Neutral Citation Number: **[2026] EWHC 878 (Fam)**

Case No: CM23P92382

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
IN THE MATTER OF THE FAMILY LAW ACT 1986

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/26

Before :

The Rt Hon Sir Andrew McFarlane
President of the Family Division
- -

Re N (Paternity: Unregulated Sperm Donor)

- -
- -

Sam King KC and Charlotte Baker (instructed by **Goodman Ra**y) for the **Applicant 'Mr Robert Albon'**
Andrew Powell KC and Nadia Campbell-Brunton (instructed by **Kingsley Napley LLPRespondent 1 'Mother'**
Rebecca Foulkes and Clarissa Wigoder (instructed by **Forsters LLP**) for **Respondent 2 'EF'**
Deirdre Fottrell KC (instructed by **Cafcass LegalRespondent 3 'Child's Guardian'**

Hearing dates: 21 October 2025
- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 21/04/2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....
This judgment was delivered in private [and a reporting restrictions order OR transparency order is in force]. 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 and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Sir Andrew McFarlane P:

1. Robert Albon, who offers a service by providing sperm for the conception of children, seeks a declaration that he is the father of 'N' [randomly chosen initial] pursuant to Family Law Act 1986, s 55A. There is no dispute that Mr Albon is the genetic father of N, and therefore he is legally N's father under the common law. The application is, however, contested by N's mother and by the children's guardian appointed by the court to represent N's interests in these proceedings.

2. There is a separate issue arising from the fact that an individual, EF, who cannot be N's father, is registered as 'father' on N's birth certificate. Mr Albon seeks a declaration of non-parentage with respect to EF. EF does not consent to the making of such a declaration, but accepts that he has no grounds on which to oppose it.

The factual background

3. In 2019 N's mother, Ms JE [random initials], began a romantic relationship with EF [random initials], a cisgender woman (having been assigned the female gender at birth) who was, at that time, still identifying as female.

4. About one year into their relationship EF began identifying as transgender. Ms JE supported EF's decision to transition to the male gender. EF changed his forename and pronouns to male and began taking testosterone. By that time Ms JE was forming the view that she would like to have a child of her own. EF conducted some research and identified Mr Albon as a possible sperm donor. EF contacted Mr Albon and, in due course, Mr Albon attended at the couple's home and provided sperm. Mr Albon was paid £100. No pregnancy resulted. Mr Albon attended the home again and provided a second donation of sperm,

for which he was given a £150 Amazon gift card. The second donation resulted in conception and N was born in the early autumn of 2021. In accordance with a request made by Mr Albon at the time of donation, the couple informed him of the birth. Ms JE is clear that this was to be the end of their contact with Mr Albon, and that there was no agreement that he would have any parental rights or future involvement in the child's life. Ms JE regarded the donation of sperm as being a business transaction and nothing more.

5. Ms JE and EF registered N's birth, with EF being registered as 'father' on N's birth certificate. At that time, the couple both knew that conception had been achieved using Mr Albon's sperm. The false declaration to the registrar has been reported to the police, who have apparently decided to take no action.

6. In the spring of 2023, Ms JE and EF separated, leaving Ms JE with the full-time care of N. It is accepted that during the first 18 months of N's life, EF acted as a father figure to the child. In separate proceedings, which have now been resolved, EF has sought to continue his relationship with N, notwithstanding his acceptance that he is not the child's father.

7. In December 2023, Mr Albon applied for a declaration that he is N's father and that EF is not. He also sought orders aimed at developing and promoting a relationship with N through direct contact. In the event, these latter applications were not pursued and the only issues that now remain for determination relate to paternity.

8. Mr Albon's application was heard on 21 October 2025, but judgment was reserved to await the Court of Appeal decision in *Re J, Re M and Re P (Parental Responsibility)* [2026] EWCA Civ 344. At the October hearing, and a

subsequent hearing in December 2025, the other applications between Ms JE and EF were heard and resolved.

Mr Albon's activities: the wider picture

9. Robert Albon, who also uses the name 'Joe Donor', is publicly known as a sperm donor. He has appeared on and in the national media in this jurisdiction and abroad discussing the role he has undertaken. He makes the uncorroborated claim to be the father of more than 180 children around the world over the course of some 12 years.

10. Mr Albon's activities have been considered in detail in two recent judgments:

A v B, C and D [2023] EWFC 333 [HHJ Jonathan Furness KC]

Re CA (Children of Unregulated Sperm Donor) [2025] EWFC 130 [Poole J]

11. In *A v B, C and D* [2023] EWFC 333, HHJ Furness KC, sitting as a deputy High Court judge, heard private law proceedings between the birth mother of a 2 year old child and her wife. The child had been conceived by the mother self-administering sperm provided by Mr Albon. There had been no agreement that Mr Albon would have any role in the child's life. The judge found that Mr Albon's subsequent application for a declaration of paternity and a child arrangements order in his favour under CA 1989, s 8 were motivated principally to support his immigration position in the UK.

12. HHJ Furness KC found Mr Albon to be 'a man who has a complete absence of sensitivity or empathy, is wholly self-centred and will stop at nothing to get

what he wants'. The judge refused Mr Albon's application for parental responsibility and his application to change the child's name to his. His application for direct contact was refused, but a limited indirect contact order was made. With respect to Mr Albon's application for a declaration of parentage under FLA 1986, s 55A, the judge concluded that it was not in the child's interests for the court to hear the application (under s 55A(5)).

13. Mr Justice Poole considered Mr Albon's activities in *Re CA (Children of Unregulated Sperm Donor)* [2025] EWFC 130, which arose from care proceedings relating to two children. Mr Albon was the father of both children, by different mothers. In the course of his judgment, Poole J gave an extensive account (paragraphs 14 to 42) of Mr Albon's history as a sperm donor in America, Argentina and Australia, his arrival in the UK in 2020 and his direct involvement with respect to individual children in Wales, North East England and Norfolk. Upon arrival in the UK, he already had a public profile as a sperm donor. That is demonstrated by the fact that on 5 October 2020, less than a month after arrival here, he appeared on a UK television programme, 'This Morning', in which he claimed to have fathered 150 children 'by personal insemination'.

14. It is neither necessary, nor appropriate, to reproduce that account in this judgment, but the judge's findings, reached after an oral hearing and a detailed examination of Mr Albon's history, are important and were not challenged at the hearing of these applications before me.

15. Later in his judgment, Poole J turned his focus directly on Mr Albon (paragraphs 62 to 78). Again, in summary form, the following findings are of particular note:

a) He promotes himself as a sperm donor online using Facebook and Instagram.

b) He makes no claim to the women who contact him about his health or any hereditary conditions.

c) His sperm is delivered in a variety of ways, depending upon the wishes of his client: by post, by visiting the client and delivering a freshly obtained donation, or by direct sexual intercourse.

d) He is indiscriminate and will have sex with, or provide sperm to, just about any woman who asks him to do so.

16. Having reviewed the evidence of Mr Albon's activities, Poole J concluded (paragraph 71):

> 'I conclude that Mr Albon produces sperm and distributes it as a sole trader for profit. He uses terms such as "expenses" and "opportunity cost" to obscure the fact that sperm donation is, for him, a business. …. He advertises his services online using cartoon-like imagery and light-hearted terms, whilst at the same time creating the impression that his sperm is tested and packaged in laboratory conditions. He has used images of plastic syringes, a microscope, and a centrifuge machine in promotional material. He refers in such material to "quality controlled sperm". He told the court that he uses a substance known as an "extender" added to his semen. He is in business and he makes money out of the business. As such, having regard to the provisions of the Human Fertilisation and Embryology Act 1990 …, there must be a concern that he ought to have had a licence at least for distributing his sperm in the course of business to aid reproduction.'

17. In terms of the risk to women using Mr Albon's service, Poole J said (paragraph 67):

> 'The risks they take in using a prolific, unregulated sperm donor who operates as Mr Albon does, are obvious. They do not know anything about the health of his sperm, his genes, his physical or mental health, or his history. Like MA, many will not even know his real name. There is no record of his other children, their mothers, or where they live. There is nothing to prevent Mr Albon seeking declarations of parentage, parental

responsibility, or child arrangements orders in respect of the children he fathers.'

18. In his judgment, Poole J rightly draws attention to advice published by the Human Fertilisation and Embryology Authority [the HFEA] on its website. The advice describes the approach that must be taken to the sperm donors that are used by HFEA regulated clinics:

> 'At regulated clinics, the donor is screened for infectious diseases, such as chlamydia and HIV, and is offered counselling and information about their rights and obligations.
>
> The donor's sperm can only be used to create up to 10 families and they will be compensated up to [£45] for each clinic visit in line with the requirements set by the HFEA.
>
> If you have fertility treatment using a donor at a UK clinic the donor will not:
>
> - Be the legal parent of the child born
> - Have any legal obligation to the child
> - Be named on the birth certificate
> - Have any rights over how the child will be brought up, or
> - Be required to support the child financially.'

19. The HFEA gives this warning about unregulated sperm donation:

> 'If you undergo a private arrangement, you will not have the same safety and legal protections: you can't be sure that the donor has undergone rigorous screening and quality checks. If the donor has not had these checks, you may be putting you and potentially your child at risk of many diseases, including hepatitis B and C.
>
> There is also no limit on the number of families the donor can create or on how much compensation he can receive. If you have donor treatment at a UK clinic, the donor can only donate to up to 10 families. This limit is to maintain a relatively small number of children and donor-conceived genetic siblings from one donor. The limit also minimises the possibility of two children from the same sperm donor having a relationship with each other without knowing. Some unregulated donors have reported conceiving several hundred children and it is therefore important to think about the possible implications of this for your child.

There are also safety issues to think about. If you decide to meet a man who you do not know, you should be careful not to put yourself at risk. Some donors may be genuine in their intentions, but some may not be, and rather than offering artificial insemination they may insist on 'natural' insemination. They may try to convince you that 'natural' insemination offers a better chance of getting pregnant over IUI, but this is not necessarily the case.'

20. Drawing matters together with respect to Mr Albon's activities, Poole J concluded (paragraphs 98 to 100):

'98. Regulated artificial insemination at a licensed clinic involves a number of protections for the recipient woman and the potential donor-conceived child. These include screening of the donor for genetic disorders and sexually transmitted and other infections, screening of the donor sperm, limits to the number of families created by one donor, and a welfare of the child assessment. The option of counselling must be made available to the recipient. Records are kept so that donor-conceived children can later be given details of their biological father and siblings. The regulated processes offer protections but they are intrusive for the recipient and can be expensive.

99. In contrast, Mr Albon's private sperm donor service is quick, cheap, and non-intrusive. It is unencumbered by regulations. There is no paperwork to sign, no screening, and no assessment. This service may attract recipients who cannot afford to use a licensed private clinic but it also attracts those who do not want to be asked questions, would prefer that records are not kept, and do not want there to be a child welfare assessment. From the evidence before the Court it seems that a high proportion of women using Mr Albon's services in this country are vulnerable in one way or another. Certainly MA and MB were both highly vulnerable women when they contacted Mr Albon. MA had suffered abuse at the hands of different men, she has a borderline IQ and has suffered mental health struggles throughout adulthood. MB had five children who had either been removed from her care or had chosen to leave her care. She has unresolved attachment needs which have a significant detrimental impact on her parenting ability. Mr Albon does not trouble to question the history, character, and health of the women who use his service. He does not give any consideration to their ability to bring up his child. He was quite frank that he does not believe it to be his concern.

100. Mr Albon seemingly offers a cheap, "no strings attached" service to allow women to conceive. However, his service brings with it some significant risks and potential complications:

a. The risk that he is carrying a sexually transmitted or other infection;

b. The risk that he could pass on a genetic disorder to the child;

c. The risk that the child may unknowingly form a relationship with a half-sibling.

d. Misunderstandings about the role he will have in the child's life;

e. The risk that he would seek unwanted involvement in the life of the child including declarations of parentage and/or a grant of parental responsibility;

f. Legal disputes and litigation involving the child.

g. The risk that the mother would not provide safe parenting for the child;

h. Problematic issues in the child's upbringing concerning their identity, the circumstances of their conception, and the number and unknown identities and whereabouts of their half-siblings.'

21. Poole J's judgment, which merits reading in full, is highly critical of Mr Albon, who is described as not being 'a man troubled by self-doubt', but being one who leaves personal turmoil in the wake of his intervention in the lives of, often, very vulnerable women. Although Poole J had no evidence of a diagnosis of personality disorder or mental health condition, he was concerned by Mr Albon's rock-solid self-belief, his lack of empathy, his dismissal of those who disagree with him, his determination to get his own way and the way that he seeks to control others to serve his own ends. This latter trait, was of obvious note to Poole J, as it would be to any Family judge. Poole J knew in detail of six women in England and Wales who had carried Mr Albon's children. He found that Mr Albon had sought to control five of these six and that these women each had vulnerabilities arising from their circumstances, their intellectual or emotional make-up or some other psychological or behavioural difficulties.

22. Poole J considered that it was not contrary to the child's welfare to hear the application for a declaration of parentage. Conception had occurred as a result of full sexual intercourse, and it was not, therefore, a case of unregulated

artificial insemination which might, the judge considered, engage public policy issues under FLA 1986, s 58(1). There was agreement that Mr Albon was the child's father, and the judge made a declaration of parentage accordingly. However, he refused to grant Mr Albon parental responsibility. He refused to make any order for direct contact, but did order limited, one-way, indirect contact by which Mr Albon could send a letter for the child once each year.

23. Before leaving this account of *Re CA*, it is right to record that I found Poole J's extensive and meticulously compiled account of Mr Albon's activities to be deeply troubling. In the absence of any challenge to these findings in the present proceedings or by appeal, I have no hesitation in adopting them as the baseline when evaluating the issues that now fall to be decided.

The Legal Context: the statutory scheme

24. Before turning to the statutory material and supporting case law, it is right to stress the priority which the law gives to the status of parenthood and the value attributed to the acknowledgment, with truth and accuracy, of the relationship between two individuals as parent and child. This was forcefully and succinctly captured by Sir James Munby P in *Re Human Fertilisation and Embryology Act 2008 (Cases A, B, C, D, E, F, G and H)* [2015] EWHC 2602 (Fam) (at paragraph 3):

> '[3] The question of who, in law, is or are the parent(s) of a child born as a result of treatment carried out under this legislation – the issue which confronts me here – is dealt with in Part 2, ss 33–47, of the HFEA 2008 Act. It is, as a moment's reflection will make obvious, a question of the most fundamental gravity and importance. What, after all, to any child, to any parent, never mind to future generations and indeed to society at large, can be more important, emotionally, psychologically, socially and legally, than the answer to the question: Who is my parent? Is this my child?'

25. The approach of our domestic law, which is well established in the case law, is on all fours with that set out in Article 7(1) of the United Nations Convention on the Rights of the Child ['UNCRC']:

> '**Article 7(1):** The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.'

26. I will turn to public policy shortly, but it is plain that, in terms of public policy, the starting point must be the priority that is to be afforded to the accurate recognition of a child's legal parentage.

27. The statutory scheme affording jurisdiction to the court to make declarations of parentage (and non-parentage) is contained in Family Law Act 1986, Part III and, in particular, ss 55A and 58:

> '**55A Declarations of parentage.**
>
> (1) Subject to the following provisions of this section, any person may apply to the High Court or the family court for a declaration as to whether or not a person named in the application is or was the parent of another person so named.
>
> (2) A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, either of the persons named in it for the purposes of that subsection—
>
> (a) is domiciled in England and Wales on the date of the application, or
>
> (b) has been habitually resident in England and Wales throughout the period of one year ending with that date, or
>
> (c) died before that date and either—
>
> (i) was at death domiciled in England and Wales, or
>
> (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.
>
> (3) Except in a case falling within subsection (4) below, the court shall refuse to hear an application under subsection (1) above unless it considers that the applicant has a sufficient personal interest in the determination of

the application (but this is subject to section 27 of the Child Support Act 1991).

(4) The excepted cases are where the declaration sought is as to whether or not—

(a) the applicant is the parent of a named person;

(b) a named person is the parent of the applicant; or

(c) a named person is the other parent of a named child of the applicant.

(5) Where an application under subsection (1) above is made and one of the persons named in it for the purposes of that subsection is a child, the court may refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child.

(6) Where a court refuses to hear an application under subsection (1) above it may order that the applicant may not apply again for the same declaration without leave of the court.

(7) Where a declaration is made by a court on an application under subsection (1) above, 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.

…

58 General provisions as to the making and effect of declarations.

(1) Where on an application to a court 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.

(2) Any declaration made under this Part shall be binding on Her Majesty and all other persons.

(3) A court, on the dismissal of an application for a declaration under this Part, shall not have power to make any declaration for which an application has not been made.

(4) No declaration which may be applied for under this Part may be made otherwise than under this Part by any court.

(5) No declaration may be made by any court, whether under this Part or otherwise—

(a) that a marriage was at its inception void;

(b) . . . . . .

(6) Nothing in this section shall effect the powers of any court to [F4make a nullity of marriage order.'

28. The two provisions under FLA 1986 which are specifically relevant to the present application are, firstly, s 55(5), which gives the court power to refuse to hear the application for a declaration 'if it considers that the determination of the application would not be in the best interests of the child', and, secondly, s 58(1), which requires the court to make a declaration of parentage, where the underlying facts are established, 'unless to do so would manifestly be contrary to public policy'. Those who oppose Mr Albon's application for a declaration rely upon both provisions. They submit that to hear the application would not be in N's best interests, and they argue that to grant a declaration would be manifestly contrary to public policy.

29. Although the arrangements that led to the conception of N in the present case were conducted entirely outside the statutory scheme established by the Human Fertilisation and Embryology Acts 1990 and 2008 ['HFEA'] the scheme is of relevance in identifying the strict parameters that Parliament has placed around the provision of artificial insemination treatment within regulated clinics.

30. HFEA 1990, s 28(6) provides:

'(6) Where—

(a) the sperm of a man who had given such consent as is required by paragraph 5 of Schedule 3 to this Act was used for a purpose for which such consent was required, or

(b) the sperm of a man, or any embryo the creation of which was brought about with his sperm, was used after his death,

he is not, subject to subsections (5A) and (5B) above, *to be treated as the father of the child*.' [emphasis added]

HFEA 1990, s 28(5A)+(5B) relate to the use of sperm after the death of the donor and Sch 3 para 5 provides that:

> '5(1) A person's gametes must not be used for the purposes of treatment services or non-medical fertility services unless there is an effective consent by that person to their being so used and they are used in accordance with the terms of the consent.
>
> (2) A person's gametes must not be received for use for those purposes unless there is an effective consent by that person to their being so used.
>
> (3) This paragraph does not apply to the use of a person's gametes for the purpose of that person, or that person and another together, receiving treatment services.'

31. In like terms, HFEA 2008, s 41 makes it clear that a sperm donor who consents for their sperm to be used to provide treatment services by a clinic within the HFEA scheme is not to be treated as the father of any child born as a result of those treatment services:

> '**41 Persons not to be treated as father**
>
> (1) Where the sperm of a man who had given such consent as is required by paragraph 5 of Schedule 3 to the 1990 Act (consent to use of gametes for purposes of treatment services or non-medical fertility services) was used for a purpose for which such consent was required, he is not to be treated as the father of the child.
>
> (2) Where the sperm of a man, or an embryo the creation of which was brought about with his sperm, was used after his death, he is not, subject to section 39, to be treated as the father of the child.
>
> (3) Subsection (2) applies whether W was in the United Kingdom or elsewhere at the time of the placing in her of the embryo or of the sperm and eggs or of her artificial insemination.'

Legal Context:

[1] FLA 1986, s 55A(5) - refusing to hear the application on welfare grounds

32. Turning to the first of the two specific provisions which are in focus in the present application, FLA 1986, s 55A(5), which allows a court to refuse to hear the application if it considers that the determination of the application would not be in the best interests of the child.

33. In *Re S (A Child) (Declaration of Parentage)* [2012] EWCA Civ 1160, Black LJ (as she then was) gave the first and only reported Court of Appeal judgment dealing with the operation of FLA 1986, ss 55A and 58. In the circumstances it is helpful to reproduce the relevant section of her judgment in full:

> '22. The workings of section 55A and section 58 of the Act are not entirely easy to understand.
>
> 23. The key is perhaps to start with a consideration of the nature of a declaration of parentage. The court is charged with determining whether (to use the words of section 58(1)), "the truth of the proposition to be declared is proved to the satisfaction of the court". In other words, the court is deciding whether a fact is established, in this case whether this man is the father of this child. It is not taking a discretionary welfare decision or making a value judgment.
>
> 24. Issues of status, such as parentage, can be expected to be approached with some formality. They concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records.
>
> 25. Part III of the Act, of which section 55A forms part, contains also provisions as to declarations of marital status (section 55), declarations as to legitimacy and legitimation (section 56) and declarations as to adoption effected overseas (section 57). The general public importance of declarations as to status is underlined by section 59 which provides that the Attorney-General may intervene in an application for a declaration under Part III.
>
> 26. On either side of the core fact finding function of the court are ancillary decisions. Preceding it, there is the consideration under section 55A(5) of whether the determination of the application "would not be in the best interests of the child" and, if so, the determination of whether the court should refuse to hear the application. Following it, there is the consideration under section 58(1) of whether it would be "manifestly contrary to public policy" for the declaration to be made. Section 55A(5) is specific to

declarations of parentage. Section 58(1), in contrast, is applicable to any declaration under Part III.

27. Counsel did his best to assist us as to what was behind the provision in section 58(1) as applied to declarations of parentage but the material is sparse. He had been able to find only a reference in a textbook by Professor Cretney on family law to publications which suggested that the provision was intended to cover the situation where, for example, a declaration of parentage was sought in respect of a child who was conceived following a rape and whose mother opposed the application or in respect of a child who was settled in an adoptive family. Counsel was unfortunately unable to track down the documents to which Professor Cretney's book referred, nor did we have a copy of the book. As for section 55A, counsel was not able to find anything, other than the two cases I have mentioned, which could really illuminate us.

28. I think it is important to recognise that the thrust of sections 55A and 58 is that a declaration will be made unless there is a reason not to do so. Section 55A(5) does not simply invite the court to carry out an assessment of whether it is in the child's best interests to have a determination of the application. It empowers the court to refuse to hear the application if it considers that determining it "would not be in the child's best interests". By the time section 58 is reached, the impetus towards the declaration has become even stronger. It will be made unless to do so would not only be contrary to public policy but manifestly contrary to public policy.

29. Although he considered section 55A and section 58 separately, the Recorder effectively conflated them in their application to this case, concentrating for both purposes on the best interests of the child. It is difficult to foresee all the possible circumstances that may arise for consideration under these provisions and I do not want to circumscribe the scope of the public policy considerations relevant to section 58(1) or to exclude matters relating to the best interests of the child from the ambit of those considerations. However, I see the basic structure of the Act rather differently from the way in which the Recorder viewed it.

30. In my view, it is at the section 55A(5) stage that the focus is firmly on the child's interests, whereas section 58(1) is concerned with more general issues of public policy. To get an idea of what these issues might be, in the almost total absence of any authorities providing examples of public policy considerations relating to declarations of paternity, it might be worth briefly considering *Puttick v A-G* [1980] Fam 1, [1979] 3 All ER 463, albeit that it concerned a different sort of declaration, under different legislation and in rather extreme circumstances. There the petitioner sought a declaration that her marriage was valid. She was a German national who had absconded from Germany whilst awaiting trial on serious offences and contracted a marriage with a British man using a false identity. In law, the marriage was valid but the petitioner was not granted her declaration. The principal reason was that she was not domiciled here and was not therefore entitled to petition but the court also indicated that had she not faced that obstacle,

it would nevertheless have exercised its discretion under the Matrimonial Causes Act 1973 to refuse to grant a declaration.

31. Returning to the sphere of declarations of parentage, it may be helpful, in order to examine how section 55A and section 58 interrelate, to take the example of a teenage child who is aware of the application for a declaration of parentage by a man who claims to be his or her father and who threatens that he or she will commit suicide if the man's application is permitted to proceed. A psychiatrist gives evidence that he considers the threat to be genuine and that, should the proceedings continue, the child is at serious risk of emotional harm at the very least. Section 55A(5) would enable the court to refuse to entertain the father's claim for a declaration on the basis that the determination of the application would not be in the best interests of the child.

32. I have deliberately chosen an example in which the application of section 55A(5) is obvious but there may well be cases in which the facts were less radical but the court would still exercise its power under section 55A(5). I would have thought that the examples in Professor Cretney's book of the child conceived in a rape or the child who is settled with adopters would potentially give rise to a power under section 55A(5) to refuse to hear the application. I question whether it is likely that a case would avoid being derailed at the section 55A(5) stage, proceed to a determination of the fact of parentage, and then throw up welfare considerations which would make it manifestly contrary to public policy to grant a declaration.'

34. *Re A & B (Declaration of Non-parentage)* [2025] EWFC 41 involved twins, aged 16 years, who had been conceived by IVF using an anonymous sperm donor. The twin's mother had separated and was divorced when they were babies. Her ex-husband had, however, provided financial support for the children throughout their childhood, but he now sought a declaration of non-paternity. Cobb J (as he then was) identified four 'gateway' factors which were relevant to the facts of that case in deciding whether to refuse to hear the application pursuant to FLA 1986, s 55A(5) on the basis that it would "not be in the best interests of" the twins to do so:

'i) The children's ascertainable views about the application;

ii) Whether there is evidence that the mere fact of considering the application would be likely to be harmful to the children;

iii) Whether the application, if granted, would be likely to have such deleterious consequences for the children that I should not even proceed to determine it;

iv) How determination of the application fits with the Article 8 ECHR rights of the individual members of the family.'

35. Whilst the list identified by Cobb J in *Re A & B* was case specific, and no doubt not intended to be exhaustive, items (ii) to (iv) are likely to be relevant to all cases, with item (i) being engaged in most.

36. In *TT v A Mother and Lancashire County Council* [2025] EWFC 109, HHJ Burrows, as a deputy High Court judge, determined that it was not in the best interests of the relevant child for the court to hear an application for non-parentage made by the man named as father on the child's birth certificate in circumstances were the child had subsequently been adopted. In that case, as in *MS v RS and BT (Paternity)* [2020] EWFC 30 (MacDonald J), the weakness of the evidence relied upon was a relevant factor in deciding that it was not in the child's best interests to proceed to hear the application.

37. In *A v B, C and D*, HHJ Furness KC, dealing with a similar application by Mr Albon, relying upon s 55A(5) declined to hear his application for a declaration of paternity. He did so, despite accepting the baseline priority for establishing the truth of a person's parentage, despite it being accepted that Mr Albon was the child's father and despite acknowledging that a decision to reject a father's request to determine his child's paternity is an interference with his right to respect for family life under the ECHR, Art 8, unless it is in accordance with the law and pursues an aim or aims that are legitimate and can be regarded as necessary in a democratic society. The judge, rightly, held that the burden was upon those who urged the court not to proceed to hear the case. His decision to

accede to their submissions was based upon the negative view that he had formed of Mr Albon, which had, at an earlier stage of his judgment, led him to refuse to grant parental responsibility to him. He also held that it was difficult to see what concrete benefits there would be for the child if a declaration were made, in circumstances where the mother accepted the fact of paternity and had undertaken to inform the child of the true position in due time. The judge was further concerned that a declaration would lead to an amendment of the birth certificate to show Mr Albon as 'father', and that this might in turn be used by him in a manner that was contrary to the child's welfare. HHJ Furness KC therefore refused to hear the application for a declaration.

38. In *Re CA (Children of Unregulated Sperm Donor)*, the case before Poole J concerning Mr Albon, the issue of whether the court should decline to hear the application had been determined at the very start of the hearing on the basis that all parties and the judge accepted that s 55A(5) did not apply. The hearing proceeded on that basis, but, at a later stage the mother's position changed and she submitted that the court should decline to hear the application as to do so was not in the child's best interests. Poole J described his analysis of the issue, with reference to HHJ Furness KC's decision in *A v B, C and D,* at paragraph 126 and following:

> '126. With respect to HHJ Furness KC, the decision about whether to make the declaration is not itself a best interests decision. FLA 1986 s 55A(5) allows the court to refuse to determine an application for a declaration of parentage if to do so would not be in the best interests of the child. So, it is the determination itself that must be found not to be in the best interests of the child. And the test is a negative one – would the determination "not be in the best interests" of the child. The question is not whether it would be in the best interests of the child for Mr Albon to be declared to be their parent.

127. There are strong factors in favour of making the determination as were articulated by MacDonald J in *MS v RS* and in other caselaw. It is of great importance for a child to know where they are from, who their parents are, and to be able to understand their identity. Here, it is known who CA's father is. CA was born after consensual sexual intercourse. It would be odd for the court to record in its judgment that Mr Albon is CA's father but to refuse to conduct a hearing to determine that he is. I shall not set aside the decision I made at the outset of the hearing to hear and determine the application. The s 55A(5) exception is not made out.'

39. Drawing matters together, the following points arise from the, albeit few, extant reported decisions:

a) Parliament has established a firm default position by FLA 1986, s 58(1) that, where the truth of the proposition to be declared is proved to the satisfaction of the court, the court must make the relevant declaration;

b) The obligation to make a declaration flows from the establishment of the truth of the proposition, it is not an exercise that involves the court in making a discretionary welfare decision or a value judgment;

c) The court may, however, refuse to hear an application for a declaration of parentage if it considers that the determination of the application would not be in the best interests of the child [s 55A(5)]. The question is not whether it would be in the best interests of the child for the applicant to be declared to be their parent, it is whether determining the application would not be in their best interests;

d) The burden of satisfying the negative test in s 55A(5) is upon the party who makes that assertion;

e) The court is only released from the obligation to make a declaration imposed by s 58(1) where to do so would manifestly be contrary to public policy;

f) Section 55A(5) does not invite the court to carry out a simple assessment of whether it is in the child's best interests to have a determination of the application. It empowers the court to refuse to hear the application only if it considers that determining it "would not be in the child's best interests". By the time section 58 is reached, the impetus towards the declaration has become even stronger. It will be made unless to do so would not only be contrary to public policy but manifestly contrary to public policy;

g) The court's powers under s 55A(5) and s 58(1) are separate, distinct and fall for consideration at two different stages of the process. They should not be confused or conflated with each other. It is unlikely that an application will proceed to hearing, without being dismissed under s 55A(5), yet fail at the conclusion of the process on welfare grounds which are such as to establish a situation manifestly contrary to public policy;

h) When determining an issue under s 55A(5) the gateway considerations that are likely to be engaged in most cases will include:

i) The children's ascertainable views about the application;

ii) Whether there is evidence that the mere fact of considering the application would be likely to be harmful to the children;

iii) Whether the application, if granted, would be likely to have such deleterious consequences for the children that I should not even proceed to determine it;

iv) How determination of the application fits with the Article 8 ECHR rights of the individual members of the family.

Legal Context: FLA 1986, s 58(1) - refusing declaration as 'manifestly contrary to public policy'

40. Questions of parentage are not just important from the perspective of the individual child, but also with respect to the public at large. In *MS v RS and BT* MacDonald J considered this wider perspective at paragraph 42:

> '42. It is also important to bear in mind from the outset, as Black LJ (as she then was) noted in *Re S (A Child) (Declaration of Parentage)* [2012] EWCA Civ 1160 at [24], that the question of parentage is a question that concerns more than just the child or children whose parentage is in doubt and, accordingly, that:
>
> "Issues of status, such as parentage, can be expected to be approached with some formality. They concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records."
>
> And at [37]:
>
> "[37] I think there was also a failure on the part of the Recorder to give full weight to the public interest aspect of a status issue such as this. This is seen in the conflation in the judgment of the considerations under section 55A(5) and section 58 and also in

> his concentration upon the desirability of J making an informed choice as to whether his father was named on his birth certificate ... I am not suggesting that the desirability of a child being involved in the decision is necessarily a completely irrelevant consideration but it must be borne in mind that it is not given to most to choose who is named on their birth certificate and the system of public records would be seriously undermined if it were."

41. In a subsequent decision, *H v An Adoption Agency (No 2) (Declaration of Parentage and Public Policy)* [2021] EWHC 1943 (Fam), MacDonald J considered the public policy element contained in FLA 1986, s 58(1) in the context of an application for a declaration of parentage made by the natural father of a child, who had since been adopted. MacDonald J's judgment contains a valuable summary of the approach to issues of public policy in the context of a declaration of parentage generally (paragraphs 22 to 25):

42. MacDonald J emphasised a further issue of public policy at paragraph 48(1):

> 'The question of parentage is a question that concerns more than just the individuals involved in a specific case. Issues of status, such as parentage, can be expected to be approached with some formality in circumstances where they concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records (per *Re S (A Child)(Declaration of Parentage)* [2012] EWCA Civ 1160 at [24]).

43. After identifying the key public policy drivers that relate to adoption, MacDonald J concluded [paragraph 71] that making a declaration of parentage in that case would be manifestly contrary to public policy.

44. As MacDonald J makes clear at paragraph 24, the court must act cautiously when identifying 'public policy' for the purposes of s 58(1). The formulation of

public policy is for Parliament and not for a judge. The judicial role is to seek to measure the step contended for (in this case the making of a declaration of paternity) against the principles of public policy recognised by the law. In the present case this will involve, in due course, examining the statutory HFEA scheme to discern any clear principles of public policy relied upon by Parliament when enacting that law.

45. A further element of public policy which attaches to a declaration of parentage is that, the declaration, once made, is for all time and its implementation cannot be deferred (*Re F (Paternity: Registration)* [2011] EWCA Civ 1765 at paras [20]–[23]; and *Re Ms L; Ms M (Declaration of Parentage)* [2022] EWFC 38).

Mr Albon's application

46. Ms Sam King KC based Mr Albon's case upon the fundamental importance of a child's right to know the true identity of their parents. In addition to relying on domestic case law which firmly supports that principle, she referred to Article 7(1) of the UNCRC.

47. Ms King particularly relied upon the observations of Peter Jackson LJ in *P v Q and F (Child Legal Parentage)* [2024] EWCA Civ 878 as a recent statement of this important principle:

> '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] UKSC 43 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.'

More generally, issues of paternity should be approached with a certain degree of formality (Black LJ in *Re S (A Child) (Declaration of Parentage)* at paragraph 26).

48. Ms King submitted that, for present purposes, it is important to emphasise the limits of a declaration of parentage which, she asserts, are:

    i) It does not confer parental responsibility on Mr Albon, nor does it give him any decision-making power;

    ii) It does not require the mother to consult him about anything relating to the child;

    iii) It does not make him a social or psychological parent.

    iv) Unlike a parental order or an adoption order, both of which are transformative and serve to sever and forge legal relationships, a declaration of parentage is simply a recognition of the true factual position in law, formalised in the proper way.

    All Ms King says that Mr Albon seeks is to be known as the child's father and recorded as such on the birth certificate.

49. Ms King correctly submitted that the way the welfare question is posed in s 55A(5) places the burden of persuasion on those seeking to prevent the application being heard. It is, she submitted, a burden which is not easily discharged as there is a 'high bar' in place to reflect the public policy in favour of there being true and accurate statements concerning parentage.

50. In circumstances where there is no dispute about paternity, and where the child's mother intends that he should be told about his father and the circumstances of his conception at the right time, Ms King submitted that it is difficult to see how it could be contrary to the child's best interests for the application to be heard. She firmly pointed to the fact that, despite the highly negative findings that were made against him, Poole J nevertheless declined to hold that it was not in the child's best interests to hear the application for a declaration in *Re CA*.

51. With respect to public policy, Ms King pointed to the fact that the relevant government departments had been invited to intervene in these proceedings but had declined to do so. The court was therefore lacking any principled statement regarding public policy from that source. What is known is that Parliament could have chosen to make unregulated sperm donation unlawful, but it did not do so. The implication being that, as a matter of public policy, Parliament accepted that unregulated provision, such as that supplied by Mr Albon, was acceptable. Ms King's overarching submission was that there is no public policy reason why Mr Albon should not be declared to be the father of this child.

52. Mr Andrew Powell KC, leading counsel for the child's mother, opposed the application relying on both s 55A(5) and s 58(1). In the context of the child's best interests, Mr Powell emphasised the vulnerability of his client and how adversely she would be impacted if the application were heard and a declaration of paternity were granted. Although Mr Albon had backed down from the more intrusive stance that he had taken by seeking parental responsibility and contact, the very fact of having him named as father in a declaration would leave open the potential for Mr Albon to assert a right of involvement in the child's life in

the future. Mr Albon's current indication of restraint cannot, it was submitted, be relied upon. On Poole J's finding, he is not a man troubled with self-doubt and, if he were to perceive a need for him to intervene there is the real prospect that he would do so. The making of a declaration would, therefore, leave the mother in a perpetual state of uncertainty about Mr Albon's future involvement.

53. The mother, who is the child's sole carer, has been upset by the whole court process, which is the hardest thing that she has ever had to deal with, and this must, vicariously, impact on the care that she is able to give to her child. If a declaration of paternity is made this will, Mr Powell submitted, have such an impact on the mother's wellbeing that it will, in time, detrimentally impact on the child's welfare.

54. Against these submissions, and very much to the mother's credit, is the account of the child given in the children's guardian's report which is in very positive terms, and does not indicate any detriment in his care despite the mother having had to cope with these court proceedings over many months.

55. With respect to the issue of public policy, Mr Powell accepted that the deployment of the word 'manifestly' in s 58(1) elevates the test that must be met so that the making of a declaration must be clearly contrary to public policy. Notwithstanding that test, Mr Powell submitted that it was made out in this case by:

    a) The extraordinary number of children that Mr Albon is said to have fathered;

b) The fact that he is operating a service and doing so wholly outside the scheme established by Parliament for regulating the provision of HFE services;

c) It is Mr Albon's reprehensible conduct, as identified in the judgments of HHJ Furness KC and Poole J, which includes preying upon vulnerable individuals, which is contrary to public policy. That conduct would be legitimised, endorsed and encouraged (including by others) if a declaration were made.

56. For the children's guardian, Ms Deirdre Fottrell KC accepted that the bar set by s 55A(5) is a high one. A declaration of parentage is a matter of the utmost gravity, but nevertheless the guardian's case is that s 55A(5) is satisfied in this case. Ms Fottrell relied upon the 'extraordinary' findings made by HHJ Furness KC and Poole J in support of her submission in the context of best interests. It was, she submitted, of particular concern to observe the way, as found by the two judges, Mr Albon has sought to step in, and step out of, the lives of families to whom his only connection is that he has supplied a donation of sperm. Ms Fottrell drew attention to a passage in Mr Albon's witness statement, which is dated 26 April 2025 (thus 6 months prior to the hearing) in which he says: 'My interest in [the child] is simply a father's love for his [child], and wishing to develop a father/[child] relationship'. Mr Albon's more recent, very carefully drafted statement, should not be taken as a true account of his intentions.

57. Ms Fottrell drew attention to the guardian's assessment of Mr Albon:

> 'I was concerned about Mr Albon's lack of insight in this regard and a complete lack of empathy for the children who result and their parents, all of whom are real humans, not numbers or accomplishments, and who are

> unlikely to have a full understanding of the wide ranging implications of their circumstances and how many connected half-siblings there are globally.
>
> Mr Albon demonstrated little moral or ethical awareness of the implications of prolific and unregulated sperm donation, with him being of a clear view he and others like him are doing nothing wrong, it is not criminal, and it will be the onwards responsibility of the children resulting from his donations, to take precautions and steps to avoid the physical (and emotional and psychological) risks associated with consanguinity in their adulthood.'

58. Ms Fottrell described Mr Albon as a 'shape shifter', who was motivated by self-interest, for example his immigration status, rather than that of the children he has fathered or their mothers. Once formally named as 'father', Mr Albon can apply for orders under the CA 1989 as of right, making the mother in this case very vulnerable to his intervention, with a corresponding potential impact upon her ability to care for the child.

59. In consequence, the guardian would have 'grave concerns' for the child's welfare if Mr Albon were granted a declaration of paternity, given the potential for him to seek to have an ongoing role in the child's life in the future – over and above the child simply having knowledge of his paternity and background. Ms Fottrell submitted, in plain terms, that determining the application for paternity would open the gateway to 'this highly dangerous man' seeking to intrude into the child's future care.

60. With respect to public policy, Ms Fottrell, who accepts that 'manifestly' sets a high bar, submits that that bar is crossed in this case on the basis of the findings made by Poole J. She relies particularly on the summary of findings at paragraph 71 (at paragraph 16 above).

61. In short terms, Ms Fottrell submits that Mr Albon is running a business for the 'processing' and 'distribution' of gametes, and is charging a fee for doing so without a license. His entire operation is, therefore, in contravention of HFEA 1990 which defines 'non-medical fertility services', 'distribution' and 'processing' of gametes in s 2 as follows:

> '"non-medical fertility services" means any services that are provided, in the course of a business, for the purpose of assisting women to carry children, but are not medical, surgical or obstetric services,
>
> "distribution", in relation to gametes or embryos intended for human application, means transportation or delivery to any person in or outside the United Kingdom for human application, and related terms are to be interpreted accordingly,
>
> "processing", in relation to gametes or embryos intended for human application, means any operation involved in their preparation, manipulation or packaging, and related terms are to be interpreted accordingly,'

62. HFEA 1990, s 4 establishes 'prohibitions in connection with gametes':

> '4 (1) No person shall—
>
> (a) store any gametes, or
>
> (b) in the course of providing treatment services for any woman, use—
>
> (i) any sperm, other than partner-donated sperm which has been neither processed nor stored,
>
> (ii) the woman's eggs after processing or storage, or
>
> (iii) the eggs of any other woman,
>
> (c). . . . . .
>
> except in pursuance of a licence.
>
> (1A) No person shall procure, test, process or distribute any gametes intended for human application except in pursuance of a licence or a third party agreement.
>
> (2) A licence cannot authorise storing or using gametes in any circumstances in which regulations prohibit their storage or use.

> (3) No person shall place sperm and eggs in a woman in any circumstances specified in regulations except in pursuance of a licence.
>
> (4) Regulations made by virtue of subsection (3) above may provide that, in relation to licences only to place sperm and eggs in a woman in such circumstances, sections 12 to 22 of this Act shall have effect with such modifications as may be specified in the regulations.
>
> (5) Activities regulated by this section or section 3 or 4A of this Act are referred to in this Act as "activities governed by this Act".'

63. A licence may be issued under Schedule 2(1A) of the 1990 Act authorising the procuring and distributing of sperm in the course of providing non-medical fertility services.

64. Ms Fottrell's case is that a person who, in the course of business, for the purpose of assisting women to carry children, distributes gametes (which includes sperm) intended for use in a human recipient requires a licence to do so. Further, she points to HFEA 1990, s 41, which makes it an offence to contravene s 4(1A). More generally, it was submitted that the 'public policy' case against Mr Albon's activities is obvious and strong, as being manifestly contrary to the clear public policy that lies behind the very strict controls on the processing and distribution of sperm other than through the scheme of licensing that are established by the legislation. Ms Fottrell submitted that the court should not be condoning a person who acts in breach of the statutory scheme. Unregulated assisted reproduction on the level operated by Mr Albon runs risk to the many children involved and deprives them of the protection put in place by Parliament.

65. In reply to these submissions on public policy, Ms King challenged the assertion that Mr Albon was running a business, as the evidence was that he charged postage at cost and claimed a modest travel allowance. Ms King submitted that

this court should not import Poole J's findings into the present case and she cautioned the court from being drawn into public policy issues where Parliament has declined to make a specific activity unlawful.

Discussion and conclusions

66. Drawing matters together, and looking, first, at the issue under FLA 1986, s 55A(5), the court's jurisdiction to prevent an application for a declaration of parentage under s 55A being heard is limited to cases where the court 'considers that the determination of the application would not be in the interests of the child'. I agree with the distinction drawn by Poole J at paragraph 126 of *Re CA*. The decision under s 55A(5) is not itself a best interests decision. It is the action of 'the determination of the application' which must be considered not to be in the best interests of the child. This is different from deciding whether declaring that the applicant is a parent is, positively, in the child's best interests.

67. I also agree that the four gateway factors identified by Cobb J in *Re A & B* are likely to be relevant in most cases. In doing so I would stress that the focus of those factors, as carefully cast by Cobb J, is on the act of determining the application, and not best interests more generally. Cases where s 55A(5) may be in play, for example where conception has occurred as a result of rape, or where the child has been adopted, have been identified in the case law.

68. Ms King submitted that the bar under s 55A(5) is a high one. Ms Fottrell and Mr Powell agreed that this is so. I, also, agree. Cobb J correctly described the approach as including consideration of whether the application, if granted, would be likely to have such deleterious consequences for the child that the

court should not even proceed to determine it; that is more than a simple welfare balance.

69. Parliament was plain in requiring, by s 58(1), that a declaration of parentage must be made if the underlying facts are established. The decision to grant a declaration is not one in which the welfare of the child is paramount; indeed it is not even a relevant consideration. Not to permit an application for a declaration of parentage to be determined is contrary to the principle that there should be access to justice. For a court to prevent an application to be determined is, therefore, a matter of significant consequence. I would, however, avoid endorsing the adoption of a particular word, such as 'high' or 'exceptional', to describe the bar that must be crossed to satisfy s 55A(5). To do so might impose loaded wording where Parliament has chosen not to do so. Rather, the weighing up of the relevant factors under s 55A(5) is an exercise in proportionality, where the default position is that the application should proceed to determination and the priority afforded to establishing and fixing the truth as to an individual's parentage and the principle of access to justice are fully in play, but where the best interests of a child may, in some cases, nevertheless require the court not to determine the application.

70. In the present case both N's mother and the children's guardian assert that to determine Mr Albon's application is not in N's best interests. Mr Powell, understandably, drew attention to the vulnerability of his client. I fully accept that 'vulnerable' is, sadly, an apt description of her position, both in terms of her internal resources and the situation in which she now finds herself with respect to Mr Albon. It is also the case that, generally, where the sole carer of a

child is likely to be adversely affected by events, their ability to care for their child may be affected to a degree which would not be in the best interests of the child.

71. In relation to Mr Albon, I also accept that his current restricted statement of future interest in the care of N cannot be relied upon as an indicator of future conduct. On the basis of the findings of HHJ Furness KC and Poole J, it is likely that, if Mr Albon thought that there was a need to do so, he would, once again, seek to assert himself as an active parent for N. The impetus for doing so would be entirely self-driven by Mr Albon's views, and not moderated by any insight towards, or empathy for, the mother. I accept that if a declaration were made the mother would never know when, or if, Mr Albon might once more step forward and that this would be unsettling for her.

72. In hearing those submissions, I was, however, struck by the fact that, despite her vulnerability, and despite the great stress of these unwelcome court proceedings, N's mother has demonstrated a degree of resilience so that the reports of her care of N have remained positive to the extent that there does not currently seem to have been any significant detriment to N's best interests.

73. Both Mr Powell and Ms Fottrell, the latter supported by the guardian's strongly worded descriptions of Mr Albon's character and behaviour, submitted that the potential for harm if he were to reassert himself as a parent was such as to be a matter of grave concern for the child's welfare. In this regard there is a need to separate out those matters that might directly impact on N, and the different areas of concern about Mr Albon's conduct with regard to the provision of fertility services.

74. It must be relatively common in the life of divided families for one parent to be very apprehensive about the future intervention of the other parent. Often there will be no doubt in such cases as to the fact and status of the other parent as the child's parent. Where, as here, there is no doubt at all that the applicant for a declaration is indeed a parent, it is difficult to translate the potential for future disruptive behaviour into grounds for holding that determining the fact of parentage will be, itself, sufficiently detrimental to the best interests of the child to justify declining to do so. Poole J was careful not to be drawn into considering Mr Albon's reprehensible behaviour as a basis for holding that s 55A(5) was satisfied, as to do so would turn the hearing of the declaration of parentage application into one that is determined on welfare grounds.

75. The valid criticism that is made by Mr Powell and Ms Fottrell of Mr Albon's activity in the provision of donor sperm, and the manner in which he conducts himself during the course of dispensing his services, are very much live issues in the context of public policy, but they do not, in my view, sound loudly in terms of their impact on the best interests of N when considering s 55A(5).

76. From N's perspective, in circumstances where it is agreed that Mr Albon is his legal father, and where it is also agreed that he will be told of his parentage and the circumstances of conception in an age appropriate way, save for the legal status that a declaration would afford to Mr Albon by enabling him to apply for orders under the CA 1989 without the need for permission to do so, there is little in the 'best interests' balance in favour of refusing to determine the application. For the reasons to which I have already referred, the fact that the other parent may be very difficult and seek to intrude is not an uncommon feature of cases

in the Family Court. Where that parent's litigation behaviour, or use of parental responsibility if held, is contrary to the welfare of the child, the court is able to deploy orders limiting that parent's actions and, if justified, imposing a filter on their ability to apply to the court. When set against the priority that Parliament has attached to the making of a declaration of parentage where the underlying facts are proved, I do not consider that the case is made out for refusing to determine the application on the basis that to do so would not be in N's best interests.

77. Turning to s 58(1), the position is very different. It can be taken shortly and in stages.

78. Starting with the basic parameters set by Parliament in the legislation, by 'processing' and 'distributing' sperm, as defined by HFEA 1990, s 2, Mr Albon is acting in breach of s 4(1A). 'Processing' means 'preparation, manipulation or packaging' of sperm. By generating a dose of sperm and then passing it on for use by a recipient, whether this be by post or by immediate delivery at the home address, Mr Albon is engaged in processing it. By passing the donated sperm over to the recipient he is distributing it, just as much as if he had sent it by post or other means. By s 4(1A), it is an offence for any person to 'process or distribute any gametes intended for human application except in pursuance of a licence or a third party agreement'.

79. As a result of the HFEA 1990, IVF treatment became lawful for the first time. It is clear that Parliament sought to maintain tight control over the processes involved by only permitting the process and distribution of gametes within the licensed scheme. There is a degree of control even within that scheme over the

introduction of sperm from any individual donor, so that their gametes may only be used for the creation of up to 10 families, is further demonstration of a tight policy.

80. In establishing the narrowly defined permissive route for the processing and distribution of gametes, and by rendering any non-permitted processing or distribution unlawful, Parliament was clear in marking out the limit to which, as a matter of public policy, such activity was acceptable. From this first perspective, it is clear that Mr Albon's engagement in providing sperm to N's mother, by visiting her home and producing a donation which he then passed to her for her use in inseminating herself, is contrary to public policy as established by HFEA 1990, ss 2 and 4(1A).

81. It was of note that, in reply to Ms Fottrell's submissions on this point, Ms King, for Mr Albon, understandably did not dispute the legal foundation of the case being put forward and limited her response to arguing that this court should not import Poole J's findings into the present case. She also suggested that Parliament had not made the specific actions of Mr Albon unlawful. Neither of these two submissions is sustainable. Poole J's findings were made after a fully contested hearing, in which Mr Albon gave evidence. It is apparent that many of the findings are based upon Mr Albon's own account. There has been no appeal against those findings and there was no attempt in the present proceedings to reopen the factual enquiry. For the reasons that I have already given, Parliament has been explicit in making it unlawful to process and/or distribute sperm without a licence.

82. Moving on, and turning to a second perspective, Parliament has provided that where the sperm of a man, who has donated as part of the statutory scheme, is used for the purposes of insemination within that scheme, that man is not to be treated as the father of the child [HFEA 1990, s 28(6) and HFEA 2008, s 41]. In the present case, sperm has been provided by an individual who advertises himself as providing a sperm donation service. Those who use his service, like the mother in the present case, see the engagement as purely transactional with no continuing consequence. Whilst there is no express provision in the legislation to this effect, it seems most unlikely that Parliament would have taken a starkly different approach to a non-licenced donor who has acted as Mr Albon has done on so many occasions (whether as a formal 'business' or in any event). I, therefore, hold that it would be contrary to public policy for Mr Albon to be treated as the father of N by the court granting a declaration of paternity naming him.

83. The third perspective by which to evaluate the public policy issue is to look at the activities of Mr Albon more generally, as found by Poole J and HHJ Furness KC, which are the very antithesis of that which is permitted under the HFEA scheme. Not only are his actions outside the regulatory scheme, they are unregulated in a wider, moral, sense. On the basis of the findings made by the two judges, there is no indication that Mr Albon's behaviour is governed by any recognised moral principles, or is informed by the need for any of the checks and assessments present in the statutory scheme to ensure the genetic integrity of the process or to guard against any mental or physical health issues. As Poole J held, the risks that his customers take in using a prolific, unregulated sperm donor who operates as Mr Albon does, are obvious [paragraph 67, see paragraph

17 above]. Mr Albon has been found to be indiscriminate about the women to whom he donates his sperm. As Poole J found, there is a risk that his service may attract those who do not want questions asked, or records kept, and do not want a child welfare assessment. On the findings made, the proportion of vulnerable women who turn to Mr Albon is high, yet 'Mr Albon does not trouble to question the history, character, and health of the women who use his service. He does not give any consideration to their ability to bring up his child. He was quite frank that he does not believe it to be his concern'.

84. At paragraph 100 of his judgment [see paragraph 20 above], Poole J lists 'some significant risks and potential complications' arising from Mr Albon's cheap, 'no strings attached' service. I agree with, and endorse, the list of some 8 factors identified by Poole J in this context. These are important matters which may not only have an impact on an individual user of Mr Albon's service, they are of wider societal importance. Looked at through this wider perspective, Mr Albon's behaviour, sustained as it has been for over a decade, provides an illustration of just what extensive unlicensed sperm donation can involve. It is, as I have said, the very antithesis of the Parliamentary scheme, and the illustration provides justification for the public policy decisions taken by legislators.

85. Taken individually, but also looking at them all together, it is clear that it would be manifestly contrary to public policy to endorse Mr Albon's activities, and his particular engagement around the conception of N, by making a declaration of parentage in this case. The bar set by s 58(1) is a high one, but the clarity of the statutory provisions and the scale on which Mr Albon has operated outside those

provisions make it manifest that what he has been doing is contrary to public policy as established by Parliament in the HFEA legislation.

86. The outcome of the application is that, whilst the truth of the proposition to be declared (namely that Mr Albon is N's father) is proved to the satisfaction of the court, the application for a declaration of parentage is dismissed on the ground that to grant it would manifestly be contrary to public policy.

87. By agreement, there will be a declaration that EF is not N's father.

88. Before concluding, it is necessary to state that the facts of this case are extreme. It does not follow that all applications for a declaration of parentage by those who donate sperm to assist in the conception of a child outside the HFEA scheme will be dismissed on public policy grounds under s 58(1). It is not uncommon for conception to be arranged through sperm donated by a friend of the mother, or by some other single, informal arrangement. This case has involved sperm donation on a wholly different scale. Nothing that I have said in this judgment is intended to impact, one way or the other, on such cases, which will continue to be determined on their own facts as they arise.