



Neutral Citation Number: [2021] EWHC 1943 (Fam)

Case No: PR20P00303

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

H

Applicant

- and -

R

First Respondent

-and-

An Adoption Agency

Second Respondent

-and-

The Attorney General for England and Wales

Intervenor

The Applicant appeared in person

The First Respondent did not appear and was not represented

Ms Lorraine Cavanagh QC and Ms Eleanor Keehan (instructed by the Adoption Agency)

for the Second Respondent

Mr Edward Devereux QC (instructed by The Government Legal Department) for the

Intervenor

Hearing dates: 8 June 2021

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.00pm on 13 July 2021.

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MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. On 29 September 2020, I handed down my first judgment in this matter, in which I decided that the High Court has jurisdiction pursuant to s 55A(1) of the Family Law Act 1986 to grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child under the Part 1 of the Adoption and Children Act 2002. As I noted in my first judgment, that conclusion is, of course, entirely separate from the question of whether such a declaration should be made following the adoption of the child. My first judgment was published as *H v An Adoption Agency (Declaration of Parentage Following Adoption)* [2020] EWFC 74. This judgment should be read with my first judgment in this matter.
2. Mr H applies for a declaration of parentage in respect of an adopted child formerly known as T (who, for the sake of convenience, I shall refer to in this judgment as T). Mr H is the birth father of T as confirmed by the results of a DNA test dated 16 November 2015. In my first judgment, I further determined that, whilst s 55A(5) of the Family Law Act 1986 permits a preliminary hearing on the question of whether the court should refuse to hear such an application on the grounds that it is not in the child's best interests to determine the application, it was appropriate in this case to list Mr H's application for a declaration of parentage for a final hearing. Mr H appears before the court in person and has provided the court with a Position Statement and has made short oral submissions at the final hearing.
3. The respondents to Mr H's application are R, the birth mother of T, and [named local authority], the adoption agency that placed T for adoption. R does not appear before the court and is not represented. The adoption agency, which opposes Mr H's application, is again represented by Ms Lorraine Cavanagh, Queen's Counsel and Ms Eleanor Keehan of counsel. Ms Cavanagh and Ms Keehan have once more provided the court with a meticulously researched Skeleton Argument and Ms Cavanagh has made detailed oral submissions at this hearing. The adoptive parents of T are aware of this application but do not wish to take part in these proceedings. The views of the adoptive parents have however, been conveyed to the court in comprehensive terms by the adoption agency.
4. At the conclusion of the last hearing, and in circumstances where at the final hearing the primary issue before the court is one of public policy pursuant to s. 58(1) of the Family Law Act 1986, the court repeated an earlier invitation to the Attorney General to intervene in these proceedings. The Attorney General accepted that invitation and is represented by Mr Edward Devereux of Queen's Counsel. Mr Devereux has also provided a comprehensive and helpful Skelton Argument by way of assistance to the court and made oral submissions in support of that document.
5. Given the issues involved in this complex matter, and having heard submissions from the parties and the intervenor, I reserved judgment. I now set out my decision and the reasons for reaching that decision.

BACKGROUND

6. The factual background to Mr H's application is set out in my first judgment and does not require to be repeated in detail here. The following matters however, require re-stating.
7. T became the subject of care proceedings under Part IV of the Children Act 1989, and placement proceedings under Part 1 of the Adoption and Children Act 2002, in 2015. Mr H is not named on T's birth certificate. However, following the DNA paternity test dated 16 November 2015, to which I have referred and which indicated that Mr H is the birth father of T, he was made a party to those care proceedings. On 6 April 2016 District Judge Greensmith (as he then was) made a final care order and placement order in respect of T. Mr H sought permission to appeal the placement order. On 26 July 2016 His Honour Judge Duggan refused Mr H permission to appeal. For the reasons set out in my previous judgment, I am satisfied that no order was made during the care proceedings, or subsequently, directing the local authority to cause T's birth certificate to be amended to record Mr H as her birth father, whether by declaration of parentage pursuant to s 55A(1) of the Family Law Act 1986 or otherwise.
8. Following refusal of permission to appeal, T was placed for adoption and an application was made for an adoption order by the then prospective adopters. Mr H applied for permission to oppose the making of the adoption order. That application was refused by District Judge Jones on 28 February 2017. T was made the subject of an adoption order pursuant to s 46 of the Adoption and Children Act 2002 on 12 April 2017. On 27 June 2019, and out of time, Mr H applied for permission to appeal against the refusal of permission to oppose the making of the adoption order. On 17 July 2019 permission to appeal was refused by His Honour Judge Booth.
9. Mr H issued his application for a declaration of parentage in respect of T on 2 March 2020. The C63 application form made no mention of the fact that T had been made the subject of an adoption order on 12 April 2017. As noted, on 29 September 2020 I decided that the High Court does have jurisdiction pursuant to s 55A(1) of the Family Law Act 1986 to grant to a birth parent in the position of Mr H a declaration of parentage in respect of a child following the lawful adoption of that child under the Part 1 of the Adoption and Children Act 2002.
10. During argument in September on the preliminary issue of jurisdiction, a number of matters became apparent that bear on the issue of whether, having determined that it has jurisdiction, the court should make the declaration of parentage sought. In particular:
 - i) It was apparent that when the rules set out in Part 8 of the FPR 2010 were drafted it may not have been appreciated that it is open to a birth parent to apply for a declaration of parentage under s 55A(1) of the 1986 Act with respect to a child who has been made the subject of an adoption order.
 - ii) By FPR r 8.22, were the court to make a declaration of parentage in favour of Mr H that declaration must, pursuant to FPR r 8.22(1), contain T's *adoptive* name, which at present is confidential to the adoptive parents.

- iii) It was not clear on current authority whether the court has power to disapply the provisions of FPR r 8.22(1).
 - iv) Pursuant to FPR r 8.22(2), a copy of the declaration of parentage would have to be sent to the Registrar General within 21 days beginning with the date the declaration was made for the Registrar General to consider whether re-registration should take place. It was not clear whether the Registrar General would accept an order in respect of which the court had disapplied the requirement under FPR r 8.22(1) that the declaration of parentage contain T's *adoptive* name, if it had the power to do so.
 - v) Whilst, pursuant paragraph 5 of Schedule 1 of the Adoption and Children Act 2002, an entry in the registers of live births will be marked with the words 'adopted' when the birth is re-registered following adoption, there is no equivalent duty where re-registration has occurred under sections 10A or 14A of the Births and Deaths Registration Act 1953. There is accordingly no statutory provisions pursuant to which the word "adopted" would be added to T's name in the birth register following re-registration consequent upon the granting of a declaration of parentage pursuant to s. 55A of the Family Law Act 1986.
 - vi) Whilst the court retains control over who is respondent to any proceedings pursuant to r. 1.4(2)(b) FPR 2010, as matters stand the terms of FPR r. 8.20(1) means that adoptive parents are automatic respondents and the Form 63 application for a declaration of parentage contains no provision for indicating the child whose parentage is in issue has been adopted.
 - vii) Within the foregoing context, when considering the merits of Mr H's application, and in particular the application of the public policy provisions of s. 58(1) of the Family Law Act 1986, the court would need to consider whether it had the power to disapply FPR r 8.22(1) to avoid T's adoptive name appearing on the declaration of parentage having regard to the need to maintain the confidentiality of the adoptive placement.
 - viii) Further, and again within the foregoing context, the court would need to understand whether the Registrar General would accept a declaration in respect of which the court has disapplied FPR r 8.22(1), if it had the power to do so, and whether, if the Registrar General exercised his discretion to re-register the birth following the granting of a declaration of parentage, the Registrar General would also, as a matter of practice rather than law, be willing to add the word "Adopted" upon re-registration following a declaration of parentage in favour of a birth parent in circumstances where the child who is the subject of the declaration has been made the subject of an adoption order by the court.
11. Within this context, upon handing down my first judgment in this matter, I directed that adoption agency file and serve a statement detailing, *inter alia*, the outcome of its enquiries of the Registrar General on the questions set out above. The adoption agency contacted the Registrar General on 4 December 2020 and provided a letter of instruction containing the questions for consideration and the Registrar General responded on 6 January 2021. In summary, the Registrar General stated as follows:

- i) The methods by which, and the documents that are required for, a natural father to be re-registered, other than by legitimisation or a declaration of parentage, are contained within ss. 10A(1)(a) to (g) or 10A(1A) of the Births and Deaths Registration Act 1953. In circumstances where these methods are unavailable to Mr H, on the facts of this case there are *no* alternative methods available for Mr H's name to be added to T's birth certificate without a declaration of parentage being made by the court pursuant to s.55A of the Family Law Act 1986.
 - ii) If the Court were to disapply FPR r. 8.22(1) such that the T's birth name (as opposed to her adopted name) appeared on the declaration of parentage order then, in T's case, the Registrar General would accept such an order pursuant to s55A(7) of the 1986 Act.
 - iii) Notwithstanding that there is no statutory duty to mark the register with the word "adopted" where re-registration has occurred under sections 10A or 14A of the Births and Deaths Registration Act 1953, in T's case the Registrar General would mark the re-registered entry with the word 'adopted' if the birth were re-registered pursuant to s14A (re-registration after a declaration of parentage) of the 1953 Act.
 - iv) The Registrar General would make traceable the connection between the re-registered birth and the corresponding entry for the child in the Adopted Children Register certificate in accordance with s. 79(1) Adoption and Children Act 2002.
 - v) There will be no difference to the availability of the Adopted Children Register indexes and the procedures for T to gain access to information which would enable her to obtain a certified copy of a record of her birth in accordance with Schedule 2(1) and (2) of the Adoption and Children Act 2002.
12. In addition, I directed that a copy of my first judgment be disclosed to the Family Procedure Rules Committee in order that the matters I have set out above could be considered by the Rules Committee if the Committee considered it appropriate to do so. The Family Procedure Rules Committee has indicated it intends to defer consideration of the matters raised in the first judgment of this court as to jurisdiction until the court has delivered its second judgment on the merits.

POSITION OF THE PARTIES AND INTERVENOR

The Applicant

13. Mr H seeks a declaration of parentage with respect to T. As noted in my first judgment, it is clear from his Position Statement that Mr H sees his application for a declaration of parentage as a staging post on a route to resuming his relationship with T. Within this context, in addition to submitting that T also has the right to know who her biological father is and to know of the siblings that she has, Mr H seeks indirect contact with T on a monthly basis, leading thereafter to fortnightly indirect contact.

The Adoption Agency

14. On behalf of the adoption agency, Ms Cavanagh and Ms Keehan submit that it would be contrary to public policy for the court to make a declaration of parentage in a case where, as in this case, the child who is the subject of the application has been made the subject of an earlier adoption order. Ms Cavanagh and Ms Keehan contend that the application made by Mr H as a litigant in person has revealed statutory lacunae and procedural anomalies that have, in combination and inadvertently, created a back door into what is, pursuant to public policy recognised by law, the inviolable, final and confidential nature of an adoptive placement. Ms Cavanagh and Ms Keehan support this submission by pointing out that, save for s.55A of the Family Law Act 1986 as interpreted by this court in its decision as to jurisdiction, there is no other mechanism on the statute books by which a birth parent is able to make an application, without the permission of the court, regarding their status in respect of, or contact with, a child who has been adopted. Within that context, they further submit that the current statutory and procedural position is likely to represent an omission on the part of Parliament, not least in circumstances where Parliament did address expressly the question of re-registration in the context of declarations of legitimacy by way of paragraph 5 of Schedule 1 of the Adoption and Children Act 2002.
15. With respect to the application of FPR r.8.22(1), Ms Cavanagh and Ms Keehan submit that r. 8.22(1) is narrow in its terms, mandatory in its effect and has a particular purpose in a specific statutory context and that, accordingly, it is not open to the court to use general case management provisions to disapply it. Further, Ms Cavanagh and Ms Keehan submit that pursuant to s. 3 of the Human Rights Act 1998 the FPR must be read and given effect in a manner compatible with the Convention rights. Within this context, Ms Cavanagh and Ms Keehan submit that to read r. 8.22(1) as not applying where an adoption order has been made would comprehensively undermine the public policy imperative that underlies it, namely the need for accurate records, and would be to stray into the purview of Parliament. Conversely, to apply the rule in the context of an adoptive placement would be incompatible with the Art 8 right of T and her parents to respect for private and family life. In the circumstances, Ms Cavanagh and Ms Keehan submit that the existence of r. 8.22(1) constitutes a powerful reason not to grant the declaration sought.
16. With respect to the public policy recognised by law that is relevant to the application, Ms Cavanagh and Ms Keehan adopt those factors advanced by the Attorney General, which factors I deal with below, with one addition. Ms Cavanagh and Ms Keehan submit that it is a matter of public policy recognised by law that an adopted person should be entitled to choose whether and when they have information with respect to their birth family and should have assistance and support before they receive that information.
17. In the foregoing circumstances, and having regard to what they submit are the well-recognised adverse consequences of a breach by a birth parent of the inviolability, finality and confidentiality of an adoptive placement, Ms Cavanagh and Ms Keehan submit that to grant the declaration sought by Mr H would manifestly be contrary to the clear public policy, recognised by law, as to the permanent nature of the family unit created by adoption and the confidentiality of the adoptive placement. Ms Cavanagh and Ms Keehan submit that this outcome pertains notwithstanding the importance of T being able to obtain information as to his or her origins and the importance of the status

of an individual member of society being spelled out accurately in properly maintained records. In reaching its decision on the question of public policy, Ms Cavanagh and Ms Keehan submit that the court must consider not only the position of T but the wider impact of a decision to grant a declaration of parentage with respect to a child who has been made the subject of an adoption order.

18. Finally, Ms Cavanagh and Ms Keehan also set out the views of the adoptive parents with respect to this application. As I have noted, the adoptive parents have made clear that they do not wish to actively participate in the proceedings and wish for their views to be conveyed via the adoption agency. Overall, the views of the adoptive parents remain as recorded in my first judgment at paragraph [13]. They do not have an objection *per se* to T's birth father's name being placed on her birth certificate, considering it is important for her to have full information without gaps for her life story work, *provided* that that step can be achieved safely and without the confidentiality from the adoption order being breached. The adopters would *not* be supportive of the application made by Mr H if it risked T's adoptive name being made known to Mr H, or risked being made known to him, by this process.

The Attorney General

19. On behalf of the Attorney General, Mr Devereux submits that in the event that FPR r. 8.22(1) cannot be disapplied by the court, and in the event that no alternative mechanism can be implemented to protect the confidentiality of the adoptive placement, then, on the facts of this case, the public policy exception articulated by s.58(1) of the Family Law Act 1986 should be invoked. Within this context, the Attorney-General submits that it is of *cardinal* importance that adoptive placements are protected from any circumstances wherein the confidentiality of such placements could be compromised. The Attorney General submits that, accordingly, the confidentiality of adoptive placements constitutes a *very* strong public policy reason for a declaration of parentage not being made if the confidentiality of the placement may be put at risk.
20. With respect to the question of whether the court is able, if appropriate, to disapply the terms of r. 8.22(1), on behalf of the Attorney General, Mr Devereux submits that, having regard to the decision of the Court of Appeal in *Re F (Paternity: Registration)* [2013] 2 FLR 1036 and the decision of Mostyn J in *AS v CS* [2021] 4 WLR 68 the court is able to disapply the rule. Mr Devereux further submits that, whilst the FPR does not contain a specific provision permitting the rules to be disapplied, such a course would be consistent with other extant procedural regimes in this jurisdiction, specifically r. 3.3 of the Court of Protection Rules. Further, Mr Devereux submits that not to disapply the rule in this case may work an injustice, particularly in circumstances where the current rules were drafted without it being appreciated that the application made by Mr H was possible and in circumstances where the Family Procedure Rules Committee may go on to recommend an amendment to the rule.
21. In the event that the court is satisfied that rule 8.22(1) of the Family Procedure Rules 2010 can be disapplied, or there is an alternative mechanism, the Attorney General draws to the court's attention the public policy factors relevant to the application, which factors I deal with below, but does not provide an ultimate position on the preferred outcome in such circumstances.

LAW

Public Policy

22. Section 58(1) of the Family Law Act 1986 provides as follows with respect to the public policy principle as it relates to declarations made under Part III of the Family Law Act 1986, including declarations of parentage:

“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.”

23. In the Law Commission’s report *Family Law – Declarations in Family Matters* Law Comm. 132 the explanatory notes to Clause 4 of the Bill, which was to become s.58(1) of the 1986 Act, made clear that the phrase “manifestly” indicates that the public policy safeguard should only be invoked in exceptional circumstances. In *NB v MI* [2021] EWHC 224 (Fam) Mostyn J held that in enacting the provisions of s.58 of the Family Law Act 1986 Parliament must be taken to have adopted the reasoning and intentions of the Law Commission as set out in its report. In the context of an application for a declaration of parentage pursuant to s.55A of the 1986 Act, in *Re S (A Child)(Declaration of Parentage)* [2012] EWCA Civ 1160 Black LJ (as she then was) held as follows (emphasis in the original):

“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.”

24. In *Richardson v Mellish* (1824) 2 Bing 229 at 252, Burrough J described public policy as “a very unruly horse” and one that “when you get astride it you never know where it will carry you”. Within this context, it is important to recognise that the task of the court under s.58(1) of the Family Law Act 1986 is not to determine what public policy should be (which is a matter for Parliament) but, rather, to measure the step contended for, in this case the grant of a declaration of parentage, against the relevant principles of public policy recognised by the law (see *Janson v Driefontein Consolidated Mines Ltd* [1902] AC 484 at 491 per Lord Halsbury). As noted in *Fender v St John-Mildmay* [1938] 1 AC 1 at 12, the doctrine of public policy “does not depend on the idiosyncratic inferences of a few judicial minds.” However, whilst it is for Parliament and not the courts to formulate public policy, it is also the case that the *application* by the court of any particular ground of public policy so formulated will vary according to the facts of the individual case (see *Egerton v Earl Brownlow* (1853) 4 HL Cas 1 at 149 and *Monkland v Jack Barclay Ltd* [1951] 2 KB 252 at 265).

25. The foregoing summary of the law leads to the question of what principles of public policy recognised by the law are relevant in this case? Section 58(1) of the 1986 does not itself contain the principles of public policy against which the application for a declaration of parentage falls to be measured. In this case, the relevant principles of public policy recognised by the law are those concerning the practice of adoption in this jurisdiction. Within this context, it is necessary to say something about public policy as it relates to adoptive placements, and in particular the permanent nature of the family unit created by adoption, the confidentiality of the adoptive placement, the importance of the adopted child being able to choose to obtain information as to his or her origins and the importance of the status of an individual member of society being spelled out accurately in properly maintained records.
26. The Adoption of Children Act 1926 created the institution of legal adoption in this jurisdiction. By s. 5(1) of the 1926 Act the child was treated as if born to the adopters “in lawful wedlock” and the rights, duties, obligations and liabilities of the birth parents of the child stood extinguished, albeit not for the purposes of succession to property and certain other purposes. However, whilst s.11(7) of the 1926 Act Parliament required the Registrar General to keep confidential those records that recorded a traceable connection between the register of births (which would contain the birth name of the child) and the corresponding entry in the Adopted Children Register (which, by s.11(2) of the 1926 Act, may contain the child’s adoptive name), and notwithstanding the objection of those professionally involved in arranging adoptions and the policy of many adoption societies, the Adoption Rules promulgated under the 1926 Act provided that not only the name, but also the address of the adoptive parents should be inserted on the form prescribed for the giving of parental consent to adoption (see Cretney, S., *Family Law in the Twentieth Century – A History* (2003) Oxford, p.605).
27. The Adoption of Children Act 1949 further refined the policy of the law with respect to the permanent nature of family unit created by adoption and the confidentiality of the adoptive placement. The principle that the law should treat the adopted child as, legally, the child of the adoptive parents, who would “pass for all purposes into the family of the adoptive parents” (Official Report (HL) 11 July 1949, vol. 163, col. 1062 (Viscount Simon)) was further developed. In addition, and in the context of increasing urging on the part of those concerned with adoption practice that adoptive parents should be allowed to conceal their identity, the 1949 Act rejected the notion, implicit in the 1926 Act, that a parent could not consent to adoption unless they knew the identity of the adopter (see Cretney, S., *Family Law in the Twentieth Century – A History* (2003) Oxford, p.612). Within this context, the 1949 Act permitted the identity of the adopters to be concealed behind a serial number. Further reform of the law relating to adoption in 1958 saw the first attempt at facilitating access by an adoptive person to his or her birth records (Children Act 1958 s.25), which approach was consolidated in the Children Act 1975 s.26.
28. The foregoing developments to the policy of the law with respect to the permanent nature of the family unit created by adoption, the confidentiality of the adoptive placement and the importance of the child being able to choose to obtain information as to his or her origins were maintained in the Adoption Act 1976 and in the Adoption and Children Act 2002.
29. Section 39(2) of the Adoption Act 1976 provided that an adopted child must be treated in law as if he were not the child of any person other than the adopters or adopter.

Section 50 of the 1976 Act required the Registrar General to keep confidential those records that recorded a traceable connection between the register of births and the corresponding entry in the Adopted Children Register. In this context, r. 14 of the Adoption Agencies Regulations 1983 provided *expressly* that all information obtained by virtue of the Regulations was to be treated as confidential. In line with developments signalled by s.25 of the Children Act 1958 and consolidated by s.26 of the Children Act 1975, s.51 of the Adoption Act 1976 provided for the option of disclosure of birth records to adopted children when they had attained the age of 18 years. The Adoption and Children Act 2002 s.67(1) reflects the terms of s.39(2) of the Adoption Act 1976 regarding the status conferred by adoption. Section 51 of the 2002 Act once more provided for the disclosure of birth records to adopted children when he or she had attained the age of 18 years. However, it is noteworthy in the context of the issue before the court in this case that the 2002 Act also significantly expanded the provisions governing the disclosure of information concerning a child's adoption, albeit subject to strict controls.

30. Sections 57 to 65 of the Adoption and Children Act 2002 introduced a new statutory regime for the control of protected information (as defined in s.56 of the 2002 Act and including the case record in respect of the child), including identifying information about an adopted person (defined in s.57(4) as information which, whether taken on its own or together with other information disclosed by an adoption agency, identifies the person or enables the person to be identified). Section 59 of the Adoption and Children Act 2002 provided for regulations to be promulgated creating a criminal offence of disclosing information in contravention of the relevant provisions of the 2002 Act. Section 61 of the 2002 Act controls the disclosure of information relating to children, including adopted children. Part 7 of the Adoption Agencies Regulations 2005 further regulates the storage of case records. By r.39 of the 2005 Regulations, the adoption agency must ensure that the child's case record and the prospective adopter's case record and the contents of those case records are at all times kept in secure conditions and by r. 42 the contents of the child's case record and the prospective adopter's case record must be treated by the adoption agency as confidential. Further, s.79 of the Adoption and Children Act 2002 introduced an "exceptional circumstances" test absent from s.50 of the Adoption Act 1976 with respect to the provision of information from registers and books making a traceable connection between the Register of Births and the Adopted Children Register.
31. Ms Cavanagh and Ms Keehan also point to further provisions in the adoption legislation that they submit demonstrate the policy of the law with respect to the confidentiality of the adoptive placement and the choice conferred on an adopted person to seek information regarding their birth family or not, namely:
 - i) The requirement pursuant to s. 78(3) of the Adoption and Children Act 2002 for advice and signposting to counselling for an adopted adult before being able to access adoption records and /or an original birth certificate.
 - ii) The requirement under s. 80(3) of the Adoption and Children Act 2002 and the Adopted Children and Adoption Contact Register Regulations 2005 (SI 2005/924) that a person be 18 years of age before making an entry in the register expressing a wish to have contact with birth relatives.

- iii) The requirement in the Adoption Information and Intermediary Services (Pre-Commencement Adoptions) Regulations 2005 that a person seeking information about an adopted person via the Adoption Contact Register may have their information passed to the adopted person only if the adopted person is seeking information about their birth family.
32. In addition to the foregoing matters, FPR r.14.24 creates a separate jurisdiction with respect to the control of the confidentiality of court adoption records, providing as follows:

“14.24 Documents held by the court not to be inspected or copied without the court's permission

Subject to the provisions of these rules, any practice direction or any direction given by the court –

- (a) no document or order held by the court in proceedings under the 2002 Act will be open to inspection by any person; and
- (b) no copy of any such document or order, or of an extract from any such document or order, will be taken by or given to any person.”
33. The recent relevant authorities largely reflect the foregoing policy of the law, developed over the course of the last century, with respect to the permanent nature of the family unit created by adoption, the confidentiality of the adoptive placement, the importance of the child being able to choose, or not, to obtain information as to his or her origins and importance of the status of an individual being spelled out accurately and in clear terms and recorded in properly maintained records.
34. With respect to the status conferred by adoption, as I noted in my first judgment, in *Re C (Adopted Child: Contact)* [1993] Fam 210 Thorpe J (as he then was) emphasised that adopted orders are intended to be permanent and final. In *Re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239 Swinton Thomas LJ noted at 245 that:

“An adoption order has a quite different standing to almost every other order made by a court. It provides the status of the adopted child and of the adoptive parents. The effect of an adoption order is to extinguish any parental responsibility of the natural parents. Once an adoption order has been made, the adoptive parents stand to one another and the child in precisely the same relationship as if they were his legitimate parents, and the child stands in the same relationship to them as to legitimate parents. Once an adoption order has been made the adopted child ceases to be the child of his previous parent and becomes the child for all purposes of the adopters as though he were their legitimate child.”

And Lord Bingham MR (as he then was) observed at p 251 that:

“The act of adoption has always been regarded in this country as possessing a peculiar finality. This is partly because it affects the status of the person adopted, and indeed adoption modifies the most fundamental of human relationships, that of parent and child. It effects a change intended to be permanent and concerning three parties. The first of these are the natural parents of the adopted person, who by adoption divest themselves of all rights

and responsibilities in relation to that person. The second party is the adoptive parents, who assume the rights and responsibilities of parents in relation to the adopted person. And the third party is the subject of the adoption, who ceases in law to be the child of his or her natural parents and becomes the child of the adoptive parents.”

35. More recently, in *Re B (A Child)(Post Adoption Contact)* [2019] 3 WLR 324, the President made clear that this position has not been changed by the provisions of the Adoption and Children Act 2002 governing post-adoption contact:

“Although s 51A has introduced a bespoke statutory regime for the regulation of post-adoption contact following placement for adoption by an adoption agency, there is nothing to be found in the wording of s 51A or of s 51B which indicates any variation in the approach to be taken to the imposition of an order for contact upon adopters who are unwilling to accept it. Indeed, as Mr Goodwin's submissions, in my view, establish, both the Explanatory Note and the fact that Parliament only afforded the court power to make orders of its own motion if such orders are to *prohibit* contact, Parliament's intention in enacting s 51A was aimed at enhancing the position of adopters rather than the contrary.”

36. Within this context, and again as I noted in my first judgment, the fundamental nature of the change of legal status visited on the child and the adoptive parents by the making of an adoption order is further emphasised by the fact that an adoption order will act to terminate the birth parents' Art 8 right to respect for private and family life with the child made the subject of the adoption order (see *Eski v Austria* [2007] 1 FLR 1650 and *Pini v Romania* (2005) 40 EHRR 13). In *Re A (A Child) (Adoption: Human Rights)* [2016] Fam 171 Peter Jackson J (as he then was) concluded:

“... that the making of an adoption order always brings pre-existing Art 8 rights as between a birth parent and an adopted child to an end. Those rights arose from and co-existed with the parent-child relationship, which was extinguished by adoption. There is no right to re-establish family life that has ended in this way.”

37. With respect to the confidentiality of adoptive placements, in *FL v Registrar General* [2011] 2 FLR 630 at [48], Roderic Wood J considered that public policy encompassed maintaining confidentiality in respect of adoptive placements. Earlier, in *Re L (Adoption: Disclosure of Information)* [1998] Fam 19 the Court of Appeal considered that, having regard to the terms of s.50 of the Adoption Act 1976, truly exceptional circumstances would have to exist for the confidential registers and books to be opened to anybody in the case of an adopted child. In *B and B v A County Council* [2007] 1 FLR 1189 the Court of Appeal, in holding that where a local authority has given an undertaking not to reveal their address to the birth family a duty of care sufficient to found an action in negligence may be established if the undertaking is subsequently breached, observed as follows at [25]:

“The particular circumstance of this case was, as the judge emphasised, that a specific undertaking had been sought and given; but as we understood it at least the starting point of even an open adoption will always be confidentiality of the identity of the adopters. If the local authority fears that

it may not be able to maintain that confidentiality, or reaches a stage where there may be good reasons for revealing the identity of the adopters, then the course that it should take is to discuss the implications of that with the potential adopters before the latter commit themselves. The local authority did not do that in this case because it did not expect its officers to breach the confidence that had been requested. And similarly, if the local authority thinks that such an assurance on its part may not be of much use to the adopters because their names may become known from other sources, the example given in argument being the child when in contact with her natural parents, then the implications of that must also be discussed with the potential adopters before any assurance is given. These considerations do not place an unreasonable burden on adoption agencies, because they do no more than hold the agency to what ought to be good practice.”

38. With respect to the importance of the child being able to choose to obtain information as to his or her origins, in *M v W (Declaration of Parentage)* at [17] Hogg J held that:

“ [17] I am of the view that it could be of assistance to the petitioner and his own children to know who the natural father was, because questions are often asked now as to a person's possible vulnerability to medical conditions or genetic make-up. It may be of value for the petitioner and his family to know that the state has recognised the named father. It would, of course, also satisfy the petitioner's personal wishes and emotions.”

Within this context, as to the importance of the child being able to obtain information as to his or her origins, I noted in my first judgment in this case as follows at [74]:

“[74] ... the right of the child to know, and the importance of the child knowing, his or her paternity is a factor that must also be weighed in the balance. In addition, there is plainly benefit to a child having access to accurate genetic information. Whilst it is the case that this information can be relayed to T via life story work and by her adoptive parents (they confirming that they are indeed ensuring that this is done), as the adoptive parents recognise, there is also value for T in the *official* record accurately and completely reflecting these matters without gaps.”

39. However, it is also important to recall in the foregoing context that there are a number of ways in which the a child can obtain information as to his or her origins. In *Re M & N* [2017] EWFC 31 Cobb J, declining to make a declaration of parentage on the grounds that there was insufficient evidence to justify that step, recognised at [21] that the subject child could be provided with information concerning the identity of her father through the provision of life story work.
40. Finally, with respect to the importance of the status of an individual member of society being spelled out accurately in properly maintained records, in *Re S (A Child)(Declaration of Parentage)* Black LJ (as she then was) held as follows at [24]:

“[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.”

Registration of Adoption

41. T has been made the subject of an adoption order pursuant to Part I of the Adoption and Children Act 2002. Within this context, paragraph 1 of Schedule 1 of the Adoption and Children Act 2002 provides as follows with respect to the amendment of a person’s birth certificate following adoption:

“1. Registration of adoption orders

(1) Every adoption order must contain a direction to the Registrar General to make in the Adopted Children Register an entry in the form prescribed by regulations made by the Registrar General with the approval of the Secretary of State.

(2) Where, on an application to a court for an adoption order in respect of a child, the identity of the child with a child to whom an entry in the registers of live-births or other records relates is proved to the satisfaction of the court, any adoption order made in pursuance of the application must contain a direction to the Registrar General to secure that the entry in the register or, as the case may be, record in question is marked with the word “Adopted”.

(3) Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in England or Wales under Part 1 of this Act or any other enactment—

(a) sub-paragraph (2) does not apply, and

(b) the order must contain a direction to the Registrar General to mark the previous entry in the Adopted Children Register with the word “Re-adopted”.

(4) Where an adoption order is made, the prescribed officer of the court which made the order must communicate the order to the Registrar General in the prescribed manner; and the Registrar General must then comply with the directions contained in the order.

“Prescribed” means prescribed by rules.”

42. Further, paragraph 5 of Schedule 1 of the Adoption and Children Act 2002 provides as follows:

“5. Marking of entries on re-registration of birth on legitimation

(1) Without prejudice to paragraphs 2(4) and 4(5), where, after an entry in the registers of live-births or other records has been marked in accordance with paragraph 1 or 2, the birth is re-registered under section 14 of the Births and Deaths Registration Act 1953 (c. 20) (re-registration of births of legitimated persons), the entry made on the re-registration must be marked in the like manner.

(2) Without prejudice to paragraph 4(9), where an entry in the registers of live-births or other records is marked in pursuance of paragraph 3 and the birth in question is subsequently re-registered under section 14 of that Act, the entry made on re-registration must be marked in the like manner.”

43. Within the foregoing context, and as I noted in my first judgment in this matter, every adoption order must thus contain a direction to the Registrar General to make an entry in the Adopted Children's Register. Pursuant to s 77(5) Adoption and Children Act 2002, a certified copy of an entry in the Adopted Children's Register (which contains the date and place of birth of the child) is received as evidence of the date and place of birth of the child in all respects as if the copy were a certified copy of an entry in the registers of live-births.
44. Further, the adoption order must contain a direction that the entry in the register of live-births or other records relating to the child is marked with the word 'Adopted'. After an entry in the registers of live-births or other records has been so marked, the adopted child's birth is re-registered under s 14 of the Births and Deaths Registration Act 1953 and the entry made on the re-registration must also be marked 'Adopted'. In accordance with s 79(1) of the Adoption and Children Act 2002, the Registrar General must make traceable the connection between any entry in the registers of live-births or other records which have been marked 'Adopted' and any corresponding entry in the Adopted Children Register.
45. However and as noted above, whilst pursuant paragraph 5 of Schedule 1 of the Adoption and Children Act 2002, an entry in the registers of live births will be marked with the words 'adopted' when the birth is re-registered following adoption, there is no equivalent duty where re-registration has occurred under sections 10A or 14A of the Births and Deaths Registration Act 1953. There is accordingly no statutory provisions pursuant to which the word "adopted" would be added to T's name in the birth register following re-registration consequent upon the granting of a declaration of parentage pursuant to s. 55A of the Family Law Act 1986.

Declaration of Parentage

46. The law governing declaration of parentage is provided for by s. 55A of the Family Law Act 1986 (as inserted by the Child Support, Pensions and Social Security Act 2000 s.83 and amended by the Crime and Courts Act 2013 s 17, Sch. 11) which provides as follows:

"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.”

47. The principles governing, and the effect of making of a declarations under Part III of the Family Law Act 1986, including the public policy principle as discussed above, are set out in s. 58 of the Family Law Act 1986 as follows:

“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) (*Repealed*)

(6) Nothing in this section shall effect the powers of any court to grant a decree of nullity of marriage.

48. Within the foregoing statutory context, the following further principles are articulated within the authorities with respect to the granting of declarations under s. 55A of the Family Law Act 1986:
- i) 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] All ER (D) 140 at [24]).
 - ii) The terms of s 58(2) of the 1986 Act make clear the importance and the solemnity of declarations of parentage made under s 55A(1) of the Act (per *Re F (Paternity Registration)* [2013] 2 FLR 1036).
 - iii) An application pursuant to s 55A of the Family Law Act 1986 will be dismissed where it amounts to an abusive collateral attack on an earlier judgment (per *Dunkley v Dunkley and Another* [2018] 2 FLR 258 at [22] to [24]).
 - iv) A declaration of parentage under s 55A(1) of the Family Law Act 1986, once made, is there for all time and its implementation cannot be deferred (per *Re F (Paternity Registration)* [2013] 2 FLR 1036 at [20] to [23]).

Consequences of Declaration of Parentage for Registration

49. The making of a declaration of parentage has certain consequences regarding the obligations of the Registrar General. In particular:
- i) Section 55A(7) of the Family Law Act 1986 imposes a mandatory requirement whereby an 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 a declaration under s 55A(1) of the 1986 Act.
 - ii) The prescribed period is now set out in FPR r. 8.22 , which provides that a court officer must send a copy of a declaration of parentage and the application to the Registrar General within 21 days beginning with the date on which the declaration was made.
 - iii) If the declaration of parentage is granted pursuant to s. 55A(1) of the Family Law Act 1986, within the context of s. 55A(7) of the 1986 Act, s. 14A of the Births and Deaths Registration Act 1953 confers a discretion on the Registrar General who, if it appears to him or her that the birth of the person named in the declaration of parentage should be re-registered, shall authorise the re-registration.
50. As I have already alluded to, within the foregoing context, there is an interaction between the provisions of s. 55A(7) of the Family Law Act 1986 (imposing a mandatory

requirement whereby an officer of the court shall notify the Registrar General of the making of the declaration), the provisions of s. 14A of the Births and Deaths Registration Act 1953 (conferring a discretion on the Registrar General to authorise the re-registration of birth following the making of a declaration) and FPR 2010 r.8.22(1) (requiring a name other than that which appears in the person's birth certificate to be stated on the declaration of parentage) that has particular significance where the subject of the application for a declaration of parentage has previously been made the subject of an adoption order under Part I of the Adoption and Children Act 2002. FPR r. 8.22 provides as follows:

“8.22 Declarations of parentage

(1) If the applicant or the person whose parentage or parenthood is in issue, is known by a name other than that which appears in that person's birth certificate, that other name must also be stated in any order and declaration of parentage.

(2) A court officer must send a copy of a declaration of parentage and the application to the Registrar General within 21 days beginning with the date on which the declaration was made.”

51. Thus, pursuant to FPR r. 8.22(1) there is a *mandatory* requirement for all names by which a person is known to appear on the declaration of parentage. As I will come to, the effect of this provision in respect of T in the context of her having been made the subject of an adoption order were a declaration of parentage to be granted in favour of Mr H, would be that her *adoptive* name (placed on her birth certificate by virtue of the relevant provisions of Schedule 1 of the Adoption and Children Act 2002 set out above and which is confidential from Mr H) would have to be placed on the declaration of parentage obtained by Mr H unless the court waived the requirements of FPR r.8.22(1).
52. Further, the Adoption and Children Act 2002 contains no provisions for marking a birth certificate of an adopted child with the word “adopted” following re-registration after the making of a later declaration of parentage under section 55A(1) of the Family Law Act 1986. In the circumstances, in my first judgment I held as follows at [71]:

“...if a declaration of parentage is made in favour of a birth parent with respect of a child who has been made the subject of an adoption order under the Adoption and Children Act 2002, pursuant to s FPR r 8.22(1) the declaration in favour of the birth parent made by the court must state the name given to the child by the adoptive parents if different (in circumstances where, if the child is known by a name other than that which appears in that child's birth certificate, r 8.22(1) requires that other name must also be stated in any order and declaration of parentage), which order would, by FPR r 8.22(2), have to be sent to the Registrar General within 21 days beginning with the date the declaration was made for the Registrar General to consider whether re-registration should take place under the provisions of the Births and Deaths Registration Act 1953. Within this latter context, the matters set out at paragraph [56] above regarding the consequences of re-registration also have the potential to cause disruption.”

53. Finally, as also noted in my first judgment, pursuant to FPR 2010 r 8.1, an application for a declaration of parentage must be made by way of the procedure under Part 19 of the FPR 2010. Pursuant to FPR r 8.20(1) the respondents to an application for a declaration of parentage include any person who is alleged to be a parent of the person whose parentage is in issue. Pursuant to FPR r 19.5 respondents served with an application for a declaration of parentage must acknowledge service and provide the evidence on which they intend to rely. The operation of these provisions in an application for a declaration of parentage with respect to an adopted child would result in adopted parents being immediately involved in that application. Within this context, I note that the procedural protections provided by FPR r 14.2, which provides for a serial number to be applied to protect the identity of the adopters, does not appear to apply to applications for a declaration of parentage under s 55A(1) of the 1986 Act. Accordingly, I held as follows in my first judgment at [71]:

“...whilst, for the reasons set out above, I am satisfied that a birth parent is entitled to apply for a declaration of parentage under s 55A(1) of the 1986 Act, neither the statute nor the associated rules of procedure in the FPR contain the protective provisions that are ordinarily incorporated where an application can be made by a birth parent with respect to a child who has been made the subject of an adoption order and which account for the fact that the child has been adopted. Section 55A of the 1986 does not provide a permission stage before an application can be issued in respect of an adopted child, by contrast, for example, to that imposed by Parliament by s 51A(4)(c) of the Adoption and Children Act 2002 upon birth parents who seek an order under s 51A of the 2002 Act. Further, the effect of the rules in Part 8 of the FPR is that the adoptive parents will be amongst the automatic respondents to the application for a declaration of parentage in respect of a child who has been made the subject of an adoption order (notwithstanding the difficulties with the adoptive parents being served with the application in a closed serial number adoption case).”

54. With respect to the question of whether the court is able to, and if so should, disapply some or all of the foregoing procedural rules, some assistance can be derived from the decision of the Court of Appeal in *Re F (Paternity: Registration)* [2013] 2 FLR 1036. In that case, following the making of declarations of parentage pursuant to s.55A of the Family Law Act 1986 in respect of twins, the judge at first instance deferred the drawing of the declarations in the prescribed form and their transmission to the Registrar General pursuant to FPR r 8.22 pending the children being informed of their parentage some four years thereafter, when they attained the age of 16. On appeal, leading counsel for the respondent sought to avoid the requirements of FPR r. 8.22 by asserting that:

- i) Rule 8.22 operated subject to, and was overridden by the overriding objective in FPR r. 1.1, which, the argument went, gave the court a very wide discretion when interpreting r. 8.22;
- ii) Rule 8.22 operated subject to FPR r. 4.1(2) which applies the list of powers in the rule to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

- iii) Rule 8.22 operated subject to FPR r. 4.1(3), including r. 4.1(3)(o) which permitted the court to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.

55. In rejecting the submission that the foregoing rules liberated the court from the strict requirements of FPR r. 8.22(1) Lord Justice Thorpe held as follows at [23]:

“[23] It is important that a clear distinction be drawn between the difficult judgment of when children are to be informed, by whom they are to be informed, how they should be prepared for the information, and how they should be helped to deal with the information – all that is very difficult territory for a judge, and it not infrequently arises in the court. A completely separate question is the status question which is a matter of public interest, and it is of general public interest that official records are maintained effectively and that they swiftly reflect decisions of the court. That is why the 21 days for registration is written into the rules and it is important that it should be treated as the norm and that any divergence should be, if not exceptional, at least justified by exceptional circumstances.”

Further, Lady Justice Black (as she then was) held as follows at [26] and [27]:

“[26] There were no reasons of public policy to prevent the making of the declaration and, therefore, insofar as the judge did not make a declaration in March 2010, he was in error. If he did make a declaration then if he had a discretion at all about when the declaration should be notified to the Registrar General, which Ms Scriven suggests would arise under various provisions of the now Family Procedure Rules 2010, I have no doubt that the judge was not entitled to exercise the discretion in such a way as to defer the notification under s 55A(7) for the very long period for which he did defer it in 2011. Issues of status are dealt with with considerable formality and it is important that public records are an accurate representation of the fact. One need only look at s 58(2) to see the importance and the solemnity of declarations such as the one in this case. The mandatory terms in which the provisions in the statute are cast also underline the formality of the matter. Section 58(1) obliges the court to make the declaration in the way that I have said if it finds the underlying proposition to be true; and under s 55A(7) the court shall notify the Registrar General of the making of the declaration, the notice period prescribed being the short fixed period of 21 days.

[27] Any discretion that may arise from the rules must be exercised with an eye to the statutory context in which recourse is being had to the powers conferred under the rules. Here that statutory context is Part 3 of the FLA. I do not see how it could be said to be consistent with that statutory context to defer notification to the Registrar General for a period such as the judge permitted here. I would prefer in those circumstances not to express a view as to the extent, if at all, to which the general powers of the Family Procedure Rules 2010 can be used to extend the time prescribed by r 8.22(2) of the Family Procedure Rules for the purposes of s 55A(5).”

56. Having regard to the foregoing passages, the Court of Appeal declined to confirm that FPR rr. 1.1 and 4.1 confer a discretion on the court by which the court can avoid the

terms of Art 8.22(1), indeed Thorpe LJ doubted the merit of such an approach. Whilst r. 3.3 of the Court of Protection Rules allows the court to dispense with the requirement of any rule in the Court of Protection Rules, there is no equivalent rule either in the FPR or the CPR (see *Re P (Discharge of a Party) AA v Southwark London Borough Council and Ors* [2021] EWCA Civ 512 at [56]). Against this, I note that in *AS v CS* [2021] 4 WLR 68, Mostyn J considered that pursuant to the provisions of FPR r. 4.1 the court had what he described as an “unquestionable power” to disapply a procedural rule in the FPR, in that case rule FPR r.9.15(4).

57. In any event however, if discretion to disapply r 8.22(1) exists, the Court of Appeal made clear in *Re F (Paternity: Registration)* that such a discretion must only be utilised in exceptional circumstances and with an eye to the statutory context in which recourse is being had to the powers conferred by the procedural rules. The need for the exercise of any discretion to disapply procedural rules to take account of the wider legal context was reiterated by the Court of Appeal in *Re P (Discharge of a Party) AA v Southwark London Borough Council and Ors* with respect, *inter alia*, to the power under r. 3.3. of the Court of Protection Rules to dispense with the provisions of any rule, Baker LJ holding at [30] (emphasis added):

“The Court of Protection Rules therefore invest the court with wide powers to exclude parties from hearings, to withhold information from parties, to discharge parties from the proceedings, and to dispense with the rules altogether. Manifestly, however, as Mr Nesbitt submitted on behalf of the appellant, these powers have to be exercised in accordance with the overriding objective *and with wider principles of law and justice which have been developed and recognised both at common law and latterly under the Human Rights Act 1998.*”

DISCUSSION

58. Having considered carefully the bundle and the written and oral submissions in this matter, and applying the legal principles articulated above, I am satisfied that it would manifestly be contrary to public policy to grant to Mr H a declaration of parentage in respect of T subsequent to her adoption. Accordingly, I am satisfied that Mr H’s application must be refused. My reasons for so deciding are as follows.
59. Within the foregoing statutory and common law context, I accept the submission of Ms Cavanagh and Ms Keehan on behalf of the adoption agency, and Mr Devereux on behalf of the Attorney General, that the following are firmly established elements of public policy recognised by the law as it relates to the practice of adoption in this jurisdiction and which fall for consideration when the court is applying s. 58(1) of the Family Law Act 1986 in this case:
- i) The result of an adoption order should be that an adopted child ceases to be the child of his previous parent and becomes, for all purposes, the child of the adopters, that change of status being final and permanent and the family unit thereby created being inviolable.
 - ii) The integrity of the adoption process is dependent on certain matters remaining confidential. In particular matters relating to the identity of adoptive parents, the adoptive name of the child and the location of the adoptive placement not

ordinarily being disclosed to the natural parents unless agreed by the adoptive parents and/or mandated by the court.

- iii) The adopted person should be entitled to determine whether they wish to have information about their birth relatives or not and, if they choose to seek that information, should be provided with it after they have been offered counselling and intermediary support services.
 - iv) An adopted child should, where possible and appropriate, know his or her biological parentage and other cardinal matters relating to his or her origins, including cultural and genetic information.
 - v) The legal status of an individual in society should be spelled out accurately and in clear terms and recorded in properly maintained records.
60. I acknowledge that there is increasing debate regarding certain of the matters set out in the foregoing paragraph, and in particular whether confidentiality with respect to adoptive placements is any longer possible in the face of advancing communications technology. However, in accordance with the principles I have summarised above, those debates and the consequences flowing from them remain matters for Parliament and not the court, and have not, to date, led to any substantial amendment to the public policy approach recognised by law that I have articulated above.
61. I must also acknowledge that the court could account for at least one of the foregoing areas of public policy that bear on this case if it were prepared to disapply the provisions of FPR r. 8.22(1) and to rely on the indication provided by the Registrar General that, in T's case, the Registrar General would be prepared to adopt an approach different to that provided for by statute. However, whilst grateful to the Registrar General for her accommodation in this matter, I am not satisfied that it would be appropriate in this case for the court to disapply the requirements of FPR r. 8.22(1), or to require the Registrar General to proceed, albeit voluntarily, on the basis of an *ad hoc* process not provided for by statute.
62. With respect to the power of the court to disapply FPR r.8.22, both Thorpe LJ and Black LJ (as she then was) appeared in *Re F (Paternity: Registration)* to be prepared to proceed on the basis that such a power existed (albeit Black LJ declined to express a definitive view on that question), they were each equally clear that the exercise by the court of a discretion consequent on that power would be significantly circumscribed. In particular, any disapplication of FPR r. 8.22 must be justified by exceptional circumstances and must be exercised having regard to the statutory context. I proceed on that basis.
63. I am mindful of Mr Devereux's submission on behalf of the Attorney General that, in circumstances where this court has already concluded that the relevant rules were drafted without contemplating an application of the sort now before it and that, in circumstances where FPR r.8.22(1) must be interpreted in light of the overriding objective, it might be open to the court to conclude that the rule applies only in cases where adoption has not taken place. I further accept the submission that the tenor of the FPR, and in particular of the overriding objective in FPR r.1.1, is that is that where the welfare interests of the child and justice are not served by applying a particular rule it must be open to the court to not apply it. However, notwithstanding these matters,

applying the approach set out in *Re F (Paternity: Registration)* I am, on balance, satisfied that the following matters tend against the court exercising a discretion to disapply FPR r. 8.22(1) in this case.

64. Whilst unusual, in circumstances where I have found that the court has jurisdiction under s.55A of the Family Law Act 1986 to grant to a birth parent a declaration of parentage in respect of a child following the lawful adoption of that child under the Part 1 of the Adoption and Children Act 2002, it cannot be said in my judgment that the application made by Mr H, and the situation it gives rise to, is exceptional in nature, permitted as it is by the statutory scheme and open, in principle, to any birth parent seeking a declaration of parentage.
65. Further, with respect to the statutory context that must be considered, FPR r. 8.22(1) deals with the question of status and, specifically, the manner in which a person's status is recorded in official records. As I have set out above, the authorities make clear that issues of status are to be dealt with by way of considerable formality. That this is the case is emphasised by the fact that FPR r.8.22(1) is narrow in its terms and its terms are mandatory, which is a further important aspect of the statutory context within which any discretion to disapply the rule must be considered. In that context, I am satisfied that the court should be slow to use an exceptional discretion to disapply a rule that Parliament has decided should be mandatory in its application, in order to engineer a substantive result not provided for by statute. Within the statutory context, I am further satisfied that there is a need for a high degree of legal certainty in respect of the operation and application of rules that govern such cardinal matters. In the foregoing context, the stark position is that the disapplication of FPR r.8.22(1) in this case would require the Registrar General to accept, pursuant to FPR r. 8.22(2), a declaration of parentage that is inaccurate by reference to the mandatory requirements stipulated as necessary by Parliament through FPR r. 8.22(1).
66. Within the foregoing context, and in particular having regard to the desirability of legal certainty in this area that I have described, I must also have regard to the fact that, having required the Registrar General to accept a declaration of parentage that is inaccurate by reference to the mandatory requirements stipulated as necessary by Parliament through FPR r. 8.22(1), the granting of a declaration of parentage in this matter would require the court to impose even further on the Registrar General in asking to her to act outside the statutory regime put in place by Parliament. Namely, by taking *ad hoc* steps to re-register the birth of a child following the granting of a declaration of parentage in circumstances where Parliament has not provided for that course in the context of a declaration being made pursuant to s.55A of the 1986 Act in respect of an adopted child.
67. In all the circumstances outlined above, I am not satisfied that it is appropriate for the court to deconstruct, to this extent, the clear statutory regime put in place by Parliament to ensure that legal status of an individual in society is spelled out accurately and in clear terms and recorded in properly maintained records by disapplying FPR r.8.22(1) and thereafter requiring the Registrar General to proceed in an *ad hoc* manner outside the statutory regime. In the circumstances, and for the reasons I have given, I decline to exercise a discretion to disapply the terms of FPR r.8.22(1) in this case.
68. The result of that decision is that were the court to make a declaration of parentage in respect of T on the application of Mr H, by FPR 8.22(1) that declaration would have to

contain T's adoptive name. Within this context, I am led inexorably and inevitably to the conclusion that to grant a declaration of parentage in respect of T following her being made the subject of an adoption order would manifestly be contrary to public policy for the purposes of s.58(1) of the Family Law Act 1986.

69. As I have articulated in the course of this judgment, it is a firmly established element of public policy recognised by the law that the integrity of the adoption process is dependent on certain matters remaining confidential, in particular matters relating to the identity of adoptive parents, the adoptive name of the child and the location of the adoptive placement. It is likewise a firmly established aspect of public policy that the result of an adoption order should be that an adopted child ceases to be the child of his previous parent and becomes, for all purposes, the child of the adopters, that change of status being final and permanent and the family unit thereby created being inviolable. Finally, it is equally well established that an adopted person is entitled to determine whether they wish to have information about their birth relatives or not and, if they choose to seek that information, should be provided with it after they have been offered counselling and intermediary support services.
70. There are sound, child welfare centred reasons behind the formulation of such public policy. The welfare and emotional equilibrium of an adopted child is *inextricably* bound up in the safety, security and stability of his or her adoptive placement and the emotional stability of his or her adoptive parents. Within this context, the provisions of the primary and secondary adoption legislation aimed at ensuring that the adopted child is insulated from intrusion by an adopted child's birth family following the adoption order being made, insulating an adopted child from the disruption of a family unit and protecting the child from the emotional and psychological consequences of unlooked for and unplanned information about the adopted child's birth family being disseminated to that child, reflect the public policy imperative of securing for adopted children adoptive placements that are final, confidential and inviolable.
71. I acknowledge the eminently reasonable stance taken by the adoptive parents regarding Mr H being named on T's birth certificate. However, the prospective adopters are equally clear that they could not countenance such a step if it threatened the confidentiality of the placement. As I have noted, in circumstances where I am not satisfied that it is appropriate to disapply FPR r. 8.22(1) for the reasons I have given, the making of a declaration of parentage in this case would threaten the confidentiality of T's adoption. Further, I am satisfied that a breach in the confidentiality of T's adoptive placement would impact negatively on the integrity of T's adoption and the extent to which that adoption is perceived by T and her family to be final and inviolable. This in turn in my judgement risks harm being done to T's emotional equilibrium and wider welfare and on the extent to which T is able to derive benefit from her family life. It would also remove from T any agency she has in determining whether and when she wishes to have information about their birth relatives and to have counselling and intermediary support ahead of that information being provided to her. Within this context, I conclude that to grant a declaration of parentage with respect to T, which declaration would be required to contain her adoptive name, would *manifestly* be contrary to public policy.
72. I accept that there is a tension between this conclusion, which is itself driven by the courts conclusion that it is not appropriate to disapply the provisions of FPR r. 8.22(1), and the public policy that an adopted child should, where possible and appropriate,

know his or her parentage and other cardinal matters relating to his or her origins, including cultural and genetic information. However, the court's conclusions in this case will not prevent effect being given to that policy. It is well established that there are alternative, and effective, means of ensuring that an adopted child is able, in a careful and child centred manner, to learn about their heritage, including their birth parents. The primary mediator of this is so called "life story" work. In this way, as recognised by Cobb J in *Re M & N* [2017] EWFC 31, the fact that the court has declined on public policy grounds to make a declaration of parentage with respect to a child who has been made the subject of an earlier adoption order will not prevent T from being able to understand who her birth father is.

73. In the circumstances, whilst satisfied the court has jurisdiction to do so, I decline to make a declaration of parentage in favour of Mr H on the grounds that to do so would manifestly be contrary to public policy for the purposes of s.58(1) of the Family Law Act 1986.

MATTERS ARISING

74. As I have noted above, during argument on the preliminary issue of jurisdiction, a number of matters became apparent that suggest that when the rules set out in Part 8 of the FPR 2010 were drafted it may not have been appreciated that it is open to a birth parent to apply for a declaration of parentage under s 55A(1) of the 1986 Act with respect to a child who has been made the subject of an adoption order. Within this context, the Family Procedure Rules Committee may now wish to consider the following issues:

- i) Form 63 (Application for a Declaration of Parentage) contains no provision for indicating the child whose parentage is in issue has been adopted.
- ii) As matters stand, FPR r. 8.20(1) means that adoptive parents are automatic respondents to an application under s.55A of the Family Law Act 1986.
- iii) The procedural protections of FPR r. 14.2 do not apply to applications under s. 55A of the Family Law Act 1986. This rule provides for a serial number to be assigned to keep the identity of the adopters confidential in proceedings.
- iv) There is at present no permission stage within the rules where an application for a declaration of parentage under s.55A of the Family Law Act 1986 is made by a birth parent with respect to a child who has been adopted. Pursuant to FPR 2010 r 8.1, an application for a declaration of parentage must be made by way of the procedure under Part 19 of the FPR 2010. Within the context of the Part 19 procedure, there is no Practice Direction providing for a procedural process addressing specifically the circumstances of adopted persons (adult or child) whose parentage is in issue in a proposed application for a declaration.
- v) Within this context, pursuant to FPR r. 19.5 adoptive parents served with an application for a declaration of parentage must file an acknowledgment of service accompanied by evidence upon which they intend to rely. There is no prescribed form for this. This procedure front loads the evidence, such that the immediate obligations upon the adoptive parents when faced with an application under s55A of the Family Law Act 1986 are considerable.

- vi) As matters stand, were the court to exercise its jurisdiction to make a declaration of parentage in favour of the birth parent of a child who has been adopted, by FPR r. 8.22(1) that declaration must contain the adoptive name of the child, posing a threat to the confidentiality of the adoptive placement.
 - vii) Whilst this court has proceeded on the basis that there is a discretion to disapply FPR r. 8.22(1) but that it is not appropriate to do so in this case, it remains unclear on current authority whether the court in fact has power to disapply the provisions of that rule.
75. It is also plain, as I have observed, that there are aspects of the primary legislation that do not appear to have contemplated that it is open to a birth parent to apply for a declaration of parentage under s 55A(1) of the 1986 Act with respect to a child who has been made the subject of an adoption order. In particular, and as noted above, whilst pursuant paragraph 5 of Schedule 1 of the Adoption and Children Act 2002, an entry in the registers of live births will be marked with the words ‘adopted’ when the birth is re-registered following adoption, there is no equivalent duty where re-registration has occurred under sections 10A or 14A of the Births and Deaths Registration Act 1953. There is accordingly no statutory provisions pursuant to which the word “adopted” would be added to the name of the adopted child in the birth register following re-registration consequent upon the granting of a declaration of parentage pursuant to s. 55A of the Family Law Act 1986. However, these are matters of primary legislation for Parliament.

CONCLUSION

76. For the reasons I have given, I decline to make a declaration of parentage in favour of Mr H on the ground that to do so would manifestly be contrary to public policy for the purposes of s.58(1) of the Family Law Act 1986 for the reasons set out in this judgment. In the circumstances, Mr H’s application is refused. There will be no order as to costs.
77. I know that the decision of the court will come as a *great* disappointment to Mr H. However, as at the beginning of my first judgment in this matter, it is important at the end of this judgment once again to make clear that, notwithstanding Mr H’s continuing view that this application prefigured his resuming a role in T’s life, even were the court to have decided to make the declaration of parentage he sought, that declaration would *not* of itself meant that Mr H could recommence involvement in T’s life and would *not* have conferred upon Mr H parental responsibility in respect of T nor any other legal rights in respect her. Further, it is clear from their statements through the adoption agency that the court can have confidence, and that Mr H can have confidence, that the adoptive parents will, in any event, ensure that T is aware of her origins as she grows up.
78. I will direct that a copy of this judgment be disclosed to the Family Procedure Rules Committee and to the Registrar General.
79. That is my judgment.