



Neutral Citation Number: [2022] EWFC 157 (Fam)

Case No: FD21F00068

**IN THE FAMILY COURT**  
**Sitting at the Royal Courts of Justice**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/02/2022

**Before :**

**MRS JUSTICE THEIS**

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**Between:**

**Y**

**Applicant**

**- and -**

**Z**

**Respondent**

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**Ms Deirdre Fottrell Q.C & Ms Melissa Elsworth (instructed by Goodman Ray) for the Applicant, 1<sup>st</sup> & 2<sup>nd</sup> Respondents**

**Mr Paul Burrows instructed by CARE Bath attended the Hearing**

Hearing date: 27<sup>th</sup> January 2022

Judgment: 18 February 2022

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 18<sup>th</sup> February 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**MRS JUSTICE THEIS DBE**

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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 will be a contempt of court.

**Mrs Justice Theis DBE :**

**Introduction**

1. This matter concerns an application for a Declaration of Parentage pursuant to s 55A Family Law Act 1986 relating to X, now aged 3 months. The applicant is Y, and the respondent Z, X's mother. Y's application is supported by Z. Y and Z will respectively be referred to as the 'father' and 'mother'.
2. X was born following IVF treatment undertaken at the CARE Fertility Clinic (hereafter referred to as 'the Clinic').
3. The orders sought are supported by the Clinic who attended this hearing and sought to assist in any way they could. They filed a detailed statement by Dr Gadd, the person responsible to the Human Fertilisation and Embryology Authority (HFEA). The HFEA, Attorney General and the Secretary of State for Health were each given notice of this application and stated they did not wish to intervene.
4. The circumstances of this application are similar to those considered by the former President, Sir James Munby, in *A and others v HFEA* [2015] EWHC 2606 (Fam) and the cases that followed. They all involved situations where the status of the legal parent was in doubt due to administrative errors made by clinic staff during fertility treatment. In each case, the court took a purposive and constructive interpretation of the Human Fertilisation and Embryology Act 2008 (HFEA 2008) to ensure the children and parents involved in these cases obtained orders that gave them the legal status that had been intended.
5. The situation in this case is not one that has arisen before. For reasons which will be set out below, neither the father or mother completed the PP or WP forms, which are the prescribed forms that secure the legal parent status relating to children born following fertility treatment. There is an internal consent (IC) form that has been signed by both parents, but unlike the IC forms in the other cases this form does not contain a parenthood notice. The issue that I have to consider is whether the written documents that were signed meet the requirements for the parenthood conditions under the HFEA 2008.
6. The court has had the enormous benefit of a detailed skeleton argument on behalf of the father prepared by Ms Fottrell QC and Ms Elsworth, both specialists in this area, supported by their instructing solicitor, Ms Dally, who is equally expert in this field. Having heard oral submissions on 27 January 2022 the court announced its decision to make the declaration sought. This judgment sets out the reasons for that order.
7. Bearing in mind the intolerable stress and anxieties these cases cause consideration may need be given to restoring the declaration that had previously been in IC Forms. I take on board the points made by Mr Burrows, on behalf of the Clinic, including that the intention behind removing the declaration from the IC Form was to encourage compliance with signing the PP and WP Forms. However, it may still be sensible to consider the declaration being restored to these forms as a safety net, to deal with situations such as arose in this case caused by human error, which remains a risk however robust the system may be. Mr Burrows outlined the constructive and positive steps the Clinic has taken since this incident, including a flagging system when a

change is noted on the system, which triggers a full check and the revised guidance the Clinic now operates under. In this case, if the revised system was in place, the change in marital status would have highlighted the forms WP and PP needed to be completed. In addition, at paragraph 20 below the applicant's skeleton argument outlines how some of the wording in the PBR form could be improved to make the position clearer.

### **Relevant Background**

8. X was conceived through IVF treatment at the Clinic using donor sperm. Both the mother and father had been married before, X is the only child conceived during their relationship. They each have children from their previous marriages.
9. The history of their treatment is derived from the case files held by the Clinic.
10. The mother contacted the Clinic on 12 October 2020 to arrange an appointment for her and the father. The mother had used the Clinic previously to conceive her older child. The information given by the mother was entered onto the Clinic's system. The mother said the father was still married, albeit separated. As a consequence, his marital status was entered into the Clinic's system as 'married'. The Clinic accepted this was an error.
11. Both parents attended a consultation on 20 October 2020. It was agreed the father would undergo a surgical procedure to attempt to retrieve sperm for analysis.
12. On 22 October 2020 both parents completed and signed a document entitled 'Contract for Freezing and Storage'. Both parents ticked the box which states: "We are progressing to treatment as a couple or as co-parents" [emphasis added].
13. Both parents also completed separate WT forms giving their respective consent to treatment and storage. The father completed his on 22 October 2020 and the mother hers on 6 December 2020. Within his form the father ticked 'yes' to the following:

*"Consent to birth registration*

*Complete this part of section six if you consented to your sperm, or embryos created outside the body with your sperm, being used in your partner's treatment after your death. If you have given your consent to your sperm or embryos (to be created outside the body with your sperm) being used after your death, you may also wish to consent to being registered as the legal father of any child that is born as a result of your partner's treatment.*

*6.5 Do you consent to being registered as the legal father of any child born as a result of your partner's treatment after your death?*

*By ticking yes, you consent to the following:*

- *I consent to my name, place of birth and occupation being entered on the register of births as the legal father of any child born from my partner's treatment. This register is kept under the Births and Deaths Registration Act 1953, or the Births and Deaths Registration (Northern Ireland) Order 1976, or the Registration of Births, Deaths and Marriages (Scotland) Act 1965.*

*• I also consent to information about my or my partner's treatment being disclosed to my partner and one of the following registrars: - the Registrar General for England and Wales - the Registrar General for Scotland - the Registrar for Northern Ireland.*

*Please note that being recorded in the register of births as the legal father of a child born from your partner's treatment does not transfer any inheritance or other legal rights to the child."*

14. On 25 October 2020 further forms were signed by the parents. Both signed their own separate CD forms entitled 'Your consent to disclosing identifying information' and the father signed a GS form entitled 'Your consent to the storage of your eggs or sperm'.
15. The planned procedure took place on 6 November 2020, unfortunately the sperm sample retrieved was not suitable for treatment or freezing.
16. At a review appointment on 9 November 2020, the option of donor sperm was discussed, the parents decided they wished to pursue this option, with treatment starting in early 2021.
17. Both parents completed and signed separate 'Welfare of the child: patient history form' on 11 November 2020.
18. On 3 December 2020 the parents attended a telephone counselling appointment with the Clinic's senior counsellor, to discuss the implications of using donor sperm. This included discussing legal parenthood and both parents agreed the father being treated as the legal father of any child born as a result of their treatment.
19. On 4 December 2020 the Clinic issued an HFEA PBR form entitled 'Your consent to being registered as the legal parent in the event of your death'. The father completed and signed this form on 6 December 2020. The Clinic accepts that this form should not have been sent to the father, as the parents were not married and that he should have been sent a PP Form. In her statement Dr Gadd accepts that this error came about as the Clinic's computer system had the father marked as 'married' and the assumption was the parents were married to each other.
20. Reliance is placed on a number of parts of the PBR form, as set out in the skeleton argument:

*One of the warnings at the beginning of the form has been drafted in a deficient way: "If you are using donor sperm but are not married or in a civil partnership, you should complete the 'Your consent to being the legal parent' (PP) form and not this form." A clearer way of expressing this would be to include the following: "If you are using donor sperm but are not married or in a civil partnership [to/with your treatment partner], you should complete the 'Your consent to being the legal parent' (PP) form and not this form."*

*Para.2.1 states as follows: "Do you consent to embryos created before your death being transferred to your partner after your death, and to being registered as the legal parent of any child born from your partner's treatment after your death (ie, posthumous birth registration)? By ticking yes, you consent to the following:*

• *I consent to my name, place of birth and occupation being entered on the register of births as the legal father of any child born from my partner's treatment. This register is kept under the Births and Deaths Registration Act 1953, or the Births and Deaths Registration (Northern Ireland) Order 1976, or the Registration of Births, Deaths and Marriages (Scotland) Act 1965.*

• *I also consent to information about my or my partner's treatment being disclosed to my partner and one of the following registrars: - the Registrar General for England and Wales - the Registrar General for Scotland - the Registrar for Northern Ireland. Please note that being recorded in the register of births as the legal father of a child born from your partner's treatment does not transfer any inheritance or other legal rights to the child."*

21. On 8 December 2020 a member of the Clinic nursing team checked and signed off the PBR form. The fact the parents were not married to each other was not picked up at that point.
22. Following a phone call to the Clinic by the mother about the treatment timetable, an electronic registration form was sent to both parents on 16 December 2020 using the Clinic's patient portal system. Both parents completed the form and stated on this form they were 'not married'. Their marital status was updated on the Clinic electronic system automatically overnight, so the Clinic records recorded them as 'not married'. The registration form the parents completed had the following notice above the box relating to marital status '*IMPORTANT: Your answer to the following questions are CRITICAL to determine the legal parenthood of your future child*'.
23. A travel questionnaire was also completed by both parents on 16 December 2020. They both ticked 'yes' to the question '*we are being seen in clinic (or donating embryos) as a couple or as co-parents*' [emphasis added].
24. There is a Clinic record of the mother attending on 16 December 2020 to discuss various aspects of the treatment and the note records her taking a video of what was being said so she can show her '*husband*', illustrating that there was still a misunderstanding about the parents' marital status.
25. On 5 and 6 January 2021 the parents signed the '*Consent to Treatment*' form (the IC form) this form required them to confirm

*'a) I am progressing treatment as an individual*

*b) We are progressing to treatment as a couple or co-parents'*

The parents' ticked the box at b) to confirm they were progressing treatment as a couple or co-parents.

26. On 6 January 2021, prior to the treatment cycle starting, a pre-treatment checklist was completed by a member of the nursing team. As Dr Gadd noted in her statement, "*The purpose of this checking process is to identify any anomalies/errors and to ensure any errors in/incomplete/missing consent forms are rectified before treatment starts. I would therefore have expected the discrepancies regarding consent forms to have been picked up on during the checking process. Unfortunately, however, the*

*checking process was carried out incorrectly and the errors were not picked up on. The member of the nursing team carrying out the check failed to appreciate/note that the Applicant and Respondent had marked their marital status as not married on the electronic registration form and therefore that PP and WP forms would be required in order for the Applicant to be the legal parent of any child/children resulting from the planned fertility treatment.” As a result of this, the parents were not made aware, and therefore did not complete, Forms PP and WP before treatment.*

27. Egg retrieval took place on 19 January 2021, the embryo transfer on 24 January 2021 and X was born in October.
28. The Clinic did not discover the fact that Forms PP and WP had not been completed until 11 September 2021, when undertaking a routine audit of legal parentage forms. The parents were notified of this error by the Clinic on 15 September 2021. The parent’s statements set out the distress and anxiety caused to them by this development, as it was shortly before X’s birth.
29. X’s birth was registered naming Z as his mother with no father being named.

### **The Legal Framework**

30. The key statutory provision the court is concerned with is s 37 HFEA 2008 which provides [emphasis added]

#### ***37 The agreed fatherhood conditions***

*(1) The agreed fatherhood conditions referred to in section 36(b) are met in relation to a man (“M”) in relation to treatment provided to W under a licence if, but only if,*

—

*(a) M has given **the person responsible a notice stating that he consents to being treated as the father of any child resulting from treatment provided to W under the licence,***

***(b) W has given the person responsible a notice stating that she consents to M being so treated,***

*(c) neither M nor W has, since giving notice under paragraph (a) or (b), given the person responsible notice of the withdrawal of M’s or W’s consent to M being so treated,*

*(d) W has not, since the giving of the notice under paragraph (b), given the person responsible—*

*(i) a further notice under that paragraph stating that she consents to another man being treated as the father of any resulting child, or*

*(ii) a notice under section 44(1)(b) stating that she consents to a woman being treated as a parent of any resulting child, and*

*(e) W and M are not within prohibited degrees of relationship in relation to each other.*

**(2) A notice under subsection (1)(a), (b) or (c) must be in writing and must be signed by the person giving it.**

*(3) A notice under subsection (1)(a), (b) or (c) by a person ("S") who is unable to sign because of illness, injury or physical disability is to be taken to comply with the requirement of subsection (2) as to signature if it is signed at the direction of S, in the presence of S and in the presence of at least one witness who attests the signature*

31. A number of cases have considered situations where the notice requirements under s37 have not been complied with (see *X v Y (St Bartholomew's Hospital Centre for Reproductive Medicine Intervening)* [2015] EWFC 13) and *In the matter of HFEA 2008 (Cases A,B,C,D,E,F,G and H Declaration of Parentage)*[2015] EWHC 2602 (Fam)). In each case (save one which was adjourned) the court made Declarations of Parentage by finding either that a missing Form PP/WP had been completed/signed but later mislaid; rectifying or correcting mistakes within Forms PP/WP; different forms were capable of complying with the requirements of s37.

32. Dealing with the requirements of any notice the former President stated *In the matter of HFEA 2008 (ibid)* the following:

*At paragraph 53 '...What ss 37(1)(b) and 44(1)(b) require is a 'notice in writing' by W, 'stating that she consents to [M or P as the case may be] being ... treated [as 'the father' or 'a parent', as the case may be]'. That statutory language is tracked in the Form WP formula, 'I consent to my partner ... being the legal parent'. These words do not appear anywhere in either the Barts Form IC or the MFS Form IC. But this, in my judgment, is not fatal. The Form IC is, as we have seen, a single composite document which has accordingly to be read and construed as a whole, the first section or sections providing for W's consent to the various stages of the IVF process and the final page providing for the signed consent of W's partner. If W is consenting to the treatment and, in the same document, W's partner is consenting to becoming the parent of the child resulting from that treatment, it seems to me to follow by necessary implication, even if not by express words, that W is consenting to her partner being the other parent....'*

*At paragraph 57 ' Given the statutory framework, what it provides and, equally significant, what it does not provide, I do not see how a mere failure to comply with the HFEA's direction that Form WP and Form PP 'must' be used can, of itself, invalidate what would otherwise be a consent valid for the purposes of s 37 or s 44. These sections do not prescribe a specific form. What is required is a 'notice' and that is not defined, although I would agree with Miss Broadfoot that, given the context, what is required is a document of some formality. The argument must be that it is the combined operation of s 12(1)(d) of the 1990 Act, which in effect elevates this requirement into a condition of the licence, coupled with the words 'treatment provided ... under the licence' in ss 37(1)(a) and 44(1)(a) (and the corresponding words 'being so treated' in ss 37(1)(b) and 44(1)(b)), that invalidates what would otherwise be a consent valid for the purposes of s 37 or s 44.'*

*At paragraph 59 'There is one final consideration. What is meant by a direction saying that a clinic 'must' use the Form WP and the Form PP? Suppose that what are completed are copies of Form WP and Form PP which, in their operative parts, follow to the last dot and comma the text of the required forms, but which omit all the*

*explanatory text which is included in those required forms. Can Parliament really have intended that to be fatal? Surely not. So, surely, what one is looking for is compliance with the substance, not slavish adherence to a form. Is parenthood to be denied by the triumph of form over substance? In my judgment, not.'*

And finally at paragraph 61 *'In my judgment, failure to use a Form WP or a Form PP does not invalidate a consent which would otherwise comply with ss 37 and 44.'*

33. The content of IC forms were considered *In the matter of the Human Fertilisation and Embryology Act 2008 Case I [2016] EWHC 791* and *In the matter of the Human and Fertilisation and Embryology Act (Case M) [2016] EWHC 1572 (Fam)*. In the latter case, Sir James Munby set out at paragraph 14 *'...I am satisfied that the Form IC signed by X and Y is, as a matter of content and construction, apt to operate both as a Form PP and as a Form WP, complying with the requirements of both section 37(1)(a) and section 37(1)(b). 15. The second issue: In In re A, paras 54, 61, I concluded that a properly completed Form IC which, as a matter of content and construction, is apt to operate both as a Form PP and as a Form WP and which complies with the requirements of sections 37(1)(a) and 37(1)(b), is not precluded by any of the provisions of the statutory scheme from operating as consent for the purposes of section 37 of the 2008 Act; and that failure to use a Form WP or a Form PP does not invalidate a consent which would otherwise comply with section 37.'*
34. *In the matter of the Human Fertilisation and Embryology Act 2008 [2017] EWHC 784* Sir James Munby observed at paragraph 10 *'....The document [Form IC] has to be read as a whole and, read as a whole, it is clear that both parties were signing a document which contemplated that X would be a parent. If X was not to be a parent....'*
35. Section 3 Human Rights Act 1998 provides as follows:
  - (1) *So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.*
  - (2) *This section— (a) applies to primary legislation and subordinate legislation whenever enacted; (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility*
36. Under s 3 HRA 1998 the Court is required *'so far as it is possible to do so'* to read legislation to 'give effect' to it in the way that is compatible with the Convention. The leading authority is *Ghaidan v Godin-Mendoza* [2004] UKHL 30 which sets out the applicable principles confirming the s 3 exercise in these applications is driven by a purposive construction and the court should be willing to depart from a literalist interpretation of language. Lord Steyn observed at paragraph 41 that there should not be *'an excessive concentration on the linguistic features of the particular statute'*.
37. The use of s 3 requires the court to consider what is the scope of the Convention right(s), is there an apparent incompatibility between the Convention and the



legislative provision and can the court ‘read and give effect’ to the legislation in a Convention compliant way so far as it is possible to do so.

38. As summarised in Ms Fottrell’s skeleton argument, in the present context article 8 includes

*(a) The right of a couple to conceive a child and to make use of medically assisted procreation for that purpose, as such a choice is a form of expression of private and family life (SH and Others v Austria (para.82); Knecht v Romania (para.54)).*

*(b) Respect for private life requires that everyone should be able to establish details of their identity as individual human beings, which includes the legal parent-child relationship (Menesson v France (para.96)). In Mennesson, the ECtHR stated that Article 8 protects children born via surrogacy outside of the member state in question, whose legal parents according to the foreign state could not register as such under domestic law.*

*(c) The right to respect for family life of the family unit which includes legal protection and recognition of de facto ties.*

*(d) The individual right to respect of the family and private life of each member of the unit.*

*(e) The child’s right to identity which includes proper and effective legal ties between him and his father [see Mikulic v Croatia [2006 CITE]*

39. There have been a number of cases that have deployed the purposive construction of legislation to assist in the interpretation of a statute. This has been particularly so in cases involving identity rights of children and the establishment of legal ties between parents and children. In *A v P* [2012] 2 FLR 145 this court read down the provisions of s 54 (4) and (5) HFEA 2008 to enable the court to make a parental order in circumstances where one of the intended parents had died after the application had been issued, but before an order could be made. That case emphasised the transformative effect of a parental order on the child. No other order could give recognition to the child’s status with the intended parents, it would protect and secure the child’s identity rights. In *Re X (Parental Order: Death of Intended Parent Prior to Birth)* [2020] 2 FLR 1326 the court was able to make a parental order where the intended father had died before the child was born. These decisions, along with that of the former President in *Re X (Parental order: Time limit)* [2015] 1 FLR 349, confirmed the positive obligation under article 8 to ensure that rights are accessibly promoted and for the protection of the rights to be ‘real and effective rather than theoretical and illusory’ (see *Marckx v Belgium (1979 – 80) 2 EHRR 330 at paragraph 31*). What these cases did was to permit the court to interpret legislation in a purposive way which maintained the objects and purpose of the legislation at the same time as giving effect to Convention rights.

## Submissions

40. In their written and oral submissions, Ms Fottrell and Ms Elsworth mapped out a number of ways they submit the court could make the Declaration of Parentage.

41. First, they submit the court can read the IC Form as a whole in the context of the other documents. They rely on the terms of the IC Form that contains the joint agreement of the parties that they have both signed that they are co-parents, confirming that each consents to the father being the legal parent of any resulting child. This document can be read with the signed posthumous consent form (PBR) and the counselling notes.
42. Second, to read the PBR form in such a way as having the notice which is otherwise found in the PP document. The primary purpose of the form was for the father to give notice that he agreed to be the legal parent of any child following his partner's treatment. It must follow that he did not intend that he would only acquire legal parentage of a child born after his death. This form gives notice, it is completed before treatment and is signed. To go down this route would require the court to read it as applying to children born during the life of the husband as well as on his death.
43. To go down this route they submit the court will need to look at the context of the other forms completed and the counselling undertaken by the father. The father understood that he was providing his consent to treatment and to acquiring legal parenthood. The Clinic understood the latter was not required. When read as a whole the forms and the counselling note make clear
  - (1) The father understood he would be the legal parent and signed the PBR form intending that to be the case.
  - (2) There was no PP form provided but all other forms were directed to ensuring consent to treatment and meeting the legal requirements to acquire parentage.
  - (3) By the time of the counselling session that took place on 3 December 2020 the necessity of obtaining notice to legal parentage was known to the Clinic and the parties. That notice was specifically canvassed and obtained by the counsellor as recorded in the notes. All three individuals involved in that counselling session were left in no doubt that the parents consented to the father acquiring legal parentage.
44. In these circumstances they submit it would be perverse to conclude the father had not met the fatherhood conditions.
45. The third route they set out is that the IC Form can, in the circumstances of this case, be read to satisfy the requirements in s 37 HFEA 2008 in respect of both parties. They rely on the following matters:
  - (1) It makes no sense for the father to agree to being treated as the child's father on his death but not also during his life.
  - (2) Both parents completed and co-signed a consent to treatment form selecting that they were progressing the treatment as co-parents.
  - (3) The effect of the other forms and documents make clear the parents were embarking on this treatment together, intended to co-parent any resulting child which is supported by the welfare forms they completed and signed.
  - (4) The forms were signed by both parents signalling their intention that the father would be a legal parent. They were often signed at the same time and they

attended appointments jointly, when they were able to.

(5) The counselling they both received prior to treatment was to discuss legal parentage and the implications for the father of this.

46. As set out in the skeleton argument '*Central to the court's determination in this case is [X's] fundamental right to have his identity secured and safeguarded. The use of s3 in this case in order to interpret s37 in light of the ECHR is entirely possible and proportionate, given the significant implications for [X's] and the parents' right to family life if a Declaration of Parentage is not made. There are no other orders which would be appropriate in the circumstances of this case in order to secure legal parentage for [the father].*'

### **Discussion and decision**

47. This case is a timely reminder of the critical importance for Clinics that undertake fertility treatment to ensure their records relating to those who seek treatment are accurately recorded, particularly the status of any relationship of those seeking treatment together, and that there are adequate and robust systems in place to check the position effectively at important stages of the process.

48. In this case there appears to have been human error at critical stages of the process with incorrect recordings as to the parents' marital status, which meant the correct forms to secure legal parentage, as was clearly intended, were not completed.

49. The critical stages were the incorrect entry in the records stating that the parents were married when the mother made the initial contact. This resulted in the erroneous issue of the PBR form, only required if they were married, which was checked and signed off. The pre-treatment checklist marked that the WP/PP forms were not required. The Clinic in Dr Gadd's statement fully accept that the parents intended the father to be a legal parent. This was discussed at the counselling session on 3 December 2020, as recorded in the notes.

50. To their credit the Clinic have accepted complete responsibility for this situation and have fully supported the steps taken by the parents to seek orders securing what had been intended, namely that the father is a legal parent of X. They have attended this hearing and sought to assist where they could. The parents, to their credit, accept this situation has been caused by human error.

51. What is clear from the evidence is the distress and anxiety caused to the parents when they were informed by the Clinic of the error. As they describe in their statements, it came as an enormous shock to them both to learn of this just prior to X's birth. It caused uncertainty when his birth was registered and impacted on them in a fundamental way. The powerful evidence in their statements describe how the uncertainty regarding the parental status of the father affected them, in particular the father's health. The extent of the anxiety they outline underscores the importance of identity and the consequences if that is thrown into doubt, not only on the parents but also the wider family.

52. Having considered the routes set out with admirable clarity by Ms Fottrell and Ms Elsworth, I am satisfied the court can follow the first route outlined by them.

53. I agree the IC Form signed by both parents on 5 and 6 January 2021 contains the joint agreement of the parties that they are ‘co-parents’. The cases make clear that the notice under s 37 does not have to be in any particular form providing it is in writing, and conveys the necessary consent as required in s 37. In my judgment the IC form in this case does that.
54. The content of the IC form is entirely consistent with all the other information available to the court, including the PBR form and the record of the counselling. As Ms Fottrell submits, it makes no sense to sign a form agreeing to be treated as the legal parent of a child born after your death if you did not intend to be the child’s parent during your life. The PBR form specifically sets out who should complete the form which includes stating *‘you wish to be registered as the legal parents to any child born if you die before embryos (that were created before your death) are transferred to your partner’*. The counselling notes are clear in that they tick all the boxes that relate to the implications post the HFEA 2008, recording that those issues were discussed. This supports the IC Form signed subsequently, where the parents tick the part that records them progressing to treatment as a couple or as co-parents.
55. Having accepted those submissions, it is not necessary to consider the other grounds advocated on behalf of the father.