



Neutral Citation Number: [2022] EWHC 1982 (Admin) and EWHC 1983 (Fam)

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**AND QUEEN'S BENCH DIVISION (ADMINISTRATIVE COURT)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/07/2022

Case No: FD22P00294

**Before:**

**THE HONOURABLE MR JUSTICE MACDONALD**

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**Between:**

**Sarah Osborne**  
**- and -**

**Applicant**

**Helen Arnold**  
**-and-**

**Respondent**

**Cambridgeshire County Council**  
**-and-**

**First**  
**Intervener**

**The Registrar General**

**Second**  
**Intervener**

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**Ms Marisa Allman** (instructed by **Cambridgeshire Family Law Practice LLP**) for the  
**Applicant**

**The Respondent appeared in person**

**Ms Francesca O'Neill** (instructed by **Cambridgeshire County Council**) for the **First**  
**Intervener**

**Mr Andrew Powell** (instructed by the **Government Legal Department**) for the **Second**  
**Intervener**

Hearing dates: 15 July 2022

Before:

**THE HONOURABLE MR JUSTICE MACDONALD**  
**(Sitting in Public)**

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Between :

**Sarah Osborne and Helen Arnold** **Claimants**  
**- and -**

**Cambridgeshire County Council** **Defendant**  
**-and-**

**The Registrar General** **Interested**  
**Party**

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**Ms Marisa Allman** (instructed by **Cambridgeshire Family Law Practice LLP**) for the  
**Claimants**  
**Ms Francesca O'Neill** (instructed by **Cambridgeshire County Council**) for the **Defendant**  
**Mr Andrew Powell** (instructed by the **Government Legal Department**) for the **Interested**  
**Party**

Hearing dates: 15 July 2022

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**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.

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## **Mr Justice MacDonald:**

### INTRODUCTION

1. In this matter I am concerned with applications in the Family Division of the High Court in respect of the child of Sarah Osborne and Helen Arnold, C, born in August 2014 and now aged nearly 8 years of age. Those applications are for a declaration of parentage in favour of Ms Osborne, pursuant to s.55A for the Family Law Act 1986 and for an order under the inherent jurisdiction revoking an adoption order made by the Family Court sitting at Ipswich on 3 November 2015. Ms Osborne, represented by Ms Marisa Allman of counsel, brings those applications and the respondent to those applications is Helen Arnold. Ms Arnold appears in person. Both Cambridgeshire County Council and the General Registrar appear as interveners in those proceedings.
2. In addition, I am concerned with a claim for judicial review in the Administrative Court brought by Ms Osborne and Ms Arnold against Cambridgeshire County Council, represented by Ms Francesca O'Neill of counsel, with respect to the decision of the Registrar not to register Ms Osborne as C's parent. The Registrar General is an interested party in that that claim, represented by Mr Andrew Powell of counsel.
3. I have determined to hear these matters together. The applications for a Declaration of Parentage and revocation of adoption are listed for a final hearing. The claim for judicial review is listed for consideration of permission and for a final hearing of the substantive claim if permission is granted. The applications for a Declaration of Parentage and the revocation of the adoption order are made by consent between the Applicant and Respondent. Cambridgeshire County Council and the Registrar General offer no objection or opposition to those applications. The local authority does not oppose the claim for judicial review being made out of time nor the substantive relief sought. The Registrar General, as an interested party, likewise does not offer any objection.
4. On 15 July 2022 I gave my decision in this matter, making the declaration of parentage pursuant to s.55A of the Family Law Act 1986, revoking the adoption order and granting permission for, and allowing, the claim for judicial review. I ordered Cambridgeshire County Council to pay the costs. I now set out my reasons for doing so.

### BACKGROUND

5. In circumstance where at the outset of these proceedings there was a prospect of civil litigation between the applicant and the local authority and/or Registrar General, this court faced the prospect of a lengthy delay before it could determine the applications before the court. In particular, the insurers of the local authority sought an extended period to review the case before being in a position to provide a definitive response to the applications before the court, in circumstances where the outcome of those applications, and any findings made in the determination of those applications might impact on other litigation. However, in circumstances where this court was not prepared to tolerate the delay inherent in that approach, the court directed the parties to agree a schedule of facts that could form the basis of an expeditious decision by this court. To their credit, the parties were able to compile such a schedule.

6. Within this context, the account of the background to this matter set out in this judgment is taken from the facts agreed between the parties to these proceedings. However, I pause to note that certain assertions made by the local authority, particularly in the statement of Louise Clover, suggest the local authority does not accept the entirety of the account of Ms Osborne and Ms Arnold as set out before the court. The following paragraphs from Ms Osborne's statement are relevant in this regard:

“[6]...We had made an appointment to register C's birth at the Cambridgeshire Register Office on 14th August 2014 (two weeks after his birth). During this appointment I was told by the registrar, in no uncertain terms, that I could not have my name entered onto my son's birth certificate because I was not the father and there could only be one mother: there was no place for me. I queried her response, but she was adamant that unless I was the father of our son, and I clearly wasn't, then my name was not permitted on the document. In hindsight, of course, I wish I had pushed harder but when in such an official setting and going through such an official process (which neither of us had experienced before) I/we trusted the professional sat in front of us and their competence.

[7] The flippant, disrespectful, and indignant attitude, tone, and comments of the registrar made me feel like I was stupid to ask, or expect, to be named on the birth certificate and that I was not deserving of such official recognition by having my name included (as if I was a random stranger Helen had just found outside on the street and taken in for moral support). There was no acknowledgement whatsoever of who I was, of our relationship, or my role; of us being a family. We were informed that I would have to adopt C by means of completing a step-parent adoption but that we would have to wait until he was at least six months old before doing so.

[8] We were both somewhat confused and rather taken aback by this information given that we had assumed, and were sure, that we had signed all the necessary consent forms for me to have full parental responsibility for any child born as a result of the IVF procedure. I remember when I signed these forms how proud, privileged, and happy I felt to know that we could do this together and as equals, as mothers. Even before we could receive IVF treatment, we faced a series of questions to satisfy the clinic that we would make suitable parents and that we realised and understood the commitment we were undertaking; we had done everything required to evidence we were creating a family together, that I was committed to both Helen and my child, and to making sure our child would always be safe, supported, loved, and cared for their entire life. We had spent so much time and effort discussing, planning, preparing for, and going through treatment; we had our precious son, we had made it a reality, and within those few minutes I felt all my pride and identity as a mother being stripped away from me; those few hostile, dismissive and inconsiderate comments, because of my gender, were devastating. I was, and am, C's mother.”

7. The witness statement of Ms Clover, who was not present at the registration on 14 August 2014, challenges the account of Ms Osborne and Ms Arnold that they were unequivocally informed by the Registrar that Ms Osborne would have to apply to adopt C. However, the basis for that attempted rebuttal is simply an assertion that, in

circumstances where it is asserted that the Registrar was not qualified to give legal advice, Ms Clover does “not recognise the wording to have been anything a member of registration staff would have said”.

8. It is not necessary to determine this point of difference for the purposes of granting the relief sought in the Family Division and in the Administrative Court. However, I endorse Ms Allman’s submission that the evidence of the local authority fails *entirely* to recognise the gravity of the error made by its Registrar and the impact on this family of that error. I likewise endorse Ms Allman’s submission that the applications before the court are *only* having to be made because of the conduct of the Cambridgeshire County Council Registrar who registered C’s birth. Within this context, the fact that the local authority has to fall back on the feeble assertion, made by a witness who was not present at the material time, that an alleged statement by a member of its staff is not ‘recognised’ perhaps speaks for itself.
9. Turning to the agreed facts that ground the applications for relief in this matter in both the Family Division and in the Administrative Court, Ms Osborne and Ms Arnold have lived together since December 2010. As I have noted, the subject child, C, was born on 1 August 2014. Helen Arnold is C’s legal, biological and gestational mother. Sarah Osborne is, as a matter of fact and law, C’s second female parent pursuant to Section 43 and 44 of the Human Fertilisation and Embryology Act 2008.
10. C was born following IVF treatment undertaken in a United Kingdom licenced clinic. Within this context, an anonymous donor fulfilled the requirements of Schedule 3 to the Human Fertilisation and Embryology Act 1990. In the circumstances, C has no legal father. Ms Arnold and Ms Osborne completed Forms WP and PP correctly and at the appropriate time.
11. Following C’s birth, Ms Osborne and Ms Arnold attended at Cambridgeshire Register Office on 14 August 2014 for the purposes of registering C’s birth (whilst the Registrar General has overall responsibility for the Registration Acts for England and Wales, local authorities are responsible for delivering the registration service for a given area). It is agreed as a fact that Ms Osborne was not included by the Cambridgeshire County Council Registrar on the birth registration for C, despite her being able to be registered as the child’s second female parent pursuant to Section 10 ZA of the Births, Deaths, and Registration Act 1953. Within this context, Ms Osborne was entitled to be registered as C’s parent pursuant to this Act and asked to be registered as C’s birth parent with the agreement of Helen Arnold.
12. It is accepted by Cambridgeshire County Council and the Registrar General that the failure by the Cambridgeshire County Council Registrar to include Ms Osborne on the birth registration was wrong in law and not determinative of Ms Osborne’s legal status in relation to the child, governed by Sections 43 and 44 of the Human Fertilisation and Embryology Act 2008. As a result, C’s birth certificate does not reflect his legal parentage. It is further conceded by Cambridgeshire County Council that there was no proper basis for the Registrar to refuse to register Sarah Osborne as the child’s legal parent.
13. Ms Osborne and Ms Arnold assert that they were informed by the Cambridgeshire County Council Registrar that Ms Osborne would have to adopt the child by applying for a stepparent adoption. As I have noted above, the local authority appears, on what

must be said to be, on the face of it, transparently weak grounds, to dispute this assertion on the basis that members of its staff would not have made this assertion. In any event, such a statement is manifestly incorrect.

14. Thereafter Ms Osborne made an application for a stepparent adoption (which might be thought to be itself strong evidence in support of her assertion that this was the advice she had received from the Cambridgeshire County Council Registrar). A stepparent adoption order was made on 3 November 2015 by the Family Court sitting at Ipswich, pursuant to Section 46 of the Adoption and Children Act 2002. On the evidence before the court, it is accepted by all parties that that application for, and the making of the stepparent adoption order, constituted a mistake of fact and law.
15. Some three years later, Ms Arnold gave birth to the parties' second child on 10 October 2018. That child was also conceived via IVF at a UK registered clinic. Following the birth of their second child, both Ms Osborne and Ms Arnold's names were correctly registered in the Register of Births. As a result, Ms Osborne and Ms Arnold are both the legal parents of C's sibling. The Registrar who registered the birth of the parties' second child confirmed to them that there was no reason why Ms Osborne's name could not have been entered on C's birth certificate on 14 August 2014.
16. In consequence, Ms Arnold e-mailed the General Register Office (GRO) on 15 November 2019, bringing to the GRO's attention that the registration of birth of C had not been correctly carried out. The GRO confirmed on 12 February 2020 that:

“...it would appear that the criteria for a joint registration showing both your details as parents at the time of the child's birth would have been met”.
17. Within this context, the GRO further confirmed that it was possible to re-register the child's birth to add Ms Osborne as the child's second female parent. However, the GRO further advised that as an entry had been made in the Adopted Children's Register (ACR) as a result of the step-parent adoption, C's original birth entry had been annotated “adopted” and, as such, this annotation would also be shown in the re-registered birth entry. The GRO further confirmed that if Ms Arnold and Ms Osborne wished to consider revoking the adoption it could only be done by order of the Court who heard the original application, namely the Family Court sitting at Ipswich. The GRO recommended Ms Arnold and Ms Osborne seek legal advice.
18. On 14 March 2022, the solicitor representing Ms Osborne and Ms Arnold wrote to Cambridgeshire Register Office bringing the intended applications to their attention and seeking an agreement in relation to costs. On 29 April 2022 the Head of Service for Cambridgeshire County Council confirmed that the matter had been handed over to the Council's insurers.
19. On 7 April 2022 Ms Osborne applied under the inherent jurisdiction of the High Court to revoke the adoption order and sought a Declaration of Parentage pursuant to s.55A the Family Law Act 1986. The Declaration of Parentage application was made on 22 April 2022. The first hearing took place before this court on 25 April 2022, at which point the Registrar General and Cambridgeshire County Council were invited to intervene in the proceedings. On 6 June 2022, the Registrar General filed their first witness statement. On 7 June 2022 at a hearing before this court the Registrar General and Cambridgeshire County Council were given permission to intervene in the

proceedings. At that hearing Ms Osborne and Ms Arnold confirmed an intention to issue a claim for judicial review with respect to the decision of the Cambridgeshire County Council Registrar to refuse to register Ms Osborne as the child's parent on his birth certificate.

20. On 14 June 2022 the Registrar General disclosed the relevant sections of the Births Handbook that was in circulation in 2014 at the time C's birth was registered. That Handbook reflects the correct legal position in respect of the registration of a child's birth at that time. Namely, that Ms Osborne was entitled to be registered as C's parent.
21. The application for judicial review was made on 21 June 2022. On 23 June 2022 Mr Justice Saini ordered that the judicial review claim was to be dealt with on a rolled-up basis and if permission was granted a substantive claim would be heard at the same time before me on 15 July 2022. Saini J made the following provisional observation:

“...the Claimant appears to be entitled to an extension of time as a matter of justice and a quashing order. If requested, an order directing the issue of a correct and fresh birth certificate may also be appropriate. The child's current birth certificate does not appear to reflect his true legal parentage and public law relief appears to be the appropriate form of relief to remedy this in accordance with re K [2017] EWHC50(FAM) at (31).”
22. On 27 June 2022 Cambridgeshire County Council filed its witness statement and on 28 June 2022 the Registrar General filed his second witness statement on 28 June 2022.
23. Within the foregoing context, the parties are further agreed as to the following matters relevant to the determination of the applications before the court:
  - i) The original birth registration was wrong in fact and law.
  - ii) When C was adopted an entry was made in the ACR and the original birth entry was annotated “Adopted.” Such annotation is re-produced on any certificates issued from the birth register. The certificate from the ACR replaces the birth certificate.
  - iii) A birth may be re-registered to include details of both parents in the entry pursuant to s14A of the Births and Deaths Registration Act 1953 further to a Declaration of Parentage pursuant to the Family Law Act 1986.
  - iv) Such re-registration would not alter the position that the certificate from the ACR would still be the “official” record of birth. The new “re-registered” birth entry would still show the “adopted” marking and this would also show on the birth certificate.
  - v) The Registrar General has no power to revoke or quash an adoption order. This can only be achieved by the High Court exercising its Inherent Jurisdiction.
  - vi) If the Adoption order is quashed the birth entry and certificate would no longer show the marking “adopted”. The original birth entry would be reinstated and certificates from the original birth entry would become the official record of

birth. If the birth is re-registered the original birth entry would be closed and marked “re-registered”. It would be clear that the birth had been re-registered.

- vii) In order for a new birth registration to take place (rather than a re-registration) then the existing birth registration would also need to be quashed. This can only be achieved by judicial review. A new registration, further to the quashing of the existing one would show no markings.
  - viii) The Claimants are entitled to be put in the position that they would have been in but for failure to register Ms Osborne as the child’s second female parent, which requires the original decision not to register her to be quashed and a fresh registration to take place.
24. As I have noted, neither the Cambridgeshire County Council nor the Registrar General oppose the relief sought. Finally, in circumstances where Cambridgeshire County Council and the Registrar General are not able to agree the apportionment of any costs order the court makes, I am asked to determine the question of apportionment, the quantum of costs having been agreed.

## THE LAW

25. With respect to the application for a declaration of parentage, Part III, Section 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 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.

26. 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 (*Re F (Paternity Registration)* [2013] 2 FLR 1036 at [20] to [23]). Declarations made under Part III of the 1986 Act are binding on the Crown and all people for all purposes pursuant to 58(2) of the Act.

27. With respect to the law governing the application for an order under the inherent jurisdiction revoking the adoption order, the law governing the circumstances in which a court may revoke a lawfully granted adoption order under the inherent jurisdiction of the High Court is set out in a number of well-known authorities. The position was helpfully summarised by Sir James Munby, P in *Re O (A Child)(Human Fertilisation and Embryology: Adoption Revocation)* [2016] 4 WLR 148 in which the former President noted at [27] that:

“[27] There is no need for me to embark upon any detailed analysis of the case law. For present purposes it is enough to draw attention to a few key propositions:

(i) Under the inherent jurisdiction, the High Court can, in an appropriate case, revoke an adoption order. In relation to this jurisdictional issue I unhesitatingly prefer the view shared by Bodey J in *In re W (Inherent Jurisdiction: Permission Application: Revocation and Adoption Order)*, para 6, and Pauffley J in *PK v K*, para 4, to the contrary view of Parker J in *In re PW (Adoption)*, para 1.

(ii) The effect of revoking an adoption order is to restore the status quo ante: see *In re W (Adoption Order: Set Aside and Leave to Oppose)*, paras 11–12.

(iii) However, “The law sets a very high bar against any challenge to an adoption order. An adoption order once lawfully and properly made can be set aside ‘only in highly exceptional and very particular circumstances’”: *In*

*re C (A Child) (Adoption: Placement Order)*, para 44, quoting *Webster v Norfolk County Council*, para 149. As Pauffley J said in *PK v K*, para 14: “public policy considerations ordinarily militate against revoking properly made adoption orders and rightly so.”

(iv) An adoption order regularly made, that is, an adoption order made in circumstances where there was no procedural irregularity, no breach of natural justice and no fraud, cannot be set aside either on the ground of mere mistake (*In re B (Adoption: Jurisdiction to Set Aside)*) or even if there has been a miscarriage of justice (*Webster v Norfolk County Council*).

(v) The fact that the circumstances are highly exceptional does not of itself justify revoking an adoption order. After all, one would hope that the kind of miscarriage of justice exemplified by *Webster v Norfolk County Council* is highly exceptional, yet the attempt to have the adoption order set aside in that case failed.”

28. *In Re O (A Child)(Human Fertilisation and Embryology: Adoption Revocation)* Sir James Munby recognised the situation in which a parent mistakenly applies for, and is granted, an adoption order when they are, as a matter of both fact and law, already the parent of the child, as constituting the type of situation where a court can consider revoking the adoption order, observing as follows at [29] to [31]:

“[29] The present case is unprecedented, indeed far removed on its facts from any of the previously reported cases. The central fact, even if no-one recognised it at the time, is that when Y applied for the adoption order she was already, not merely in fact but also in law, CI's mother. It follows that the entire adoption process was carried on while everyone, including the District Judge, was labouring under a fundamental mistake, not, as in *In re B (Adoption: Jurisdiction to Set Aside)* [1995] Fam 239, a mistake of fact but a mistake of law, and, moreover, a mistake of law which went to the very root of the adoptive process; indeed, a mistake of law which went to the very root of the need for an adoption order at all. The entire adoption proceeded upon what, in law, was a fundamentally false basis.

[30] Flowing also from this is that the consequence of an order revoking the adoption order will in this case be fundamentally different from in any of the other cases. There will be no uprooting of CI from one set of parents and return to another set of parents; CI will remain, as hitherto ever since birth, with the same people, the people who, to CI, as also to X and Y, are and always have been CI's parents in every sense of the word, parents emotionally, psychologically, socially and legally. X and Y always intended to be, and in law always were, CI's parents.

[31] To make an order revoking the adoption order, as I propose to do, will not merely right a wrong; it will recognise a legal and factual reality and put an end to a legal and factual fiction, what Ms Fottrell rightly described as a wholly contrived position. And it will avoid for the future - and this can only be for CI's welfare, now, into the future and, indeed throughout life - all the damaging consequences to which X, Y and the guardian have drawn attention. As Ms Fottrell put it, CI's welfare will be better served by restoring

the status quo ante and setting aside the adoption order. I agree. I can detect no convincing argument of public policy pointing in the other direction; on the contrary, in this most unusual and highly exceptional case public policy marches in step with justice to X, Y and C1; public policy demands that I make the order which so manifestly is required in C1's best interests.”

29. Finally in respect of the law, with respect to the claim for judicial review, in *Re K* [2017] EWHC 50 (Fam) Sir James Munby made clear that, in circumstances where the Registrar General has no statutory power to register afresh, if such a course of action is sought judicial review lies to quash the registration of birth if there has been an error of law on the part of the Registrar. Within this context, the court can entertain a claim for judicial review seeking to quash the initial registration, thereby permitting a further registration. Such a course of action is necessary if the re-registered birth is not to have the marking “adopted” and that marking accordingly re-produced on any certificates issued from the birth register.

## DISCUSSION

30. I am entirely satisfied that it is appropriate in this case to grant a declaration of parentage in favour of Ms Osborne with respect to C pursuant to s.55A of the Family Law Act 1986, to make an order under the inherent jurisdiction of the High Court revoking the adoption order made in respect of C by the Family Court sitting at Ipswich on 3 November 2015, to grant permission to Ms Osborne and Ms Arnold to bring their claim for judicial review out of time and to quash the decision of the Registrar to register the birth without naming Ms Osborne as a parent, thereby enabling a fresh registration to take place. My reasons for so deciding are as follows and can be taken shortly in light of the position of the parties.
31. As I noted in *H v Adoption Agency (Declaration of Parentage Following Adoption)* [2021] Fam 349, s.55A(1) of the Family Law Act 1986 deals with the identity of a child's parent as a matter of fact, a declaration as to status made under Pt III of the 1986 Act is intended to be an authoritative statement of the fact so declared and the term “parent” in s.55A(1) refers to someone who was a parent of the child as a matter of fact. In this case, there is no dispute that Ms Osborne is, as a matter of fact and law, the parent of C. This was the situation that pertained upon C’s birth. Ms Osborne was and is the parent of C as a matter of fact and law.
32. In the foregoing circumstances, the application for, and the granting of, an adoption order in favour of Ms Osborne with respect to C was based on a mistake of fact and a mistake of law, the mistake of law going to very root of the adoptive process in circumstances where there was no need for an adoption order at all. Within this context, the adoption of C by Ms Osborne proceeded on a fundamentally false basis founded in the mistake made by the Cambridgeshire County Council Registrar on 14 August 2014. In these circumstances, the adoption order currently in place is a legal aberration. Within this context, I am satisfied that it is plainly in C’s best interests for that entirely irregular order to be revoked. The reasons underpinning that conclusion are perhaps best articulated in the statement of Ms Arnold:

“[5] The undisputable fact is that C was not born into another family unit and has never been part of another family. Sarah is not a step-parent, she is and always has been his legal parent, his mother. He has only ever had two

parents and has only ever been a part of our family unit. C is a very intelligent, curious, and sensitive boy whose family is incredibly important to him. He constantly asks questions seeking to understand the make up of his extended family, who is who and how everyone is related to each other, who his ancestors were, and importantly how he was 'made' and has two mums. He has a need and a right for his birth certificate to reflect the reality of his life. The fact that his birth certificate states that he is adopted entirely fails to do this; it wholly misrepresents the reality of his life. The adoption process was only followed as we were told, and believed, that this was the only route we could take to provide legal certainty and the security we wanted for our son. We trusted the system and the professionals we encountered. At the time of adoption Sarah was already, in law, C's mother; the adoption then is surely a fallacy? His needless adopted status has the potential to have a significant and detrimental impact on his sense of self, identity and belonging.”

33. I am equally satisfied that Ms Osborne and Ms Arnold’s claim for judicial review must succeed. Sir James Munby P confirmed in *Re K* that judicial review lies to quash the registration of birth if there has been an error of law on the part of the Registrar. The defendant local authority does not resist the court granting permission to the Claimants to bring their claim out of time. In any event, the delay in the claim being brought is amply explained by the fact that the claimants only became aware of the error of law upon the birth of second child and thereafter sought to address that error with the Registrar General and Cambridgeshire County Council without success. In the circumstances, I am satisfied that justice requires the court to grant the Claimants permission bring their claim for judicial review out of time.
34. The defendant local authority likewise does not resist the substantive relief sought by the Claimants in the claim for judicial review. All of the legal requirements under the Human Fertilisation and Embryology Act 2008 were met in this case. As I have noted, Ms Osborne was and is as a matter of fact and law the parent of C. Both C’s parents attended to be registered on 14 August 2014 and asked to be registered. Within this context, Ms Osborne was entitled to be so registered under s.10(1)(b) of the 1953 Act. Notwithstanding this, and unlawfully, the Registrar decided to refuse to permit Ms Osborne to sign the register of birth as she was legally entitled to do. That decision was wrong in law. Within this context, there was no proper or reasonable basis for the Registrar’s decision. Only an order quashing the decision of the Registrar to register the birth without naming Ms Osborne as a parent will put Ms Osborne, Ms Arnold and C back in the position they should have been in but for the unlawful decision of the Cambridgeshire County Council Registrar, by enabling a fresh registration to take place. Within this context, justice demands that the relief sought be granted. The family are entitled to be put back in the position they would have been but for unlawful decision of the Registrar.

## CONCLUSION

35. In the circumstances, I grant a declaration of parentage in favour of Ms Osborne with respect to C pursuant to s.55A of the Family Law Act 1986. I grant an order pursuant to the inherent jurisdiction of the High Court revoking the adoption order made in respect of C by the Family Court sitting at Ipswich on 3 November 2015. Finally, I grant permission to Ms Osborne and Ms Arnold to bring their claim for judicial review

out of time and I quash the decision of the Registrar to register the birth without naming Ms Osborne as a parent, thereby enabling a fresh registration to take place.

36. Before concluding this judgment, it is worth reflecting on the following passages from Ms Osborne's statement and Ms Arnold's statement regarding the consequence for their family of the error made by the Cambridgeshire County Council Registrar. Ms Osborne states as follows:

“[17] What we had now was a complete misrepresentation of the nature of our family; and two children who were conceived and born within the same family circumstance, but one was on the adopted register for no good reason and the other was not. There is now a significant disparity between our son and our daughter. We were very concerned about the potential negative psychological and emotional impact of this disparity on C and his relationship with us as well as his sister. For all intents and purposes C is currently listed as adopted when he was not 'adopted' but was born into a family of two parents who happened to both be female. His birth certificate in no way reflects the lived reality of our family situation and wholly misrepresents his life and how he came to be our son.”

And

“[24] Everything that has happened sits very uncomfortably with us; it is like a constant shadow over our family. What should have been a simple and straightforward matter has turned into an emotional and administrative nightmare. We have been burdened with trying to put right something that should never have happened. We were very wrongly misadvised and, as far as we are concerned, a serious and significant error was made by the county council. By their own admission this organisation is responsible for the mistake; a mistake that has resulted in significant worry, emotional stress, and extensive time, effort and cost to try to put right. We have felt so worn down by the process of trying to rectify this mistake and many times were unable to see where we could turn next.

[25] Through no fault of our own we have a completely misrepresented family picture...C is not adopted and never needed to have been. The official documentation relating to his birth indicates a needless and meaningless adoption that fails to reflect our lived reality as a family, and more importantly, could have quite a serious negative impact on our son's psychological well-being. All we want is for our family to be correctly represented in the official document of his birth certificate; a document that you carry for life, a document that signifies your identity. We want C (and anyone else who looks at his birth certificate) to see and know from the information it contains that he has two mums who planned to have him, just as in the case of his younger sister. It is only fair, and right, that his birth certificate reads no differently.”

37. In her statement dated 6 March 2022, Ms Arnold articulates the following with respect to the impact on the family of the Registrar's error:

“[6] This whole situation has really taken its toll on us both; it has, and continues to, cost us emotionally and financially; it has cost us time, money, angst, anger, despair, and frustration. The adoption process was intrusive, judgmental, undermining, and in that sense hurtful. It felt wrong all the way through, and it felt so highly inapplicable to our situation. That it became apparent it was also needless just added to the humiliation we feel. We celebrated the Adoption Order completely believing it to be a cause for joy when it turned out to be a farce; we feel we have been made a mockery of, duped; it all feels like a cruel joke. We feel denied as a couple and as parents and we feel that our son is also being denied his true family situation. Surely it is only right and just that any record of his birth and identity is a true and accurate reflection of his lived reality, parentage, and of the legislation at the time of his registration.”

38. Within this context and as I noted during the hearing, whilst having a superficially bureaucratic character, administrative steps such as the registration of a birth are absolutely *fundamental* to an individual’s identity (both as a unique and separate individual and as a recognised member of society), legal status and familial relationships. Within this context, Art 7 of the United Nations Convention on the Rights of the Child stipulates that a child *shall* be registered immediately after birth and *shall* have the right from birth to a name, the right to acquire a nationality and, as far as possible, a right to know and be cared for by his or her parents. Within this context, the seemingly mundane administrative act of correctly registering a birth carries with it enormous significance for child and parents. It is a decisively important step both in ensuring legal proof of identity and civil status and as the foundation on which a personal identity is built. It is vital that it the process is undertaken correctly.
39. That is my judgment.