This judgment was delivered in private. 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, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Neutral Citation Number: [2026] EWFC 172

Case No: ZC26P00465

IN THE FAMILY COURT
IN THE MATTER OF S54 OF THE HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008
IN THE MATTER OF THE CHILDREN ACT 1989
IN THE MATTER OF THE ADOPTION AND CHILDREN ACT 2002

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 June 2026

Before :

MR JUSTICE PEEL

- -

Between :

(1) PP
(2) QQ

Applicants

-and-

RR

Respondent

- -
- -

Melissa Elsworth (instructed by **Edward Cooke Family Law Solicitors**) for the **Applicants**
The Respondent did not attend and was not represented

Hearing date: 25 June 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 1 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE PEEL

Peel J:

Introduction

1. Before me today are the following applications:
    a. An application for a Parental Order, issued on 5 March 2026.
    b. An application for permission to withdraw the application for a Parental Order, issued on 29 May 2026.
    c. An application for a Child Arrangements Order (joint 'lives with' order), issued on 29 May 2026.
    d. An application for permission to apply for an Adoption Order, issued on 18 June 2026.

2. The Applicants were represented by counsel to whom I am extremely grateful for her comprehensive written and oral submissions. She appears on a pro bono basis, instructed by solicitors who are acting for the Applicants on a heavily reduced charging rate.

3. The Respondent did not attend the hearing. She has been notified of the hearing and informed the court that she did not propose to attend. She consents to all the applications. I am satisfied that she fully understands the consequence of her consent which is set out in written, notarised documents. I am satisfied that she has not been placed under any pressure to do so, and her consent is freely and unconditionally given.

4. I had before me a full bundle, including sworn witness evidence from the Applicants and the Respondent.

5. In short, these proceedings began as what appeared to be a conventional Parental Order application brought by PP and QQ (the Applicants) in respect of non-identical twins who are now nearly 7 months old, born in Sri Lanka to a surrogate mother (the Respondent, RR)) with two embryos which were intended and understood to be created by a combination of anonymously donated eggs and the sperm of PP. Subsequently, the Applicants discovered that the sperm was in fact not that of PP, but of a sperm donor, such that neither Applicant is biologically related to the children. The Applicants are devastated. This was not what they had planned, expected or agreed to with the relevant clinic. However they have consistently determined that, notwithstanding these events, they wish to bring up these children, whom they adore,

within their family. As a matter of law, they cannot proceed with the application for a Parental Order and they now seek to secure parental responsibility for the children by, in the first instance, a child arrangements order, to be followed by an adoption order.

The background

3. The Applicants are both in their thirties. Both are of Sri Lankan origin. PP moved to the United Kingdom in 2010 and has recently obtained indefinite leave to remain. RR moved to the United Kingdom in 2001 and holds British citizenship. Both are employed here. They met in 2016, had a religious marriage in 2017 and were legally married in this country in 2019.

4. Following their marriage, they tried to start a family. After a number of years of attempting to conceive naturally, they embarked upon IVF in this country which was unsuccessful. They then travelled to India to carry out further IVF treatment there, which led to the birth of twins who, as a result of health complications during birth, tragically died within a few days. QQ was advised that she should not attempt to get pregnant again.

5. As a result, the Applicants began to consider surrogacy. In October 2024, they completed an online consultation with Wish Fertility in Sri Lanka. They were attracted to Wish Fertility due to its positive reviews and reputation.

6. RR is a friend of one of PP's brothers, through whom she learned of the sad circumstances surrounding the Applicants' attempts to have children. She lives in Sri Lanka. She offered to be a surrogate. She and the Applicants spoke on the telephone in November 2024 and then met in person in December 2024.

7. On 26 December 2024, the Applicants attended an in-person consultation with Wish Fertility in Sri Lanka, attended by the surrogate and a lawyer from the clinic. At this consultation, a consent form was signed although the Applicants were not provided with a copy of the form to take away. According to the evidence, it was presented to them on the day for signature and had not been sent to them beforehand for consideration.

8. That day, PP provided his first sperm sample. The next day, 27 December 2024, he provided his second and final sperm sample. Wish Fertility located an anonymous egg donor.

9. From December 2024 to April 2025, there was minimal communication between the Applicants and the clinic. PP's mother and the proposed surrogate mother were living in a rented property nearby, and attended appointments at the clinic during the treatment process and pregnancy.

10. On 23 April 2025, the Applicants were informed that embryo creation had taken place, and were told that two embryos, made up of a donor egg and PP's sperm, had been transferred to the surrogate mother.

11. On 7 May 2025, it was confirmed that the surrogate mother was pregnant with twins. I have no doubt that the Applicants were utterly delighted by the news.

12. On 3 November 2025, QQ travelled to Sri Lanka ahead of the children's births, with PP remaining in the UK due to his work commitments.

13. On 20 November 2025, lawyers in Sri Lanka drew up a surrogacy agreement between the Applicants and the surrogate mother RR, which was signed and notarised.

14. On 26 November 2025, the twins were born by a planned caesarean section, at which QQ was present. QQ immediately took over the care of the children who remained in hospital until discharge into her care on 13 December 2025. She and the children moved into rented accommodation in Sri Lanka with PP's mother. PP joined them on 19 December 2025 before returning to the UK on 4 January 2026 for work purposes.

15. On 13 January 2026, Wish Fertility provided a letter signed by the treating clinician, which confirmed the outcome of the fertility treatment. Within the letter, he wrote:

> "The embryos were created using donor eggs arranged by the clinic and [PP's] sperm."

22. The Applicants completed the C51 applications for Parental Orders on 3 February 2026, which were issued on 5 March 2026. The applications were made on the basis of the Applicants' belief that PP was the biological father of the children.

23. On 5 February 2026, the surrogate mother, who under English law is the legal mother of the children (s33(1) of the HFEA 2008) and has parental responsibility for the children, signed a notarised affidavit confirming that:

> "I do not want to have any further involvement in the upbringing of the children and do not wish to be responsible for them in any way. I wish to renounce all parental responsibility for the children.
> I have no objection to [PP and QQ] applying for British nationality, a British passport or a UK visa for the children I carried. I have no objection to them taking the children outside Sri Lanka to live in the UK.
> I understand that under UK law, I remain the legal mother of the children until legal proceedings for a Parental Order have been completed in the UK courts. I understand that if a Parental Order is made in the UK, the children become the legal children of [PP and QQ] alone under British law. I understand that I can withdraw my consent to this process at any time I wish until the final Parental Order is made."

24. At about this time, the Applicants instructed immigration lawyers to apply for discretionary registration of the children as British citizens under section 3(1) of the British Nationality Act 1981.

25. On 10 February 2026, the Applicants received the results of DNA tests, which had been completed by an approved provider and undertaken as a routine part of the application for British citizenship for the children. The results set out that PP was <u>not</u> the children's biological father. This came as a complete shock to the Applicants. They could not comprehend what had happened. The treatment appeared to have been

successful, and they had no reason to think that the embryo was anything other than the creation of a donor egg and PP's sperm. As QQ says in her statement: "The negative DNA result therefore struck us like a thunderbolt…". However, they were in no doubt that no matter what, they wanted to protect the children and bring them home; they believed the children were "meant for us".

26. The Applicants' immigration lawyers informed the Home Office on 13 February 2026 of the negative DNA test, stating that they were still proceeding with the application for British citizenship for the children. On 5 March 2026, British citizenship was granted.

27. In March or April 2026, the Applicants made arrangements for a second DNA test, to be completed in the UK once the children had arrived here, in order to confirm whether or not the first DNA test was accurate.

28. On 30 March 2026, standard directions in the Parental Order application were made by Theis J on the papers.

29. Due to the conflict in the Middle East, the family's travel arrangements from Sri Lanka to England were delayed. They finally arrived here on 7 May 2026.

30. The next day, on 8 May 2026, a second DNA test was carried out. The results of this were received on 18 May 2026 and confirmed that PP was not the children's biological father.

31. As a result of the second DNA test, the Applicants had no option but to apply for permission to withdraw their application for a Parental Order. Thereafter they applied for a Child Arrangements Order, and an Adoption Order (the former is effectively intended as an interim position pending determination of the latter).

32. On 17 June 2026, a letter was sent to the Applicants by the treating clinician at Wish Fertility after they had been asked to explain the circumstances which led to the embryos being created by both donor eggs and donor sperm. I reproduce the letter in full (subject to anonymisation), with my own emphasis added:

> "RE: Confirmation of Fertility Treatment and Embryo Transfer
> This letter is issued at the request of [PP and QQ] for submission to the relevant authorities in the United Kingdom.
> We hereby confirm that the above-named couple commenced fertility treatment at Wish Fertility Hospital (Pvt) Ltd, No.30, Elhena Road, Maharagama, Sri Lanka, on 25 December 2024.
> Following clinical consultation and evaluation, the couple elected to proceed with an In Vitro Fertilization (IVF) treatment programme utilising donor oocytes (donor eggs). **Initially, the treatment plan included the use of the husband's semen sample for fertilization. However, the couple subsequently executed the requisite informed consent documentation authorizing the use of donor sperm in accordance with applicable clinical and legal requirements.**

> **In accordance with the signed consent and the treatment protocol, both the husband's semen sample and donor sperm were made available to the embryology laboratory during the fertilization and embryo creation process. The embryologists utilized both sperm sources during the embryo development procedure.**
>
> **As Wish Fertility Hospital (Pvt) Ltd does not perform DNA testing or genetic parentage analysis on embryos created through assisted reproductive technologies, we are unable to determine or certify whether any specific embryo was fertilized using the husband's sperm or donor sperm. Accordingly, the Hospital cannot confirm the genetic origin of the sperm used in the creation of any particular embryo.**
>
> In accordance with established confidentiality policies and standard IVF laboratory practices, donor-related information and laboratory allocation records remain confidential and are not routinely disclosed unless required by a specific authorized request in accordance with applicable regulations.
>
> **Based on the available medical records, neither Wish Fertility Hospital (Pvt) Ltd nor the above-mentioned patients are able to confirm whether the embryos created during this treatment cycle originated from the husband's sperm or donor sperm.**
>
> **A total of two (02) embryos were created and subsequently transferred** to the surrogate mother [RR].
>
> **To the best of our knowledge and based on the records available to us, the patients themselves are not aware whether the transferred embryos were created using the husband's sperm or donor sperm, as this information was not specifically communicated to them by the IVF laboratory at the time of embryo creation or transfer.**
>
> We regret any inconvenience caused by our previous letter, which referred to the treatment procedure under which the patients were initially registered. **Upon the patients' request, we conducted a review of the IVF laboratory records and related documentation. Following this review, we confirmed that the embryo creation process was carried out by the IVF laboratory embryologists in accordance with the treatment protocol and the signed consent provided by the patients. The review further confirmed that both the husband's semen sample and donor semen were available for use during the embryo creation process.**
>
> For reference and verification purposes, a copy of the relevant signed consent form is attached to this letter.
>
> This letter is issued at the request of the patients and is based on the medical, laboratory, and administrative records maintained by Wish Fertility Hospital (Pvt) Ltd.
>
> Should any further information or clarification be required, please do not hesitate to contact us."

33. The consent form dated 26 December 2024 was attached to the letter. I acknowledge that I have not heard from Wish Fertility, the treating clinician or anyperson on their behalf. The narrative which I have outlined is based on the evidence of the Applicants and the surrogate. However, with due caution, and conscious as I am that Wish Fertility has not been invited to make formal representations or put in evidence, I note the following apparent discrepancies identified by counsel for the Applicants:

a. This letter is inconsistent with (i) the earlier letter dated 13 January 2026 which stated that the embryos were created using PP's sperm and donor eggs and (ii) a surrogacy pregnancy scan which refers to donor eggs but makes no mention of donor sperm.

b. The Consent Form (dated 26 December 2024) is entitled 'Consent Form for Recipients of Egg Donation', and makes no reference to sperm donation.

c. Contrary to what the letter says, the Applicants have never signed a consent form relating to sperm donation. The suggestion that "**the couple subsequently executed the requisite informed consent documentation authorizing the use of donor sperm"** suggests that a second consent form was signed to that effect, but none has been produced.

d. The Applicants' evidence is that at all times it was made clear that PP's sperm was to be used and that at no time during the processes in the UK, India or Sri Lanka had any issue been raised about the quality of PP's sperm as the letter suggests. There was, therefore, no need to use donor sperm.

e. The suggestion that Wish Fertility mixed PP's sperm and donor sperm, such that they were unable to tell the difference during the embryo creation process, is startling and on the face of it improbable.

f. The letter states that two embryos were created and transferred to the surrogate. Given that both embryos resulted in a successful (twin) pregnancy, and neither twin is related to PP, this suggests that Wish Fertility only in fact created embryos from donor eggs and donor sperm, and that PP's sperm was not in fact used.

38. On 19 June 2026, the surrogate mother signed (in notarised form) (i) the A104 consent to adoption form and (ii) an affidavit, confirming that she unequivocally consented to a joint "lives with" order in the Applicants' favour, the application for permission to apply for an Adoption Order, and a substantive Adoption Order.

39. I turn to each application before me.

Application for Permission to Withdraw the Parental Order Application

40. The application is made on the basis that the Applicants do not fulfil the criteria in section 54 of the HFEA 2008, specifically, section 54(1)(b) which requires that "the gametes of at least one of the applicants were used to bring about the creation of the embryo …". The egg came from a donor. The sperm (contrary to the Applicants' intention and understanding) also came from a donor. Accordingly, the gametes of neither Applicant were used.

41. FPR 2010 29.4 provides (so far as relevant) as follows:

"(1) This rule applies to applications in proceedings –

(a) under Part 7;

(b) under Parts 10 to 14 or under any other Part where the application relates to the welfare or upbringing of a child or;

(c) where either of the parties is a protected party.

(2) Where this rule applies, an application may only be withdrawn with the permission of the court."

42. FPR Part 13 deals with Parental Order applications, and therefore, per FPR 29.4(1)(b), the Court's permission to withdraw is required.

43. Examples in case law where applications to withdraw a Parental Order application have been granted include **Re J (A Child) (Surrogacy: Adoption Order) [2025] EWHC 2960,** where, upon it becoming clear that neither of the intended parents had a biological connection to the child, they were permitted to withdraw their Parental Order application and were given permission to apply for an Adoption Order instead (with Henke J ultimately making an Adoption Order in their favour at the conclusion of those proceedings).

44. In my judgment, the Applicants are blameless. Neither of them is biologically related to the children, as a result of the actions of the clinic which used donor sperm rather than the sperm of PP. Whether this was inadvertent error, perhaps as a result of poor internal processes, or was intentionally done (for whatever reason) is not clear. The fact that the clinic's explanation for what happened is inconsistent has added to the pain of the Applicants.

45. Whatever the sequence of events, the Applicants do not comply with s54(1)(b). The Parental Order process cannot continue. I therefore grant leave to them to withdraw the application.

Application for Permission to Apply for Adoption Order

46. The application is made under s42(6) of the Adoption and Children Act 2002 ('ACA 2002').

47. S42 provides as follows:

42 Child to live with adopters before application

(1) An application for an adoption order may not be made unless—

(a) if subsection (2) applies, the condition in that subsection is met,

(b) if that subsection does not apply, the condition in whichever is applicable of subsections (3) to (5) applies.

(2) If—

(a) the child was placed for adoption with the applicant or applicants by an adoption agency or in pursuance of an order of the High Court, or

(b) the applicant is a parent of the child,

the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them at all times during the period of ten weeks preceding the application.

(3) If the applicant or one of the applicants is the partner of a parent of the child, the condition is that the child must have had his home with the applicant or, as the case may be, applicants at all times during the period of six months preceding the application.

(4) If the applicants are local authority foster parents, the condition is that the child must have had his home with the applicants at all times during the period of one year preceding the application.

(5) In any other case, the condition is that the child must have had his home with the applicant or, in the case of an application by a couple, with one or both of them for not less than three years (whether continuous or not) during the period of five years preceding the application.

(6) But subsections (4) and (5) do not prevent an application being made if the court gives leave to make it.

(7) An adoption order may not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant or, in the case of an application by a couple, both of them together in the home environment have been given—

(a) where the child was placed for adoption with the applicant or applicants by an adoption agency, to that agency, (b) in any other case, to the local authority within whose area the home is.

(8) In this section and sections 43 and 44(1)—

(a) references to an adoption agency include a Scottish or Northern Irish adoption agency,

(b) references to a child placed for adoption by an adoption agency are to be read accordingly."

48. When determining a permission application under s.42(6), the child's welfare is not the paramount consideration and the Court should consider whether the proposed application has a "real prospect of success" as one of the factors when exercising its discretion: **M v Warwickshire County Council [2008] 1 FLR 1093 CA** at paras 26-27. The **Warwickshire** case concerned leave to apply for revocation of a placement order, and is therefore not directly applicable on the facts, but it is clear that Thorpe LJ intended "real prospect of success|" to be a useful guide in children proceedings generally even if it is not, as he said at para 27, "written in stone". In my judgment, the discretion is broad, and not circumscribed by statute or rules, but (i) the welfare of the child, if not paramount, is a relevant consideration and (ii) the prospect of success is also a relevant consideration. Other factors in any case will no doubt be relevant to a lesser or greater degree in the overall balancing exercise.

49. In this case, the children have lived with the Applicants since birth. It was always intended that they would be brought up by the Applicants. The surrogate has given consent to the applications, and relinquished any legal rights. From everything I have read and heard, the Applicants are giving the children outstanding care. They are the de facto parents of these young children who need permanence and stability. Adoption would confer legal parentage and parental responsibility. Lesser alternatives (child arrangements orders or special guardianship, for example) do not carry the same legal parentage rights. In my judgment, the application for an Adoption Order has real prospects of success and is in the interests of the children, and I will grant the Applicants leave to apply.

50. The Applicants will need to give at least three months notice of their intention to apply for an Adoption Order to the relevant Local Authority (s44(3) of the ACA 2002), after which period they will be able to make their substantive application for an Adoption Order.

Application for a Child Arrangements Order: Joint 'Lives With'

51. The intention behind the application is to confirm the current living arrangements of the children with the Applicants, and to confer parental responsibility on the Applicants, pending determination of the adoption application. Without a child arrangements order, the only person with parental responsibility is the surrogate mother who has expressly renounced her parental rights in favour of the Applicants.

52. Section 10(5)(c) the Children Act 1989 ('CA 1989') is as follows:

> "The following persons are entitled to apply for a child arrangements order with respect to a child –
>
> (c) any person who—
>
> (i) in any case where a child arrangements order in force with respect to the child regulates arrangements relating to with whom the child is to live or when the child is to live with any person, has the consent of each of the persons named in the order as a person with whom the child is to live;**]**
>
> (ii) in any case where the child is in the care of a local authority, has the consent of that authority; or
>
> (iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.

53. Given that the surrogate mother (who has parental responsibility) has given written consent, with a full appreciation of the consequences of her consent, I am satisfied that the Applicants are entitled to apply for a child arrangements order under c(iii). I am also satisfied that it is appropriate to make a child arrangements order so as to provide the Applicants with parental responsibility pending determination of their adoption application (s12(2) of the Children Act 1989). Parental responsibility will be held alongside that of the surrogate mother. Such an order is clearly in the children's best interests. They have lived with the Applicants since birth and will continue to do so. The Applicants need to be able to make decisions relating to the children's general welfare issues. The surrogate mother does not wish to exercise parental responsibility for the children, has never cared for them, and lives permanently in Sri Lanka. The children need their carers in this jurisdiction to hold parental responsibility for them and to be recognised as the people with whom these children live. In reaching this conclusion, I have reminded myself of the welfare checklist and the governing principle that the welfare of the children is paramount.

Conclusions

54. I will (i) give leave to withdraw the Parental Order application, (ii) give leave to apply for an Adoption Order and (iii) make a joint "lives with" order.