applicants which securely recognises the reality of the family life that exists between the applicants and H.

