THE BOARD ORDERED that no one shall publish or reveal the name or address of the child who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the child or any member of his family in connection with these proceedings.

Michaelmas Term

[2019] UKPC 40

Privy Council Appeal No 0084 of 2016

JUDGMENT

C (Appellant) v C (Respondent) (Jersey)

From the Court of Appeal of Jersey

before

Lady Hale

Lord Wilson

Lord Hodge

Lord Kitchin

Lord Sales

JUDGMENT GIVEN ON

31 October 2019

Heard on 20 February 2019

Appellant	Respondent
Richard Todd QC	Deirdre Fottrell QC
Simon Calhaem	Richard Castle
	Eleri Jones
(Instructed by Mishcon de Reya LLP (London))	(Instructed by Blake Morgan LLP (Oxford))

LORD WILSON:

Introduction

1.
The Royal Court in Jersey has ordered the appellant, an adult male, to make periodical payments to the mother of a male child for that child's benefit. The appellant and the mother were never married. At one time, before a court in Latvia, they each averred that the appellant was the boy's biological

father. Now they each aver that he is not the boy's biological father. So the appellant submits that it is an agreed fact that he is not the boy's biological father; and that therefore he should not have been ordered to make periodical payments for the boy's benefit.

2.
There is no denying that it is at present agreed between the parties that the appellant is not the boy's biological father. But is it a fact that he is not the biological father? Curious though it may seem in the light of the agreement between the parties, the history raises doubts in this respect. But the overarching question is whether the appellant is a "parent" of the boy for the purpose of conferring jurisdiction on the Royal Court to make the order against him. And the narrower question is whether the Royal Court was entitled to conclude, by reference only to an order made by the court in Latvia, that the appellant was the boy's "parent"; and that therefore it could make the order for periodical payments without having to decide for itself, on the evidence before it, that he was his biological father and therefore his parent.

3.
At the outset of the hearing on 20 February 2019 the Board ordered that no one should publish in connection with the appeal the name or address of the boy or any information likely to lead to his identification or that of any member of his family. So the clarity which attends the conventional recital of specific facts in the Opinions of the Board will to a substantial extent be lost because of the need to blur recital of many of the relevant facts so as to conform with the order for anonymity.

4.
The order for periodical payments to be made by the appellant for the benefit of the boy, which was in the sum of £5,000 per month, was made, together with collateral orders, by the Registrar of the Royal Court, Family Division, in 2014. In 2015, on appeal by the appellant, the Deputy Bailiff, sitting with two jurats, set aside two of the Registrar's collateral orders but dismissed his appeal against the substantive order for periodical payments. In 2016 the Court of Appeal of Jersey, by a judgment delivered by David Anderson QC on behalf of the court, namely Sir David Calvert-Smith, its President, Robert Logan Martin QC and himself, dismissed the appellant's further appeal against it. It is against this decision that the appellant brings this yet further appeal to the Board.

Facts

5.
The appellant, who is now aged close to 70, has British nationality and has lived for many years in Jersey. The mother, who is now aged about 40, has joint Russian and Latvian nationality and now lives in Mauritius with a man whom she married there in 2014. The boy, born in June 2003 so now aged 16, has Latvian nationality and now lives in Mauritius with her.

6.
In 2000 the appellant met the mother in Latvia where she was living. Within two months of their meeting, he had funded her purchase and renovation of a flat there.

7.
The present contention both of the appellant and of the mother is that from 2000 onwards they pursued a sexual relationship during his visits to Latvia.

8.

The boy was conceived in September or October 2002. The mother's present contention is that her sexual relationship with the appellant had ended in August 2002 and did not resume until early in 2003 and thus that he could not be the boy's father. The appellant's present contention is that their sexual relationship continued until early in 2003; that he nevertheless accepts the mother's present contention that he is not the boy's father; and that their relationship did not resume until 2005. So there are substantial discrepancies even between their present contentions.

9.
When in Latvia the mother registered the boy's birth, another man with whom she may have had a sexual relationship was recorded on the certificate as the boy's father.

10.
Following the resumption of their relationship, whatever its date, the appellant and the mother became engaged to be married and even entered into a pre-nuptial agreement. But no marriage was ever celebrated.

11.
In 2006 the appellant applied to a district court in Latvia for a declaration of his paternity of the boy and for registration of him as the father of the boy on his birth certificate instead of the other man who had been so registered. In his supporting statement the appellant said that he was the "true" "biological" father of the boy and that he and the mother planned to marry and to care for him together. In his Notice of Appeal to the Board the appellant confirms that he did at that time genuinely believe, albeit (so he says) mistakenly, that he was the boy's father. Both the mother and the other man who had been registered as his father notified their support for the appellant's application, which was granted later in 2006.

12.
Under section 154 of the Civil Law of Latvia, the appellant's registration as the boy's father, based on his voluntary acknowledgment of paternity, confirmed his biological parentage of him; and the boy's surname was changed to his surname. Notwithstanding his later efforts to cancel it, which the Board will explain, the appellant's registration in Latvia as the boy's father remains effective today.

13.
In 2008 the mother moved, with the boy, to live with the appellant in Jersey. But her relationship with the appellant ended in 2010 when, with the boy, she returned to live in Latvia.

14.
In 2011 the mother applied to the Royal Court, Family Division, for an order that the appellant should make financial provision for the boy. Her application has generated an astonishing flurry of counter-litigation which the appellant has instigated during the following eight years and which, being wealthy, he has been well able to afford. The Board trusts that the litigation reaches its conclusion today.

15.
At an early interim hearing of her application to the Royal Court the mother stated that the appellant was not the boy's father; and such has been her contention ever since. Was her statement true? If it was untrue, did she (and does she) believe it to be true? Or, if untrue, did she (and does she) know that it was untrue and was she seeking to protect herself against claims for custody of the boy of the sort which, as the Board will explain, the appellant was later to make against her?

16.
Later in 2011, armed with the mother's statement to the Royal Court that he was not the boy's father, the appellant applied to a district court in Latvia for an order to annul the registration of his paternity of him. Under section 156 of the Civil Law in Latvia his application required him to establish all of three grounds, namely that

(a)
he was not the boy's natural father;

(b)
his acknowledgment of paternity had been the result of mistake, fraud or duress; and

(c)
his application for annulment of the registration had been made within two years of his discovery of the circumstances precluding his paternity.

17.
In 2012 the district court in Latvia dismissed the appellant's application. Significantly it held that he had failed to establish ground (a), namely that he was not the boy's natural father. But the court also proceeded to hold that if, which it did not accept, he was not the boy's father, the appellant had failed to establish not only ground (b), namely that his acknowledgment of paternity had been the result of mistake, fraud or duress, but also ground (c), namely that his application had been made within two years of his discovery of the circumstances precluding his paternity.

18.
The mother, who, unlike the appellant, gave oral as well as written evidence to the district court, had there adhered to her recent statement to the Royal Court that the appellant was not the boy's father. Her case was that the application should be dismissed on grounds (b) and (c), namely that the appellant had known long before her recent statement in Jersey, indeed long before his acknowledgment of paternity before that court in 2006, that he was not the boy's father and that he had never been misled into believing otherwise.

19.
It follows that, although confronted with agreement between the appellant and the mother that he was not the boy's father, the district court held that he had failed to establish it. How did it reach that conclusion? First, it knew that in 2006 the appellant and the mother had both stated to it that he was the boy's father. Second, it was the appellant's contention in the annulment proceedings that until 2011 he had believed that he was the boy's father; so his contention necessarily implied an acceptance that he had had sexual intercourse with the mother at around the time of the boy's conception. And third, crucially, there was no DNA evidence before it. In its judgment the district court said that

(a)
DNA evidence would have been admissible to prove or disprove the appellant's paternity;

(b)
the court had repeatedly invited the appellant's lawyer to seek a direction for DNA testing but he had replied that, in the light of the mother's agreement with his client, there was no need for it;

(c)
it was for the parties, not the court, to decide what evidence should be presented to it;

(d)
in the light of the absence of DNA or other evidence excluding his biological fatherhood of the boy, the appellant had failed to establish its exclusion; and

(e)
this conclusion was a self-contained ground for dismissing the application.

20.
The appellant appealed to a regional court in Latvia against the district court's dismissal of his application to annul the registration of his paternity of the boy. The regional court dismissed his appeal. Although it specifically addressed grounds (b) and (c), the Board is not satisfied that it departed from the district court's judgment on ground (a). On the contrary it said without qualification that it adhered to the reasoning of the district court's judgment. The appellant thereupon sought to appeal to the Supreme Court of Latvia but was refused leave to do so on the ground that, in effect, there was no arguable point of law of general public importance.

21.
Upon this final failure of his application in Latvia to annul the registration of his paternity of the boy, the appellant ceased to make voluntary payments for his support.

22.
The mother's application in the Royal Court for orders against the appellant for financial provision for the boy, which had been adjourned pending determination of the appellant's application in Latvia, then proceeded. A jointly instructed Latvian lawyer reported to the Royal Court, unsurprisingly, that under Latvian law the appellant was obliged to provide financial support for the boy.

23.
At this stage the mother appears to have filed a claim in a district court in Latvia for an order that she should have sole custody of the boy. At what appears to have been an early interim hearing of her application, the appellant's advocate informed the court that, were the mother to withdraw her application in the Royal Court for financial provision for the boy, the appellant would not contest her claim for sole custody of him.

24.
But the mother continued to prosecute her application for financial provision in the Royal Court. The Registrar made an interim order for periodical payments for the boy, pursuant to which the appellant resumed making payments for him. By the time of the hearing of the application in 2014, at which the substantive order recited in para 4 above was made, the appellant had raised the "millionaire's defence", namely that his financial resources were such that he could comply with any order for financial provision for the boy which might reasonably be made. To a claim for periodical payments for a child, this was an acceptable response, which obviated the need for the appellant to make further disclosure of his resources. At that hearing, which he did not attend in person, his then advocate also accepted that, as a result of the continued registration of his paternity in Latvia, he was a parent of the boy for the purposes of Jersey law and was liable in principle to make financial provision for him. But there was a surprising dimension to the cross-examination delivered to the mother by the appellant's then advocate; and the appellant has never denied that it accorded with his then instructions. For his advocate suggested to the mother that her sexual relationship with the appellant had not begun until 2005. On the contrary, replied the mother, it had begun three days after their first meeting in 2000. His advocate's suggestion of course flew in the face of the appellant's recent

representation to the Latvian court that until 2011 he had been misled into believing that he was the father of the boy born in 2003.

25.
Shortly before the substantive hearing before the Registrar, the mother had moved with the boy to Mauritius; and shortly afterwards she entered into her marriage there. These events, coupled with the Registrar's substantive order set out in para 4 above, seem to have prompted no less than three further applications which the father made in the courts of Latvia.

26.
The first was a counterclaim to the mother's claim for sole custody of the boy. By the counterclaim, founded on the continued registration of his paternity of the boy, the appellant claimed sole custody of him. He alleged that the mother took insufficient care of the boy and that it would be in his best interests to live with him in Jersey, where he would enjoy a high standard of living. At some stage the district court ordered that on an interim basis the boy should continue to reside with the mother in Mauritius; but it is unclear whether the rival claims for custody have proceeded further.

27.
The second was a civil claim which the appellant issued in a suburban court against both the mother and her own mother for recovery from them of about 400,000 euros which they had allegedly misappropriated from him. He obtained an initial order freezing some of their assets by way of security for the claim; but it is unclear whether it has proceeded further.

28.
The third was a claim which the appellant issued in a district court under the Hague Convention on the Civil Aspects of International Child Abduction 1980. It was again founded on the registration of his paternity of the boy. It seems to have been an application under article 14 of the Convention for the court in Latvia, as the state of the boy's habitual residence prior to his removal to Mauritius, to decide for the purposes of the appellant's intended application to the courts of Mauritius that his removal there had been unlawful. Unable under the Convention to invite the Mauritian court to order the boy to be brought to Jersey, the appellant's intended application to it was for an order that he be returned to Latvia. But the district court declined to hold that his removal had been unlawful. The appellant appealed to the regional court. It ruled that the decision of the district court had been procedurally flawed and should be set aside but that it should itself determine the appellant's claim under the Convention; and it reached the same conclusion, namely that it should be dismissed.

29.
Meanwhile the appellant's appeal to the Deputy Bailiff of the Royal Court, Family Division, against specific parts of the Registrar's orders for financial provision for the boy had been lodged and indeed heard. When, however, the Deputy Bailiff circulated his draft judgment, the appellant, by a different lawyer, sought to take a new, overarching, point, namely that, in the light of the fact that both he and the mother had come to agree that he was not the boy's biological father, it had not been open to the Registrar to make any order against him for financial provision for the boy. The Deputy Bailiff appointed a further hearing for consideration of the new point. It is consequent upon his rejection of it, and upon the reiterated rejection of it by the Court of Appeal in dismissing the appellant's appeal against the order of the Deputy Bailiff, that the point arrives before the Board for determination today.

Law

30.

Article 15 of the Children (Jersey) Law 2002 ["the Law"] provides that the court may make orders for financial relief with respect to any child in accordance with Schedule 1. Paragraph 1(1)(a)(i) of Schedule 1 provides that, on an application by a child's parent, the court may make an order requiring "either or both parents" of the child to make periodical payments for his or her benefit. The order under appeal was made under this subparagraph. So, unless the appellant was and is a "parent" of the boy, it was made without jurisdiction.

31.
Article 1(1) of the Law provides:

"In this Law, except where the context otherwise requires - …

'parent' includes the father of a child whether or not he was at any time married to the child's mother and the biological father of a child where he has been granted parental responsibility under article 5(2) …"

The use of the word "includes" suggests that the definition is not necessarily exhaustive. Nor should the reference to "the biological father" in the later part of the definition lead one to wonder whether the reference to "the father" in the earlier part of the definition excludes a biological father. Of course it includes him. It is only a biological father who can be granted parental responsibility under article 5(2); and this explains why reference is made to the biological father in the later part of the definition.

32.
In paragraph 13(b) of Schedule 1 to the Law there is a further definition of "parent" for the purposes of paragraph 1 of the Schedule. It is supplementary to the definition in article 1(1). The further definition provides that the word "includes any party to a marriage or civil partnership … in relation to whom the child concerned is a child of the family" so it is not applicable to the appellant.

33.
The Court of Appeal held that the appellant was a "parent" of the boy for the purpose of paragraph 1(1)(a)(i) of Schedule 1 to the Law; and, although it stressed that the definition of the word in article 1(1) was not exhaustive, it seems also to have held that the appellant was the boy's "father" within the definition in article 1(1). It explained that the appellant was a "parent" and indeed a "father" by reference to the orders of the district court in Latvia in 2006 by which it had registered the appellant as the boy's father and in 2012 by which it had refused to annul the registration, as a result of which it still subsisted. The Court of Appeal held that the courts of Jersey were entitled under rules of private international law to recognise the order of 2006 as establishing the appellant's parenthood and indeed fatherhood of the boy for the purposes of the Law.

34.
At an early stage of the hearing before the Board leading counsel for the appellant appeared to concede that, subject to questions of public policy, the order made by the Latvian court in 2006 fell to be recognised by the courts of Jersey. But no such concession had been made in the written case for the appellant. It is possible that counsel did not to intend to make so substantial a concession. Perhaps he intended to concede only that the Latvian court had jurisdiction under its own rules to make that order. So the Board proposes to determine for itself whether, as the Court of Appeal held, the Latvian order of 2006 fell to be recognised by the courts of Jersey. It would wish, however, to have received fuller argument on the point; and the reader of what follows must bear the lack of it in mind.

35.

In relation to private international law, the Jersey courts have consistently had regard to the common law of England and Wales: Brunei Investment Agency v Fidelis Nominees Ltd [2008] JLR 337, para 15. But the researches of counsel, and independently of the Board, have revealed no authority in England, still less in Jersey, which directly addresses the rules for recognition of a foreign declaration of paternity. “The establishment … of a parent-child relationship” is excluded by article 1.3(a) from the scope of Council Regulation (EC) No 2201/2003 (“Brussels II Revised”) and by article 4(a) from the scope of the Hague Child Protection Convention 1996; in any event Jersey is not a party to either of them.

36.
Before examining such authority as may indirectly cast light on the issue before it, the Board considers it helpful to summarise the factors which connected the boy, the mother and the appellant to Latvia on the date of the application in 2006; and, as it happens, they are identical to the factors which connected them to Latvia on the date of the application in 2011.

37.
In 2006

(a)
the mother was a national of Latvia;

(b)
the mother was present, habitually resident and domiciled in Latvia;

(c)
the boy had been born in Latvia;

(d)
the official registration of the boy’s birth, including the identification of his parents, had been effected in Latvia;

(e)
the boy was a national of Latvia;

(f)
the boy was present, habitually resident and domiciled in Latvia; and

(g)
it was the appellant who made the application.

38.
But, irrespective of whether he was present in Latvia on the date of the application in 2006, the appellant was neither domiciled nor habitually resident in Latvia. Jersey has at all material times been the place of his habitual residence and of his domicil. Does this preclude recognition of the Latvian declaration of paternity?

39.
In the following four paragraphs the Board will refer to two authorities of the English Court of Appeal which concern a recognition of foreign law which provided for a person’s legitimation and of foreign orders for the adoption of children. But there may be a distinction, deserving exploration in another case, between legitimation and adoption, on the one hand, and a declaration of parentage on the other. In the former the foreign law stamps a person with a changed legal effect. It declares that he

has become the legitimate child of their parents; and that they have become the lawful children of their adopters instead of their biological parents. The latter primarily represents a conclusion of biological fact. One needs to qualify that statement by the word “primarily” because occasionally, albeit not in the present case, a foreign declaration of paternity will survive the exclusion of biological paternity: for Latvia see para 16(b) and (c) above and for Poland see AL v Poland, Application No 28609/08, 18 February 2014, addressed in para 57 below.

40.
In re Goodman’s Trusts (1881) 17 Ch D 266 concerned the legitimation of a woman by the subsequent marriage of her parents. The domestic law of England and Wales did not provide for legitimation until 1926. The issue was whether, for the purpose of the English law of intestacy, the appellant was the lawful niece of the deceased on the basis that, under the law of Holland, she had been legitimated by the marriage of her father (the deceased’s brother) and her mother. She had been born in Holland in 1821 and her parents had married there in 1822; and the three of them had been domiciled there on both those dates. By a majority, the Court of Appeal held that the appellant had been duly legitimated for the purpose of the English law of intestacy. Cotton LJ held at p 292 that “the question whether a person is legitimate depends on the law of the place where his parents were domiciled at his birth, that is, on his domicil of origin”. James LJ held at pp 296-297 that English law reflected international law to the effect that “the status of a person, his legitimacy or illegitimacy, is to be determined everywhere by the law of the country of his origin - the law under which he was born”. In that he had expressly agreed with the reasoning of Cotton LJ, James LJ was clearly equating the law under which a person was born with the law of his domicil of origin.

41.
In the Goodman’s Trusts case, where the mother and father were living as a settled family unit at the time of the appellant’s birth, there was no difference between the appellant’s domicil of origin and her father’s domicil: at the time of her birth they and her mother were all domiciled in Holland. But the circumstances might have been otherwise: at the time of her birth the mother and father might have had different domicils (for, by definition, they were not then married so the dependent domicil of a wife upon her husband could not have arisen) and, if so, the domicil of origin of the appellant, as then an illegitimate child, would have derived from the domicil of her mother rather than from that of her father. So, although the majority of the Court of Appeal in In re Luck’s Settlement Trusts [1940] Ch 864, 879-880 considered otherwise, the effect of the decision in the Goodman’s Trusts case appears, at any rate arguably, to have been that the law of a child’s domicil of origin governs his or her legitimacy even if it is not the domicil of the father.

42.
In re Valentine’s Settlement [1965] Ch 831 concerned the recognition of adoption orders made in South Africa. The children of Mr Valentine were entitled to benefits under a settlement. He lived with his wife in what was then Southern Rhodesia, where the two of them were at all material times domiciled; and they had a natural child, X. They visited South Africa and, in accordance with South African law, adopted two further children, Y and Z, who, like their biological parents, were domiciled in South Africa. Were Y and Z children of Mr Valentine and therefore entitled, along with X, to benefits under the settlement? The answer of the Court of Appeal, by a majority, was no: the adoption orders did not fall to be recognised in England because Mr Valentine (together of course with his wife) was not domiciled in South Africa when the orders were made. Salmon LJ entered a forceful dissenting judgment. In it he observed at p 850 that, under section 142 of the American Restatement of the Law of Conflict of Laws 1934, an adoption order would be recognised if valid by the law of the domicil of

the adopted child and at p 854 that the adoption orders would probably also be recognised in most European countries; and at pp 853-854 he quoted with approval the approach adopted by James LJ in the Goodman's Trusts case.

43.
But more relevant for present purposes is the reasoning of the majority in the Valentine's Settlement case. This was expressed by Lord Denning, Master of the Rolls, at p 842 as follows:

"But when is the status of adoption duly constituted? Clearly it is so when it is constituted in another country in similar circumstances as we claim for ourselves. Our courts should recognise a jurisdiction which mutatis mutandis they claim for themselves: see Travers v Holley [1953] P 246. We claim jurisdiction to make an adoption order when the adopting parents are domiciled in this country and the child is resident here. So also, out of the comity of nations, we should recognise an adoption order made by another country when the adopting parents are domiciled there and the chid is resident there."

Apart from the suggested additional need for the residence of the child, about which he was doubtful, Danckwerts LJ, at p 846 agreed with Lord Denning.

44.
In the Travers case the principle of jurisdictional reciprocity, as thus explained by Lord Denning, had been applied so as to recognise an Australian decree of divorce. In Indyka v Indyka [1969] 1 AC 33 Lord Reid at pp 59-60 criticised the principle in the Travers case and Lord Wilberforce at p 106 stressed that it was more a general working principle than a cast-iron rule. But the other three members of the appellate committee, i.e. the majority, based their decision to recognise a Czechoslovakian decree of divorce upon that principle. And thus, although recognition in England and Wales of foreign decrees of divorce is now governed by sections 45 to 48 of the Family Law Act 1986 ["the 1986 Act"], the principle of jurisdictional reciprocity, endorsed at the highest level, remains part of the common law in relation to certain family matters, in particular, according to the decision in the Valentine's Settlement case, to adoption.

45.
So the question arises: do the courts of Jersey have jurisdiction to grant a free-standing declaration of parentage such as was made in Latvia in 2006, and, if so, in what circumstances? It is a question which we invited the parties to answer in post-hearing submissions.

46.
The answer appears to be that, unless the Royal Court were to exercise its inherent jurisdiction to do so, the courts of Jersey would have no such jurisdiction. Of course they determine issues of parentage when such determinations are a necessary step towards the determination of wider issues. But they appear to have no statutory jurisdiction to make a free-standing declaration of parentage. Under articles 6 and 7 of the Legitimacy (Jersey) Law 1973 they have jurisdiction to make declarations both of legitimacy and of illegitimacy. The appellant argues that those two words connote paternity. That is not always so. On finding that a child's mother had never been married, a court could make a declaration of illegitimacy without making any inquiry into the identity of the child's father. And, even when the declarations do depend on it, a determination of paternity is only a necessary step towards determination of the wider issues referable to legitimacy. It may however be worthwhile to note that, under article 7(1), jurisdiction to make a declaration of illegitimacy, which is the nearest statutory parallel in Jersey to the Latvian declaration, arises if the child was born in Jersey: there is no requirement for the putative father to be domiciled or resident there.

47.
In the absence of a clear answer to the question about jurisdiction under their own law, the courts of Jersey would be likely, again, to look across the water at England and Wales. There they would now find jurisdiction to grant a free-standing declaration of parentage.

48.
This jurisdiction is relatively new. Section 45 of the Matrimonial Causes Act 1973 and its predecessors provided only for declarations that a person was born the legitimate child of specified parents or had become their legitimated child. Moreover the court had no inherent jurisdiction to make a bare declaration of paternity as opposed to making a finding of paternity within a larger issue in which the need to make it arose: In re J S (A Minor) [1981] Fam 22.

49.
In its report entitled Illegitimacy, No 118 (1982), the Law Commission proposed that a person should be able to apply for a declaration of his or her parentage. It also proposed that the facility should be limited to persons born in England and Wales. It is worthwhile to note why the Commission considered the country of birth to be the optimum location for an issue of parentage to be determined. In para 10.21 it explained that evidential problems would thereby be reduced because the birth would have been registered there and because events from which paternity might be inferred were likely to have occurred there.

50.
But the first statutory provision for jurisdiction to make a declaration of parentage, namely section 56(1)(a) of the Family Law Act 1986 (as substituted by section 22 of the Family Law Reform Act 1987), did not fully implement the Law Commission's proposals. It indeed provided that application for it should be available only to a person seeking a declaration of his or her parentage. But it provided for the court's jurisdiction to be based not on birth in England and Wales but on domicil or one year's habitual residence there.

51.
The Child Support, Pensions and Social Security Act 2000 has repealed section 56(1)(a) of the Family Law Act 1986 and in its place, by section 83(2), has inserted the current section 55A into that Act. It extends the availability of an application for a declaration of parentage beyond the person who seeks to establish the identity of his or her parentage and in particular to a person who seeks to establish his parenthood of another named person. Entitled "Declarations of parentage", it provides:

"(1) Subject to the following provisions of this section, any person may apply to the High 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 …"

52.
It follows that, had the appellant, being habitually resident and domiciled in Jersey, applied to the English court for a declaration of his parentage of a boy either domiciled in England on the date of the

application or habitually resident there throughout the preceding year, it would have had jurisdiction to entertain his application.

53.
We conclude that, by application of the principle of jurisdictional reciprocity first articulated in the Travers case, it was right, subject to any contrary reasons of public policy, for the Jersey courts to have recognised the declaration of paternity made in Latvia in 2006.

54.
In Vervaeke v Smith [1983] 1 AC 145 Lord Simon of Glaisdale said at p 164:

"… there is some judicial authority that the English court will in an appropriate case refuse on the ground of public policy to accord recognition to the judgment of a foreign court of competent jurisdiction (In re Macartney [1921] 1 Ch 522 …) [although] an English court will exercise such a jurisdiction with extreme reserve …"

In the Macartney case the court held that it would be contrary to public policy to recognise a Maltese order which obliged the estate of a deceased father to make periodical payments for his six-year-old daughter for the rest of her life.

55.
In arguing that the Latvian declaration of paternity should not be recognised for reasons of public policy, the appellant makes two main points.

56.
The first is that he was induced by fraud on the part of the mother to believe that he was the boy's father and to apply for the declaration. What he and the mother each believed at the time of the application made in 2006; what they said to each other at that time; and why he made the application. These questions are all shrouded in mystery. But, in refusing his application made in 2011 to annul the registration of his parentage, the court in Latvia specifically rejected the appellant's allegation that his acknowledgment of paternity had been the result of mistake, fraud or duress. There is no foundation upon which in his appeal to the Board on points of law the appellant can construct an allegation of fraud against the mother; and, with respect to them, his lawyers should not have been party to his attempt to do so.

57.
The second point relates to the requirement of Latvian law that an application for annulment of the registration of paternity be made within two years of the applicant's discovery of the circumstances precluding his paternity. The appellant argues that the provision runs counter to English public policy: that a court's ability to identify a child's true parent should, particularly in that child's interests, never be blocked by a procedural rule. Even were it valid, the argument would lead nowhere for, as explained in para 17 above, the expiry of the limitation period was only one of three reasons why the appellant's application for annulment failed. It is however worthwhile for the Board to record, in effect as a footnote, that the European Court of Human Rights ["the ECtHR"] has held that strict rules in member states which limit a man's ability to challenge an acknowledgment of paternity, whether it be an acknowledgment by another man or a previous acknowledgment of his own, do not violate his rights under article 8 of the European Human Rights Convention. Such was its decision in Kautzor v Germany [2012] 2 FLR 396, in which a man who had been married to the mother at the time of a female child's conception was precluded under German law from challenging another man's acknowledgment of her paternity because a family relationship existed between her and that other

man. In paras 37 and 38 of its judgment the ECtHR identified various limitations upon such a challenge imposed in numerous member states. Such was also its decision in the AL case, cited in para 39 above. The facts there are arresting in that the applicant, doubtful about his paternity of the boy, had nevertheless acknowledged it but had later subjected himself and the boy to DNA tests which excluded his paternity. Under Polish law he was out of time to challenge his acknowledgment and the application to annul it made by the district prosecutor at his request was rejected. Member states, so the ECtHR held in paras 71 and 72, had a wide margin within which to set their rules for ensuring legal certainty and finality in family relations.

Conclusion

58.
The Court of Appeal was right to recognise that the Latvian declaration established the appellant's paternity for the purpose of paragraph 1(1)(a)(i) of Schedule 1 to the Law. Fortunately the status of the boy as the appellant's son does not limp as between one jurisdiction and the other. The Court of Appeal was therefore right to conclude that the Jersey courts had not been required to decide for themselves whether the appellant was the boy's biological father. As it happens, it was eminently reasonable for the Latvian court in 2006 to have declared that the appellant was the boy's father: for he and the mother had told it so. As it happens, it was also reasonable for that court in 2012 to have declared itself unpersuaded that the appellant was not the boy's father: see para 19 above. In fact, however, the reasonableness of the Latvian court's conclusions in both sets of proceedings is irrelevant. Otherwise than by rare reference to public policy, a court's recognition of a foreign order under private international law does not depend on any arrogant attempt on that court's part to mark the foreign court's homework. Irrespective of his initial motive for seeking the declaration in 2006, the appellant's subsequent actions in relation to it have been deeply cynical. It was only when confronted with the mother's claim for financial provision for the boy that he applied to have the declaration annulled. Upon the failure of that application, he actively affirmed the declaration by using it as a basis for bizarre, tactical, applications to the Latvian court for custody of the boy and under the Hague Convention. Within the financial proceedings in Jersey which then continued, he accepted his parentage of the boy up until the point at which the Deputy Bailiff was about to dismiss much of his appeal against the Registrar's orders. Only then came the appellant's further volte-face, which has ultimately required the attention of the Board.

59.
Therefore its humble advice to Her Majesty is that the appellant's appeal should be dismissed. The mother seeks an order against the appellant for the costs of and incidental to the appeal; and she contends that, as from the date of a letter written on her behalf and marked "without prejudice save as to costs", they should be ordered to be assessed on the indemnity basis. The Board directs the appellant to respond to these claims on or before 14 November 2019 so that it may include a suggested resolution of them in its advice to Her Majesty.