Neutral Citation Number: [2022] EWFC 18

Case No: ZC21P00015

IN THE FAMILY COURT
SITTING AT THE ROYAL COURTS OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/3/22

Before:

MRS JUSTICE THEIS

- -

Between:

W	**1st Applicant**
- and -	
X	**2nd Applicant**
- and -	
Y	**1st Respondent**
- and -	
Z	
(A Child by Children's Guardian, Ms Julia Green)	**2nd Respondent**

- -

Ms Marlene Cayoun and Ms Beth Hibbert (instructed by **Creighton & Partners**) for the **1st Applicant**
Mr Dorian Day and Mrs Barbara Hecht (instructed by **Hecht Montgomery**) for the **2nd Applicant**
Ms Dorothea Gartland (instructed by **Duncan Lewis)** for the **2nd Respondent**
Y did not attend the hearing

Hearing dates: 18th – 19th November 2021; 3rd December 2021;
31st January 2022 and 2nd March 2022
Judgment: 10th March 2022

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Approved Judgment

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Theis DBE:

Introduction

1. This matter concerns an application for a parental order relating to Z, who was born in 2017. The applicants are W and X, hereafter referred to as the mother and father. The Respondent to the application is Y, the gestational surrogate mother who gave birth to Z as a result of a surrogacy arrangement entered into between the parties in Georgia. Z is also a party to these proceedings, represented by his Children's Guardian, Julia Green.

2. This application is being considered in the context of ongoing care proceedings relating to Z. Those proceedings were issued in April 2020, following many years of local authority involvement with the family. The final hearing took place in December 2020 over 6 days before DJ Duddridge (as he then was). Final orders were made in relation to the applicants' older children, A and B, providing they should live with their mother, spend time with their father, which would be supervised by the local authority, and a 12 month supervision order was made in favour of the local authority. In addition, a non-molestation order was made that forbids the father from communicating with the mother and the children, save for contact arranged by the local authority. There has been an alleged breach of the order, the father pleaded guilty to one count that related to a WhatsApp message to B.

3. During the care proceedings it was discovered Z had been born via a surrogacy arrangement and no parental order had been applied for. It is of note that the father initially stated in those proceedings that the mother had carried Z. It was only when the mother filed her evidence did it become clear he had been born via a surrogacy arrangement.

4. Final orders within the care proceedings relating to Z were adjourned to enable this application to be made. Whilst the C51 application for a parental order is dated 23 December 2020, there have been significant delays in proceeding with the application due to delays in securing legal aid. Z was joined as a party and has the benefit of the same Children's Guardian in these proceedings as in the care proceedings. The care proceedings in relation to Z were adjourned until 9 and 10 December 2021, they were further adjourned due to delays in these proceedings and are re-listed for hearing in April 2022. The only issue in those proceedings is likely to relate to orders about the father's time with Z, there being no issue that Z should remain in the mother's care. The current arrangements for the father to spend time with Z were suspended in February 2022 and will be considered at the hearing in April 2022.

5. The parties agree as to the need for a parental order, the issues have centred on understanding what the surrogacy arrangement was, and gathering the evidence to meet the criteria under s 54 Human Fertilisation and Embryology Act 2008 ('HFEA 2008'). Although that task has been far from straightforward the court has been greatly assisted by the detailed and insightful judgment by DJ Duddridge in the care proceedings and all legal representatives in this case, both solicitors and counsel. Their effective and creative collaboration and excellent joint skeleton argument has helped avoid even further delays in these proceedings.

6. Before turning to consider the background, I want to draw attention to the use in this case of the process under the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents on Apostille as outlined below. That process enabled the written consent provided by the surrogate mother to be done in circumstances where it was subsequently confirmed as being a valid and lawful notarised document under Georgian law. This swift and effective process helped ensure further delays in these proceedings being avoided.

Relevant Background

7. The applicants are Z's genetic parents. They married in 2008, separated and divorced in 2020. The mother is from Moldova and has Italian and British citizenship, as a result of her marriage to the father. The father has dual British and Italian citizenship.

8. As set out in the judgment in the care proceedings, the parents are clear they have never had a sexual relationship; the father is 20 years older than the mother and is gay. The older two children, A and B, had been born following IVF treatment undertaken by the applicants, the mother carried the children and both applicants are the genetic parents of those children. The court found in the care proceedings the father had been abusive and controlling towards the mother throughout their relationship and this had been witnessed by the children.

9. An assessment undertaken by the Tavistock clinic during the care proceedings, diagnosed the father with recurrent depressive disorder, complicated by anxiety and panic attacks as well as a benzodiazepine dependence syndrome.

10. Within the care proceedings expert advice was received from Dr Bianca Jackson in November 2020 outlining the need for an application for a parental order in relation to Z. In that advice, Dr Jackson set out that in the absence of a parental order being made the applicants are not properly recognised as Z's legal parents. Without a parental order being made the surrogate mother, Y, remains Z's legal mother in this jurisdiction by virtue of s33(a) HFEA 2008. The legal mother of a child is the person who carries the child, regardless of whether the child is genetically related to the surrogate mother or not, or whether the treatment took place in this jurisdiction, or abroad.

11. In relation to the father, if the surrogate mother was not married the father is regarded as the legal father as he is the biological father (common law position) and no other person is being treated as the father/second parent (pursuant to ss 35, 36, 42 or 43 HFEA 2008).

12. It was decided the care proceedings in relation to Z would be adjourned to enable this application to proceed and be determined before final orders were made in relation to Z in those proceedings.

13. The parental order application is dated 23 December 2020. Initial directions on 25 March 2021 provided for the applicants to file statements addressing the background and the s 54 HFEA 2008 criteria, appointed Ms Green as the parental order reporter, directing her to file a report and listed the matter for further directions or a final hearing on 15 July 2021.

14. On 14 June 2021 Z was joined as a party to the proceedings, as it had not been possible to serve or locate the surrogate mother, Y. Directions were made for the local authority to consider whether they sought any directions, the applicants were directed to file further evidence and permission was given relating to any Part 25 application for a Georgian expert. The matter was listed for directions on 5 October 2021, and for two days on 18 and 19 November 2021. The local authority did not seek any directions, other than to be notified of the result of the application for a parental order.

15. The background and circumstances of the surrogacy arrangement remain somewhat uncertain. Both applicants state in their written evidence the father took the lead in these arrangements; the mother's role being confined to donating her eggs for the process. According to the father, he wanted another child, the mother was less willing and in his written evidence he said she *'donated her eggs at a cost of £10,000. I, therefore, made enquiries and the necessary arrangements via a surrogacy agency to Georgia…'* The mother doesn't accept the father's account, describing the father going ahead with the surrogacy arrangement, engaging with two difference women to act as surrogates. In her statement the mother said she *'eventually agreed to go along with [the father's] plans given the pressure he put me under. He had arranged everything and told me all I needed to do was travel to a clinic to donate eggs. He said otherwise he would do it anyway and it would mean that the child wouldn't be a full sibling to [A and B]….I had to travel to a clinic in Cyprus to donate my eggs. There were many people and organisations involved. I was there for the treatment I had to have for my egg release and just going along with the process doing what I was told. I didn't have much communication with anyone…'.*

16. Both parents have, in my judgment, failed to give the court information in a helpful, consistent or reliable way. Whilst I acknowledge the difficult dynamics in the applicants' relationship, and the findings made by DJ Duddridge about the father's coercive and controlling behaviour towards the mother, in my judgment their collective failure to provide the court with a consistent and reliable account is inimical to Z's welfare and identity; depriving him of being able to grow up with a reliable account of his own particular background.

17. The emails the court has seen between the father and Ms Tamana Gvazava of the International Surrogacy and Egg Donation Agency Ltd show a worrying disregard for the short and long term risks and consequences of what they were proposing. For example, the original plan was to have two surrogate mothers pregnant at the same time. The evidence suggests this is what was done, although the embryo transfer to one of the surrogate mothers did not result in a pregnancy. In addition, in the email exchanges the plan appeared to be for the embryo transfer to take place in Cyprus, with the Georgian surrogate travelling there for that procedure, to return to Georgia for the pregnancy and to travel to Istanbul for the birth. It was not clear why the arrangement needed to cross three jurisdictions with the inherent risks involved in such an arrangement. In the event, according to the applicants, as Z arrived early the birth took place in Georgia.

18. Until recently, it had not been possible to locate the surrogate mother, Y. The court had made orders requesting assistance from the Embassy of Georgia in London to assist in locating the surrogate mother. Just prior to the hearing in November 2021 the father's solicitors provided the contact details for the surrogate mother. The father has since confirmed this was as a result of him paying $500 USD to the agent used

previously for what have been termed ‘administrative costs’ in providing this information to the father.

19. The solicitor for the child made contact with the surrogate mother, and on 10 and 17 November was able to speak to her, with the assistance of an interpreter. In the attendance notes of those conversations Y confirmed she had carried Z, consented to the parental order being made and when asked about any payments confirmed they had been made, but could not recall any detail.

20. The surrogate mother was given details of the link to join the hearing on 18 November. Unfortunately, it was not possible to secure a video link that worked and the phone link was unreliable. With the assistance of the court interpreter, who attended at the hearing on 18 November, and the Georgian legal expert, Mr Begiashvili, who also attended the hearing, arrangements were put in place for the written consent to be completed and notarised. Detailed directions were made for evidence to be filed and the matter was relisted on 3 December 2021.

21. On 24 November 2021 arrangements were put in hand for the surrogate mother to sign the written consent, which was then notarised by the notary, Mr Zaal Batiashvili, over a video link and Mr Batiashvili signed a notarial certificate. That certificate records that that the notary spoke with Y on 24 November 2021 by direct electronic communication in the presence of Mr Begiashvili, the Georgian lawyer, and his colleague, Ms Khachidze. The certificate records that (i) Mr Begiashvili verified Y’s identity using an electronic database maintained by the Legal Entity for Public Law Agency for public registry; (ii) Y confirmed her consent to the making of a parental order in respect of Z in the presence of a witness, Ms Khachidze (in person) and the notary (via a video call) by reciting a Georgian translation of the Form A101A; (iii) the notary wrote down the text of this statement and read it online to Y and Y confirmed the text corresponded to her *‘will and that while making the Statement she was not under any physical, mental or other kind of constraint and that she empowered Mariam Khachidze to sign the statement on her behalf*’ . The certificate was then signed by Ms Khachidze, the contents of which accord with the content of the Form A101A.

22. A separate statement was filed in these proceedings from Ms Begiashvili, the Georgian lawyer, to confirm this process took place.

23. The notarial certificate has been certified by the Apostille to the Ministry of Justice of Georgia pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents on Apostille (‘the Convention’).

24. In his statement dated 6 December 2021 Mr Begiashvili explains that the certification by the Apostille involves translation of the notarial certificate into English, confirmation that (i) the notary is authorised to carry out the notarial activity in Georgia, and (ii) the Notary Act on Certification of Statement Through Direct Electronic Communication is in full compliance of the relevant laws in Georgia, and consequently is a valid and lawful document.

25. Mr Begiashvili provided a translated copy of the relevant Georgian legislation on Notarial activity, Order No 71 ‘Instructions for Notarial Acts Performance Procedure’. This provides that notaries may certify documents electronically provided there is direct visual contact between the person and the notary, and identification verification is possible. Y’s identification verification was possible in accordance with the legislation by an ID card using the electronic database and it permits a witness to sign the relevant documents on behalf of another; Y lawfully authorised Ms Kachidze

to sign the notarial certificate on her behalf. As further confirmation of her consent, Y has also signed a Georgian translation of Form A101A witnessed by Mr Begiashvili.

26. Y has been kept informed of the hearing dates since she signed her consent. The mother's solicitor's statement dated 23 February 2022 confirms how she has kept Y updated. In that statement she describes a telephone call with Y on 22 February 2022, with the assistance of a Georgian interpreter, when Y stated she understood and was aware of the hearing stating she was *'100% understanding the Judge's question and 100% sure even though I have the option to attend court if I want to, I don't want to… I have no questions at all'.*

27. Through this process, it is submitted, the Court can be satisfied Y has given her consent freely, unconditionally and with full understanding as to what is involved and that consent complies with the requirements set out in rule 13.11 (4) Family Procedure Rules 2010 regarding agreements executed outside the United Kingdom.

28. The final requirement, under s 54 (8), relates to the question of payments and the need for the court to be satisfied that no money or other benefit (other than for expenses reasonably incurred) have been given or received by either of the applicants for or in consideration of (a) the making of the order, (b) any agreement required by the subsection (6), (c) the handing over of the child to the applicants, or (d) the making of arrangements with a view to the making of the order.

29. As with other aspects of this case, the evidence from the parents is not entirely clear. In his first statement the father sets out the following: [6] "*The payment for the surrogacy process was made through the agency; I paid via bank transfer, and when Z was born, some payments for hospital bills were made via Money Gram. I cannot recall precisely how much this was, but it was a lot of money, I had to ask W to lend me some money to cover the hospital bill for which I paid her back, and I also paid £10,000 for her eggs."* In his second statement he provides some further somewhat generalised information [5] *"[…] As I have said before, payments were made to the agency via bank transfers, and I cannot recall the exact amount, but I can confirm I have not made any payments to [Y] directly."* At [14] '*As I have said before, I paid the fees for the surrogacy arrangements to the agency. I cannot recall the amount, and due to issues with my health, I have not been able to go to the bank and request statements going back 5 years.'* and [15] *Other than the payment to the agency, I have not made any payments to* [Y]."

30. The mother sets out her understanding as regards the financial arrangements in her statements as follows. In her first at [17] '…*My main communication was with a lady called Tamura from the IVF / surrogacy agency who was contacting me asking for more payments and also with a lawyer who just seemed to want more money. Even though [the father] should have been responsible for payments, he didn't have enough money as the costs kept increasing and so I was pressured to pay. It also felt dodgy. The money was sent via "MoneyGram" and to an American bank account, which wasn't in the name of the surrogacy agency or the lawyer.'* In her second statement at [20] "…*Since the last court hearing, I have managed to go back and find a copy of a bank statement from my account in which I made three large transfers of 03 July 2027* [sic]. *These were for £2,140, £5,000 and £1,000 to an account in the USA. They were all going to the surrogate agency',* and at [21] '*These were the only payments I remember making via the bank because they were such large amounts, I couldn't make them online*'.

31. The mother attached to her statement a number of email exchanges with Ms Tamara Gvazava where references are made to sums owing or being paid in connection with the surrogacy. An email in June 2017 suggests that the applicants paid a total of $30,350

made up as follows: base fee per surrogate twice $6,400 ($12,800), travel to Cyprus $750, medical expenses $2,000, Expenses months 1 – 9 total $2,600 and payment on delivery $12,200.

32. In the initial discussions Y had with Z's solicitor in November 2021, she was asked if she was paid for the surrogacy arrangement, Y responded *'Yes, of course'*. When asked if she could remember how much she responded *'To be honest I don't remember as we didn't have a contract from the beginning'*.

33. The evidence lacks clarity as to precisely what was paid to the agency or Y. The mother says she was not involved in this aspect of the arrangement but has provided details of what she knows, the father and Y state they can't remember. The context is relevant in that commercial surrogacy arrangements in Georgia are permitted, once located Y has co-operated with these proceedings and has been clear throughout that she was acting as a surrogate mother. Even though the circumstances surrounding this arrangement are not straightforward, and it has taken some considerable time to reach the position the court is in now, there is no suggestion the applicants acted in bad faith or that the payments for the arrangement are disproportionate.

34. When the matter came back before the court on 3 December 2021 the matter had to be adjourned again to 31 January 2022 due to an issue regarding the certificate exhibited by the mother to her statement from the Foreign Commonwealth and Development Office ('FCDO') which registers Z as a British Citizen born abroad, naming the applicants as his parents. It was unclear what impact this certificate would have, if any, if the court made a parental order and enquiries were directed to be undertaken with the FCDO and the General Register Office (GRO).

35. In her two statements filed since the hearing on 3 December 2021, the mother explains she took steps to do this on the advice of the Children's Guardian, Ms Green, within the care proceedings to help secure Z's legal status in the United Kingdom. The Guardian's record of the conversation with the mother was in July 2021. Such conversation was a general one about X's status which was a matter the Guardian suggested the mother spoke to her legal representatives about In her application for the certificate the mother named herself and the father as Z's parents, as that is how they are registered on Z's Georgian birth certificate, which accords with Georgian law. In her statement the mother describes being open with the FCDO officials that Z was born as a result of a surrogacy.

36. There were delays in all the relevant information being provided, with the result that the hearing on 31 January 2022 had to be further adjourned until 2 March 2022.

37. Subsequent enquiries with the FCDO resulted in their position being that the certificate should not have been issued. On 11 February 2022 the FCDO responded to the joint enquiries from the parties stating that the FCDO certificate is invalid and should be returned. The mother did that on 24 February 2022. The FCDO confirmed receipt on 28 February 2022 and stated they are in the process of getting it voided.

38. It is of note that in the application for this certificate there is no obvious indication that the mother should have provided different information than she did, nor is there any specific reference to what should be done in circumstances such as this, where a child is born following a surrogacy arrangement. That is something the FCDO may wish to consider further.

39. Enquiries were also made with the General Register Office ('GRO') about the impact, if any, of the FCDO certificate. The GRO responded on 1 March 2022 confirming that

the GRO is only informed once a parental order has been made by the court. The GRO's email confirmed that once the parental order has been made the court will send a copy to the GRO, the order requires the GRO to create an entry in the Parental Order Register following which certificates can be issued from the Registrar. The Parental Order certificate supersedes any previous birth certificate issued.

The s 54 criteria

40. The eight relevant criteria under section 54 HFEA 2008 can be summarised as follows:

(1) The biological connection with at least one of the applicants and the child, and the child was not carried by one of the applicants (s54(1)(a) and (b));

(2) Whether the applicants at the time of the application and at the time when the court is considering making an order are married, civil partners or in an enduring family relationship (S54 (2)).

(3) The application should be made within six months of the child's birth (s54(3)).

(4) At the time of the application and at the time when the court is considering making an order is the child's home with the applicants (s54(4)(a)).

(5) At the time of the application and at the time when the court is considering making an order at least one of the applicants is domiciled in this jurisdiction (s54 (4)(b)).

(6) Whether the applicants are over 18 years (s54 (5)).

(7) Whether the surrogate mother has given her consent, freely and with full understanding, to the making of a parental order at least 6 weeks after the birth of the child (s54 (6) and (7). If such written agreement is executed outside the United Kingdom rule 13.11(4) Family Procedure Rules 2010 (FPR 2010) provides details of who can witness such agreements, including a notary public.

(8) Whether any payments have been made, other than for expenses reasonably incurred and, if so, do they require to be authorised by the court (s54 (8)).

41. There is agreement that some of the criteria under s 54 are readily established, others require more careful consideration.

42. DNA tests confirm the biological connection between both of the applicants and Z (s 54 (1)(b)) and he was carried by someone other than one of the applicants, namely Y (s 54(1)(a)).

43. The relevant part of s54 (2) requires the court to be satisfied that the applicants must be '*two persons who are living as partners in an enduring family relationship…'*. The applicants separated in early 2020 and were divorced in October 2020. They submit they meet this requirement. They lived together with Z on his arrival in London in early 2018, until the mother left the home in March 2020. DJ Duddridge records in the judgment in the care proceedings that the father evicted the mother from their home.

44. At the time of Z's birth and for the first three years the applicants were married, their lives are inextricably linked and although now separated the father has an ongoing relationship with the children, including Z.

45. Reliance is placed on the circumstances that have been held to meet this requirement in a number of previous cases (such as *Re X [2018] EWFC 15; Re A [2020] EWHC 1426 (Fam))*, relying in particular on *Re X [2015]* 1 FLR 349 where Munby P made a parental order in circumstances where the applicants had been separated for 12 months and the child had been living in two separate homes throughout; holding that in respect of s54(2), the statute should be read in a way that was compliant with the European Convention. Although the HFEA 2008 does not define what an 'enduring family relationship' is, it was left for the courts to determine on the facts of each case (see *F&M (children) (Thai Surrogacy) [2016] EWHC 1594 (Fam)).* It is of note the definition of 'enduring family relationship' in s 144(4) of the Adoption and Children Act 2002 was clarified by Hedley J in *Re T [2010] EWHC 964 (Fam)* at paragraph 16 as follows: *'What is required is: first, an unambiguous intention to create and maintain family life, and secondly, a factual matrix consistent with that intention. That is clearly a question of fact and degree in each case.'*

46. I accept, in the circumstances of this unusual case, that although the applicants are separated and DJ Duddridge made significant findings about the nature of their relationship, they had established a family life. Whilst there continue to be difficulties within their relationship they both, in their own way, remain committed to their children, including Z. The court in the care proceedings will need to determine what time, if any, Z will spend with the father. In my judgment, this court should take a broad and purposive approach in interpreting this requirement in this case, in circumstances where Art 8 family life has been established, which it had in this case, and conclude that the applicants are in an enduring family relationship arising from the circumstances of their family life and their ongoing commitment to their children, including Z.

47. Section 54 (3) requires the application to be issued within six months of the child's birth. At the time of Z's birth the applicants state they were not aware of the need to apply for a parental order. It was not until receipt of the advice from Dr Jackson did they understand such an application was required. Once they were aware the application was made the following month. Munby P in *Re X (A Child)(Parental Order: Time Limit)* [2015] 2 WLR 745 concluded there is power to make a parental order, notwithstanding the expiry of the 6 month time limit. One of the factors the court needs to consider is whether the application was made relatively promptly once it was known such an application was required to be made, which it was in this case.

48. Section 54 (4) requires the child's home to be with the applicants at the time the application was issued and at the time the court is considering making a parental order and at least one of the applicants is domiciled in this jurisdiction.

49. I consider this requirement is met, de facto family life had been established between the applicants and Z, Z had lived with the applicants since soon after his birth until early 2020, Z continues to live with the mother and spent some supervised time with the father in accordance with his best interests, pursuant to the order made by DJ Duddridge. Whilst there has been some recent changes in those arrangements they will be considered by the court in the care proceedings shortly. Since the parents' separation they have both remained committed to Z. Previous cases have given a broad and purposive interpretation of the requirement of 'home' to include situations, such as here, where the child's home is based with one applicant and spends some

time with the other (see, for example, *Re A and B (Parental order) [2015] EWHC 2080 (Fam)*).

50. As regards the requirement for at least one of the applicants to be domiciled in this jurisdiction, neither the mother or father were born here. It is necessary to consider whether either of them can establish this jurisdiction is their domicile of choice. That is a question of fact applying the principles summarised in *Re Z* [2011] EWFC 3181 at paragraph 13. In summary, the court needs to consider whether either of the applicants have established an intention to indefinitely and permanently reside here. The mother owns a property here with her sister and has lived here for more than 14 years. The two older children were born here, Z has lived here since soon after his birth, all the children are being educated and brought up here, the family are based and settled here and family life is very much established here. The mother has made clear in her evidence that her intention is to remain living in this jurisdiction and she has no intention to return to live in her domicile of origin, Moldova, either in the short of long term. I accept that evidence, as a consequence this criteria for domicile is met by the mother whose domicile of choice is here.

51. Both applicants are over the age of 18 years, as required by s 54 (5).

52. s 54 (6) requires the court to be satisfied Y consents to this court making a parental order and that consent is given freely, unconditionally and with full understanding.

53. For the reasons outlined in more detail above, this issue has taken sometime to resolve. What is relied upon is the procedure that took place on 24 November 2021 where the surrogate mother was on a video link with the notary public, Mr Batiashvili, the expert, Mr Begiashvili, and his colleague, Ms Khachidze. The notarial certificate in the papers show that having confirmed her identity the notary listened to the surrogate mother read out the consent, the notary then read it back to her. The surrogate mother confirmed that she agreed the text, that she did not experience any physical, mental or other pressure and she assigned the right of signature to Ms Khachidze, who signed the document on her behalf. There is a video available to the parties and the court which confirms this took place.

54. This notarial certificate was then translated on 30 November 2021 from Georgian into English at the Apostille and Legalisation Division of the Public Service Development Agency of the Ministry of Justice by Irina Gasparova. The apostille certificate confirms this is in accordance with the Convention.

55. I am satisfied from the procedure outlined above, evidenced in the documents and information available to the court, that Y consents to this court making a parental order and that she has done so freely, unconditionally and with full understanding. The effect of the notarial procedure outlined above complies with rule 13.11 (4) that any agreement in writing executed outside the United Kingdom is witnessed by one of the persons listed, which include a notary public. In this case, Mr Batiashvili.

56. Turning to the final criteria under s 54 (8), where the court needs to consider any payments made other than for expenses reasonably incurred. It has been difficult to get a clear picture of precisely what payments were made, and when. The copies of emails between the applicants and Ms Gvazava in June/July 2017 provide some information. The email dated 22 June 2017 from Ms Gvazava to the applicants (sent to both their email addresses) refers to one surrogate mother program costing $6,400 USD then continues *for 'sm [Y] send 3 time monthly payment 200+200+200=600 usd form [sic] next mont until deliver period only sm you have to pay total 2400 usd (four month 200 usd, five month 200 usd, six month 400 usd, 7 month 400 usd, 8 month 400*

usd) this money is for her food, accommodation and a.c…when she will deliver baby in Istanbul you have to pay to sm last payment from her money 12 200 usd….'. There is then an email from Ms Gvazara later that day to just the father where she refers to two *'sm prgram'* and states *'you pay when your sm was pregnant'.* Later that day an email response from the father reads *'Thamara how much is for 1 SM IN TOTAL? How much we pay IN TOTAL TO YOU AND CYPRUS? [the mother]'.*

57. On 25 June 2017 there is an email from the father stating '*Tamara please talk to [the mother]. She don't want me to interfere. She want to talk to you her self. Please forgive her for been [sic] rude. It will not happen again. I'm promised. But please unblock her'* . On the 28 June 2017 the father thanks Ms Gvazava for unblocking the mother and asking her to talk to the mother. There are then emails asking the mother to pay and the father responding stating the banks are shut on Saturday and she will send Monday morning.

58. In her third statement dated 4 November 2021, the mother sets out that she paid 3 sums on 3 July 2017, namely £2,140, £5,000 and £1,000.

59. In an email from Ms Gvazava to the father's solicitor on 27 October 2021 she states *'[the father] was from my companion agent from Cyprus so about payments always he asked to them. And he paid to my agency fee 3000$ for take surrogate mother [Y]. I think totally they paid for a program 36000 $. Surrogate mother Compensation was as I member 15000$ And [the father] pay this money to surrogate mother by hand – I can show from clinic Repro art embryo transfer report. That they done transfer to surrogate mother [Y]…'*

60. The court is left in the position where this appears to have been a commercial surrogacy arrangement, which involved payments other than for expenses reasonably incurred but on the information available it is difficult to see precisely what the level of those payments were.

61. In considering whether any element of the payments other than for expenses reasonably incurred should be authorised, the court needs to consider whether the payments were disproportionate to expenses reasonably incurred, whether the applicants acted in good faith or sought to get round the authorities. Whilst the fine detail of the payments made remain unclear the surrogate mother, Y, when contacted, was clear she acted as a surrogate mother, was willing to co-operate with providing her consent, although she could not recall the amount she accepted she was paid for the arrangement. The emails provided indicate that there were monthly payments for expenses and then a larger payment after the birth. Whilst the court remains concerned about the applicants approach to the surrogacy and the lack of detailed information, there is no suggestion the applicants did not act in good faith, or that they sought to get round the authorities.

62. The court can only deal with the information it has been provided with. It appears from that this was an arrangement which involved payments other than for expenses reasonably incurred. Such an arrangement is permitted in the jurisdiction where it was entered into, it is not suggested the payments were disproportionate, Y has co-operated voluntarily with the process whereby she gave her consent to the making of a parental in these proceedings and has remained available to contact. Although recognising the information is not as clear as it could have been, I am satisfied the court should authorise any element of the payments made that do not relate to expenses reasonably incurred.

Welfare needs

63. If the s 54 criteria are met the court needs to consider whether making a parental order will meet Z's welfare needs. In considering whether it does his life-long welfare needs are the courts paramount consideration, having regard to the matters set out in s1 (4) ACA 2002.

64. In her perceptive report, Ms Green sets out her analysis of Z's welfare needs and recommends that a parental order is made. She acknowledges that due to his particular circumstances Z's understanding of the unusual circumstances surrounding his birth and his family life would be complex to understand. The father had, until relatively recently, been spending supervised time with Z. At a review attended by Ms Green the father had not undertaken the work recommended by the Tavistock and his insight into the impact of his behaviour on the children remains limited.

65. Z, is the biological child of both applicants. He was born through a surrogacy arrangement. Whilst there are complexities arising from the parental relationship, without a parental order he will not be able to make sense of his background. The judgment in the care proceedings set out the harm Z suffered and the recommendations of the Tavistock assessment. Since he has been in the sole care of the mother there has been a more realistic recognition, in particular by the mother, of the harm the children were caused by their previous experience of the relationship between the applicants.

66. The evidence clearly demonstrates making a parental order will secure Z's lifelong welfare interests in accordance with s1 ACA 2002. Through such an order his legal parental relationship with the applicants is recognised, particularly the mother who has been responsible more recently in providing the stability of care Z's needs require. It will extinguish his legal relationship with Y, which reflects the reality of his life. A parental order will also secure his legal relationship with his older siblings in a way that brings about lifelong security for him in terms of his identity. As Ms Green noted, they are a sibling group and as such have significant attachments to each other, a parental order in relation to Z will provide a legal security to those underlying strong attachments.