Neutral Citation Number: [2024] EWHC 1077 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Date: 08/05/2024

Before :

THE HONOURABLE MRS JUSTICE JUDD

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Between :

O	**Applicant**
- and -	
P	**1st Respondent**
-and-	
Q	**2nd Respondent**
(by his children's guardian)	

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- -

Sarah Phillimore (instructed by **Sinclairs Law**) for the **Applicant**
Tom Wilson (instructed by **Irwin Mitchell LLP**) for the **1st Respondent**
Emma Favata (instructed by **Tozers Solicitors**) for the **2nd Respondent**

Hearing dates: 17th to 19th April 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 8th May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE JUDD

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment 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 Judd :

1. In this case I am considering applications with respect to a young person who has just attained the age of 16. The mother has applied for a prohibited steps order (PSO) pursuant to section 8 Children Act 1989 and for court to make a best interests declaration under the Inherent Jurisdiction. The father has applied for interim orders to be discharged and the proceedings to come to an end.

2. In this judgment I will refer to the young person by his preferred pronouns, following a decision that was made very early in the proceedings. I will refer to him as Q. Q was born female but identifies as male.

3. Q's parents are divorced. They separated over ten years ago and their relationship has since been acrimonious. At first Q shared his time between his parents. In 2020 he informed them that he was transgender. His father quickly accepted this but his mother did not. As a result Q's relationship with his mother deteriorated and he has been living full time with his father since about 2021.

4. Between late 2020 and 2022 the mother arranged some counselling, and also some therapy sessions involving Q and both parents. In August 2022 the mother made an application for a prohibited steps order, asking the court to prevent the father from arranging for Q to access treatment for gender dysphoria. In October 2022, and at his mother's request, Q agreed to undergo an autism assessment which concluded that he had some limited traits of the condition. In November 2022 the local authority conducted a single assessment which noted that Q had suffered disruption and trauma because of parental acrimony and gender dysphoria.

5. In December 2022 Q was seen by his GP who provided a letter for the court saying that Q had gender dysphoria but no clinical evidence of any mental health problems. The family proceedings were transferred to me. The mother agreed that Q should join the waiting list for NHS treatment, but she did not agree to his accessing it privately. At that time there was no private clinic in England and Wales which provided assessment and treatment for gender dysphoria but Gender GP, an organisation based offshore was a possibility which Q and the father on his behalf, wished to pursue. In the event the parties agreed on an interim basis that I should make a PSO with respect to private treatment. That order has remained in place ever since.

6. At that point the Guardian suggested that there should be an expert assessment of Q and the family. Q was reluctant, however. The Guardian then proposed that the case should be adjourned for a matter of months for the parents to engage in an Improving Child and Family Arrangements (ICFA) service. There did seem to be a prospect at that point that the case could be resolved by agreement.

7. In the event, the ICFA was not successful because both the parents continued to hold strongly opposing views. Also Q was very anxious to have treatment. The case was set down for a final hearing in October 2023.

8. In August 2023 I met Q, together with his solicitor, online, just before a Case Management hearing. I spent some time talking to him, and the details of our conversation are set out in a note in the bundle. Q is plainly very intelligent and well informed. He is engaging and articulate and his parents are rightly very proud of him.

9. I granted the mother leave to disclose some details of the case in order to obtain legal representation through crowdfunding, which she did. The father continued to represent himself. At the hearing in October 2023 I acceded to applications on behalf of the mother to instruct a Consultant Endocrinologist and a Child and Adolescent Psychiatrist to provide expert advice as to the effect of giving or delaying hormone treatment, and as to Q's capacity.

10. It proved to be impossible to find a Consultant Endocrinologist in this country who was prepared to give expert evidence. An expert in Australia was identified but in the event she did not engage with the process and the direction for expert evidence had to be discharged. In any event Q refused to agree to his medical records being disclosed. A Consultant Psychiatrist was identified, but Q refused to be assessed by him. He was reluctant at the start to be asked to engage in an assessment which was not part of an assessment/treatment pathway, and he refused altogether after finding an article online by the expert which led him to believe he could be sceptical about treatment for young people. That instruction therefore did not go ahead either.

11. I therefore asked the Guardian to prepare an addendum report to consider Q's family circumstances and the situation in which he was living, and to provide information about the relationships he has with his father, stepmother and partner (who is his stepmother's child, lives in the same household and also identifies as a transgender male).

12. In the days and weeks before this hearing there have been several developments. The first private clinic in the UK for those seeking gender-related treatment, known as Gender Plus and Gender Plus Endocrinology services, gained CQC registration (which is required for the hormone clinic) in January 2024. Secondly, Q reached his 16th birthday. Thirdly the final Cass Review was published.

13. Information has been provided to the court by Gender Plus about the methodology they would employ in the event that Q was referred to them. They propose an assessment comprising six appointments over a period of six months. Some appointments would be in person but the majority online. Once the assessment is completed there will be a decision as to whether he should be referred for hormone treatment. If so, Q will be transferred to the Hormone Clinic for further decisions to be made by the clinicians there.

The issues

14. The parties agreed long ago that Q could join the waiting list for treatment via the NHS. The dispute relates to private treatment, which until recently could not be obtained in this country. The mother has now agreed that Q may be referred to Gender Plus for assessment only. She invites the court to adjourn the proceedings until the assessment is complete and for the case to be restored to court for further consideration thereafter. Following publication of the Cass Review the mother also invites the court to make a declaration that any proposed prescribing of puberty blockers or gender affirming hormones to a person under the age of 18 years of age by a private provider must be subject to the oversight of the court. She says that the Court of Appeal decision in *Bell v Tavistock and Portman NHS Foundation Trust and others* [2021] EWCA Civ 1363 and the decision of Lieven J in *AB v CD* [2021] EWHC 741 cannot survive the findings.

15. The father and Q invite the court to dismiss the proceedings now on the basis that Q should be assessed and then left to make decisions as to any treatment offered on his own with the assistance of treating clinicians. They argue that the proceedings have been going on for a very long time and their prolongation has been and will be damaging. The court should not oversee the process of assessment or any subsequent treatment by clinicians who are properly regulated and qualified in this country.

16. Leaving aside the issue of this court making declarations, the issues have narrowed. This fact should not, however, obscure the very deep differences between the parties. Ultimately the mother objects to Q undergoing undergoing any gender related medical treatment before he is 18 on the basis that she believes that it is still not well understood and that it could cause him harm. She is concerned that Q has been very much affected by what he has read and seen online, by his father's attitude towards her and the whole issue, and by having a partner who also identifies as transgender. In many of the concerns she has been raising about the treatment, her views have been borne out by what has been said by Dr. Hilary Cass in her independent review of gender identity services for children and young people.

Legal Framework

17. Section 8(1) of the Family Law Reform Act 1969 provides that:

> "*The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if her were of full age and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian*".

18. Therefore a child or young person over the age of 16 who has capacity is able to give consent to medical treatment. In *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 (which was concerned with the lawfulness of children under the age of 16 being provided with contraception) Lord Scarman stated at 188H – 189B that:-

> "*In the light of the foregoing I would hold as a matter of law the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates if and when the child achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed. It will be a question of fact whether a child seeking advice has sufficient understanding of what is involved to give a consent valid in law. Until the child achieves the capacity to consent, the parental right continues save only in exceptional circumstances*".

19. In *Re R (A Minor)(Wardship: Consent to Treatment)* [1992] Fam 11 the Court of Appeal rejected the argument put forward by James Munby QC that the parents' right to consent to medical treatment terminated upon the child being competent to consent to medical treatment. Lord Donaldson stated at 26F that:

> "*there can be concurrent powers to consent. If more than one body or person has a power to consent, only a failure to, or refusal of, consent by all having that power will create a veto*".

20. Until the age of 18, however, the right of a child to make decisions as to medical treatment is not absolute. The court does retain a welfare jurisdiction to override the decision, as described in the cases of *Re W (A Minor)(Medical Treatment: Court's Jurisdiction)* [1993] 1 FLR 1 and *Re X (A Child)(No 2)* [2021] 2 FLR 1187.

21. There are numerous other cases where judges have overridden the decision of a person under the age of 18 (and of parents too) with respect to medical treatment but it is right to say that they principally relate to situations where there is a difference of opinion between a child or young person and the clinicians as to treatment, with the clinicians proposing treatment that the young person and/or the parents do not wish him to have. For the most part the cases are concerned with young people who are refusing life-saving or sustaining treatment.

22. More recently the Court of Appeal considered the issue of capacity and consent in relation to treatment for gender dysphoria in the case of *Bell v Tavistock and Portman NHS Foundation Trust and others* [2021] EWCA Civ 1363. At paragraph 76 Lord Burnett of Maldon giving the judgment of the Court of Appeal reaffirmed that:

> "*The ratio decidendi of Gillick was that it was for doctors and not judges to decide on the capacity of a person under 16 to consent to medical treatment. Nothing about the nature or implications of the treatment with puberty blockers allows for a real distinction to be made between the consideration of contraception in Gillick and puberty blockers in this case bearing in mind that, when Gillick was decided 35 years ago, the issues it raised in respect of contraception for under 16's were highly controversial in a way that is now hard to imagine*".

23. At paragraph 77 he quoted the dicta of Lord Phillips of Worth Matravers MR in *R (Burke) v General Medical Council* [2005] EWCA Civ 1003:

> "*There are great dangers in a court grappling with issues….when these are divorced from a factual context that requires their determination. The court should not be used as a general advice centre. The danger is that the court will enunciate propositions of principle without full appreciation of the implications that these will have in practice, throwing into confusion those who feel obliged to attempt to apply those principles in practice. This danger is particularly acute where the issues raised involve ethical questions that any court should be reluctant to address, unless driven to do so by the need to resolve a practical problem that requires the court's intervention*".

24. And at paragraphs 92 and 93:

> "*We should not finish this judgment without recognising the difficulties and complexities associated with the question of whether children are competent to consent to the prescription of puberty blockers and cross-sex hormones. They raise all the deep issues arising in Gillick and more. Clinicians will inevitably take great care before recommending treatment to a child and be astute to ensure that consent obtained from both child and parents is properly informed by the advantages and disadvantages of the proposed course of treatment and in the light of evolving research and understanding of the implications and long-term consequences of such treatment. Great care is needed to ensure that the necessary consents are properly obtained. As Gillick itself made clear, clinicians will be alive to the possibility of regulatory or civil action where, in individual cases, the issue can be tested*".
>
> "*The service specification and SOP provide much guidance to the multi-disciplinary team of clinicians. Those clinicians must satisfy themselves that the child and parents appreciate the short and long-term implications of the treatment upon which the child is embarking. So much is uncontroversial. But it is for the clinicians to exercise their judgment knowing how important it is that consent is properly obtained according to the particular individual circumstances, as envisaged by Gillick itself, and by reference to developing understanding in this difficult an uncontroversial area. The clinicians are subject to professional regulation and oversight. The parties showed us an example of a Care Quality Commission report in January 2021 critical of GIDS, including in relation to aspects of obtaining consent before referral by Tavistock, which illustrate that. the fact that the report concluded that Tavistock had, in certain respects, fallen short of the expected standard expected in its application of the service specification does not affect the lawfulness of that specification; and it would not entitle a court to take on the task of the clinician in determining whether a child is or is not Gillick competent to be referred on to those Trusts or prescribed puberty blockers by the Trusts*".

25. In the case of *AB v CD and others* [2021] EWHC 741 Lieven J determined that parents were able to give consent to the administering of puberty blockers on behalf of their child without the need for an application to court (*AB v CD* having been decided after the decision of the Divisional Court in *Tavistock v Bell* but before the decision of the Court of Appeal). In her judgment Lieven J made a number of points about medical treatment, as follows:

> "*all the clinical professionals are subject to regulation and oversight by their own professional bodies. These bodies are in a position to produce guidance as to clinical best practice in respect of the use of PBs and best practice in respect of the*

> *treatment of gender dysphoria in children and young people as they think appropriate*" (paragraph 108)
>
> "*the analysis of the case law shows that cases supporting a special category of treatment of children which require court approval are very limited*" (paragraph 116)
>
> "*the gravity of the decision to consent to PBs is very great, but it is no more enormous than consenting to allowing a child to die. Equally the essentially experimental nature of PBs should give any parent pause for thought, but parents can and do routinely give consent on their child's behalf to experimental treatment, sometimes with considerable, including life changing, potential side effects. It is apparent from Bell that PBs raise unique ethical issues. However, adopting Lady Black in NHS v Y, I am wary of the court becoming too involved in highly complex moral and ethical issues on a generalised rather than a case specific basis*" (paragraph 121)
>
> "*The taking of strong, and perhaps fixed, positions as to the appropriateness of the use of PBs may make it difficult for a parent to be given a truly independent second opinion. However, in my view this is a matter for the various regulatory bodies, NHS England and the Care Quality Commission, to address when imposing standards and good practice on the Second and Third Respondents*" (paragraph 123)
>
> "*The pressure on parents to give consent is something that all clinicians concerned are likely to be fully alive to. Ms Morris submitted that GIDS was very much aware of the issue, and that considerable efforts were made to ensure that there was a family-based range of consultations and that parents saw clinicians in private as well as with their children*" (paragraph 127)
>
> "*I do not consider that these issues justify a general rule that PBs should be placed in a special category by which parents are unable in law to give consent*" (paragraph 128).

The submissions of the parties

26. On behalf of the mother, Ms Phillimore submits that, whilst the assessment at Gender Plus should be permitted to go ahead, the proceedings should continue so that the court can retain some oversight of the case in the event that there is a recommendation that Q be prescribed cross-sex hormones (the Gender Plus clinics will not recommend the use of puberty blockers). She relies heavily on the findings of the Cass Review. In particular she draws my attention to page 12 where Dr. Cass states:-

> "*There are few other areas of healthcare where professionals are so afraid to openly discuss their views, where people are vilified on social media, and where name-calling echoes the worst bullying behaviour*".

and page 13:

> "*This is an area of remarkably weak evidence, and results of the studies are exaggerated or misrepresented by people on all sides of the debate to support their viewpoint. The reality is that we have no good evidence on the long-term outcomes of interventions to manage gender related distress*".

27. Ms Phillimore submits that these observations support the concerns articulated on behalf of the mother, namely that this is an area of medical intervention for children which has allowed its focus to stray from the best interests of the individual child to a broader support for a wider political/ideological position, and that this is a relevant context to the court's consideration of best interests for the child and the issue of significant harm. That some practitioners have abandoned normal clinical approaches to holistic assessment means this group of children have been made an exception compared to other young people with similarly complex presentations. Simple reliance on a statutory presumption of capacity for a 16 year old is to ignore what is now understood about the maturation of the adolescent brain, and the lack of any expert evidence on this point before the court is a serious gap in the evidence.

28. Ms Phillimore points to the fact that Q is amongst the cohort of young people amongst whom there has been a very high increase in the number of those suffering from gender-related distress, namely a natal female who began to identify as male in early adolescence.

29. Ms Phillimore further relies upon the findings of the Review about the lack of a solid evidence base as to the effects not only of puberty blockers but also cross-sex hormones in young people. The review recommended '*an extremely cautious clinical approach and a strong clinical rationale for providing hormones before the age of 18'.*

30. The Review refers to the case of *Montgomery (Appellant) v Lanarkshire Health Board (Respondent) (Scotland)* [2015] UKSC 11 which emphasises that for consent to be valid it must be informed.

31. Ms Phillimore submits that in the light of these factors the decision of the Court of Appeal in *Bell* and of Lieven J in *AB* can no longer stand. In her written submissions she sets out by reference to particular paragraphs of both judgments how the subsequent findings of the Cass report undermine a number of the conclusions in both courts. Most particularly, Ms Phillimore points to the findings in *Bell* and *AB* that puberty blockers are not in a 'special category' of medical intervention that have always required the sanction of the court. She says this can no longer apply especially when the proposed provider or those working within it may have an ideological commitment to reject the recommendations of the Review. She also submits that the reliance on the mantra that 'parents know best' and that clinicians can be relied upon to ensure that consent obtained from child and parents is fully informed has been undermined. She states that it is now unsustainable to conclude that puberty blockers should not be distinguished from contraceptive treatment.

32. In all those circumstances she invites the court to conclude that such treatment as may be offered to Q (at Gender Plus this would be cross-sex hormones rather than puberty blockers) should be considered to be in a special category, requiring or justifying the

continuing oversight of the court and the making of the general declaration that she seeks.

33. On behalf of the father, Mr Wilson relies on the provisions of section 8 Family Law Reform Act 1969 which provides that as a young person of 16, Q is entitled to consent to his own medical treatment as long as he has capacity within the meaning of the Mental Capacity Act 2005. He submits that transgenderism and the concept of a gender identify are recognised and established phenomena which are capable of legal recognition and attract legal protection. An individual's gender identity and freedom to define it, has consistently been held to fall under the protection of Article 8 of the ECHR as a basic essential of the right to self-determination. It is lawful for a 16 year old to undergo treatment from a private clinic, and his right to do so is particularly important given the fact that there is no realistic prospect of his obtaining support, assessment or treatment through the NHS. In any event the court has information from Gender Plus as to their assessment process and procedure for determining appropriate treatments which mirror in substantial part the approach of the NHS. The clinicians are professionally regulated and the Hormone Clinic is registered with the CQC. Comprehensive assessments by the local authority and guardian have evidenced no safeguarding or other welfare concerns about Q.

34. Mr. Wilson also submits that the mother will always object to Q undergoing any gender-affirming medical treatment and that she holds entrenched and politicised views.

35. Against this background, Mr Wilson argues that it is not for the court to decide whether medical treatment for transgender children is appropriate or to interrogate the outcome of the Cass Review. He makes numerous submissions as to the limitations of the court's welfare jurisdiction by reference to the case law stretching back over forty years to the present day. He refers to the decision of the President, Sir Andrew McFarlane in *Re S (Inherent Jurisdiction: Transgender Surgery Abroad)* [2023] 2 FLR 1070 where he deprecated the manner in which a local authority attempted to prevent a 16 year old from travelling abroad to undergo a mastectomy with the consent of both of the parents.

36. Finally Mr. Wilson emphases the importance of respecting and defending a young person's autonomy and that there is no basis for the court to intervene in this case.

37. On behalf of Q, Ms Favata supports the submissions made on behalf of the father by Mr. Wilson. She submits that there is no basis upon which the court could reasonably find that a best interests declaration is required in Q's case. Hormone treatment for gender dysphoria does not fall into a special category of treatment; gender dysphoria should not be treated differently from other medical conditions. In her skeleton argument Ms Favata also deals with a number of criticisms of the Guardian made on behalf of the mother, in particular that the Guardian was elevating Q's autonomy above his welfare to a degree that he was being encouraged in his stance of frustrating the court's process by refusing to engage with the experts, and that there was insufficient curiosity with respect to Q's relationship with another trans child and the effect that this might have upon his views. The skeleton argument makes a number of serious criticisms of the mother stating that the manner in which the mother had pursued the case was a repeated challenge to Q's capacity and competency and had eroded his trust in her. The mother is criticised for prolonging these proceedings, and also for allowing Q to continue to be untreated for so long. The skeleton argument concludes by saying this:

> "*The Guardian is deeply concerned that this forms a pattern of behaviour by the mother in which she attacks those who do not share her views or objectives. This behaviour has been in evidence throughout these proceedings with the mother's allegations against the father (despite the court making no findings), the mother's direct attacks on others on social media, her direct attacks on the ICFA provider…and now seemingly against her own child. The Guardian considers that this conduct poses a significant risk factor that should not be overlooked and raises further concerns about the mother's motivation in these proceedings and in the Judicial Review of the CQC that she has recently brought*".

The evidence

38. In setting out some of the evidence, it is important to record that by agreement neither of the parents gave oral evidence in the case. They have each been very critical of the other, but ultimately the issues that I have to decide do not rely on the areas of dispute between them being resolved. I refused an earlier application by the mother to list the case for a fact finding hearing with respect to allegations she made against the father of coercive control and alienating behaviours, taking into account the allegations themselves and my view that it was unlikely that the outcome of such an investigation would assist me to make the decisions sought about any treatment for gender-related distress.

39. I have read the statements provided by each of the parents, and have taken them fully into account, although I will not repeat the contents here.

40. The court has been provided with detailed information from both Gender GP and Gender Plus about the assessments that they conduct. The Tavistock and Portman NHS Foundation Trust and NHS England have also provided responses to queries. Whilst Q is on a waiting list for NHS services there is no information at all as to when he would be provided with any assessment and/or treatment. The time is likely to be measured in years rather than months.

41. The Guardian provided the court with two reports and gave oral evidence. He has seen Q on many occasions. I am indebted to the Guardian for the work that he has put into the case and the high quality of his analysis of the family dynamics. I am also grateful to him for the information he provided with respect to Gender GP and Gender Plus.

42. What is clear from the Guardian's report is that the parents have very different parenting styles. The Guardian describes the father's parenting style as permissive and indulgent, characterised by a relaxed and responsive approach towards Q, sometimes overly accepting and deferring to his wishes. This can be seen in the father's approach in providing Q with a breast binder at 12 or 13 years of age, supporting his wish to social transition at school when he wanted (the mother says without consulting her) and stating that Q's wishes as to whether or not he contacts his mother or shares information with her should be followed. The Guardian also stated that there has been a largely unrestricted flow of information to Q from the father as to the difficulties between the parents. Q's expectation as to his involvement in these proceedings and what can be provided to him in terms of clinical intervention has been high, and managing these

expectations (which the Guardian and Q's legal team have been trying to do) has not been easy.

43. The Guardian described the mother as presenting with appropriately balanced authoritative and permissive styles of parenting, moderate in both responsiveness and demand. The differences in the parenting styles in this case has exposed Q to a persistent level of ambiguity. The overall outcome of all that has been going on is that Q is closely aligned with his father and rejecting of his mother. Q perceives that the mother is placing barriers in the way of the person that he wishes to be. The mother refers to him by his original, female name and misgenders him. During the course of these proceedings, Q's relationship with his mother has deteriorated so that there is now very little contact between them.

44. In his report for what was expected to be the final hearing in 2023 (when Q was still 15), the Guardian recommended that Q be permitted to refer to Gender Plus and to follow any treatment path as advised by them. He opposed any further assessments outside this.

45. As I have made clear earlier in this judgment, I acceded to the mother's application for further assessments even though I was fully aware that this was contrary to Q's wishes. At that point Gender Plus had not obtained CQC registration and so there was no private provision in this country. When it became apparent that Q would not see the expert the court had appointed I asked the Guardian to provide a further report. I was concerned that I had no evidence at all about the circumstances in which Q was living save that he was in a relationship with the child of his father's partner (who also identifies as male having been born female), and living in the same household. I also had very little independent information as to him more generally, for example how he was getting on at school, and his social circumstances.

46. In his second report the Guardian provided some reassuring information, to the effect that although Q remains in a romantic relationship with the other young person, they have their own sets of friends and interests and have their own space in the household. They are expected to go their separate ways in terms of their future education. The relationship appears to have started after Q came out in 2020, albeit they were friends before that.

47. Q is focussing well on his academic work and the Guardian found his home circumstances to be comfortable, familiar and safe. He found Q to be able to compartmentalise aspects of his life and that this provided him with resilience. The Guardian said that Q is very mature for his age, and that he is articulate and knowledgeable about all the issues, having acquainted himself widely with information available on the internet, from reliable websites such as the NHS but also from social media sites, including Reddit. In his oral evidence he said that Q was able to give a balanced view about what he heard and read, and that he was not biased or one sided. He has interests and understanding of a variety of topics, not just that of gender.

48. The Guardian also set out the extent of Q's anger and hostility to his mother. He explained that he considered that adjourning the case until the assessment had been carried out would be harmful to him and affect his ability to engage in it. Knowing that his mother would scrutinise the outcome and possibly come back to court to object to treatment would lead to a considerable further delay and violate his privacy which

would impact upon his emotional wellbeing. Indeed it could lead him to refuse to access the service. He wishes the proceedings to end and for the involvement of the state to stop.

49. I found both the reports of the Guardian very helpful, as was much of his oral evidence. He has given this case a great deal of thought and has gone out of his way to spend a lot of time with Q. His analysis as to the parenting styles of the parents was careful and thorough, as was his assessment of Q, his living arrangements and social circumstances. The work he has carried out with respect to all of this has been of a very high standard and I would like to commend and thank him for it.

50. I do wish, however, to say something about the way that the mother has been characterised in some of the written material submitted on behalf of the Guardian. I fully understand what a difficult task he and the legal team have had in advocating both for Q's views and his best interests. They have avoided a situation whereby Q had to be directly and separately represented and have managed to keep him on side which I think has been a very good thing. Nonetheless I believe that the tension inherent in the task may have affected the manner in which the mother has been described (albeit the Guardian has always been clear to say that her motives are entirely genuine). She has faced a lot of criticism for continuing these proceedings, criticism which I firmly reject.

51. The mother has made some mistakes (for example, posting things online and expressing herself in trenchant terms), but the lack of confidence she feels in the treatment of teenagers suffering from gender related distress or dysphoria has force and is shared by many others. If she had not objected to medical treatment there is every likelihood that Q would have approached a private resource offshore and been prescribed puberty blockers. The long term effects of such treatment remain a matter for further research, but it is possible that in future Q will have reason to be grateful he did not ever take them.

52. I do not find it surprising or unreasonable that, in having this issue affecting her own child, the mother has sought support from other people who share her views or that she has seeks to bring challenges through the courts. I know that Q believes that his mother has lied, or that she is motivated by wider political matters, but the fact that he holds these views does not mean that they are objectively correct. If he is being allowed or encouraged to believe his mother is behaving in this way then that is a great pity. The mother has, with some difficulty, agreed that he could change his name. She accepted the fact of his social transition even though she did not think that should happen (and the Cass Review raises questions about this). The price she has paid for fighting for what she considers to be best for her child is to lose her relationship with him. This has been very hard indeed for her and I hope that it will not be permanent.

53. I make it clear that in making these comments that I have sympathy for the father too. He has also made mistakes, not least by allowing Q access to too much information about these proceedings, particularly in the early stages. The Guardian's first report makes a number of comments which should give him pause for thought. He has faced strong criticism from the mother who has sought to blame him for his permissive and affirmative stance, and has accused him of alienating behaviours. These parents and Q have been in a situation that would challenge anyone, especially when there is so little consensus anywhere about how children with gender dysphoria should be treated, and

so little trust. Q will have been profoundly affected by his gender related distress, the hostility between his parents, and the effect on his close and wider family.

54. The toxicity of the debate has very much affected the parties in this case on a private level. It has also affected the court in that it has not been possible to obtain any independent medical evidence. Whilst there is a paucity of experts in some disciplines (radiologists and pathologists particularly come to mind) I have never encountered a case where there was simply no-one willing to provide such evidence for the court.

55. Further, the divisions are such that there is an expectation from each of the parents and Q that any experts chosen will have preconceived views, whatever the particular facts of this case. Given the findings of the Cass Review, that is hardly surprising. The mother agrees a referral to the NHS but she has considerable doubts and reservations about Gender Plus and whether their model will be an overly affirmative one. Q refused to see an expert who had expressed concern in an article he found online about the speed at which some professionals had advocated social transition, puberty blockers and hormones, no doubt because he thought the expert's opinion would be biased.

Decision

56. When coming to my decision it is vital that I focus on the law as it applies to the facts of this case. Whilst I doubt that those who passed the Family Law Reform Act in 1969 foresaw a time in which the internet would enable 16 year olds to be able to carry out intense research on their own, a situation when so many young people would experience distress in their birth gender, or the level of disagreement about treatment for children, the terms of Section 8 are clear. So is the law as expressed in *Gillick* which must apply as much to minors over the age of 16 as it does to those who are younger. The Court of Appeal in *Bell* pointed out that *Gillick* was a controversial decision at the time (albeit I acknowledge there are differences between prescribing contraceptives to prevent pregnancy and treatment for gender dysphoria). Whilst the findings of the Cass Review may turn out to be very significant, I do not think they justify a first instance judge departing from the decisions in *Bell* and *AB* (which was approved by the Court of Appeal). In any event those cases were concerned with children who are under the age of 16, whereas this one is not. The Court of Appeal in *Bell* was well aware of the controversies that exist in this area as is apparent from the concluding paragraphs of the judgment. The comments about clinicians taking great care before recommending treatment were directed to those currently providing treatment for children and young people; they were not findings as to what has happened in the past.

57. My starting point is that pursuant to the s8 Family Law Reform Act 1969 and subsequent authorities, Q is entitled to consent to his own treatment whether or not his parents agree. It is correct that the inherent jurisdiction may be invoked on occasion to override the decisions of a competent minor but as noted earlier these cases almost always arise in the context of a young person who is refusing life-saving or sustaining medical treatment that is recommended by clinicians. Counsel were not able to point me to a case where a judge had overridden a decision of a young person to consent to treatment that was actually being offered by a treating doctor in this country.

58. I acknowledge Ms Phillimore's submissions that Gender Plus would not be able to follow the specific recommendations of the Cass Review in some respects, for example recommendation 9, which proposes that every case considered for medical treatment

should be discussed at a national Multi Disciplinary Team hosted by the National Provider Collaborative. I also acknowledge the submissions she made about many of the findings and recommendations of the Cass Review which call into question the way that some young people have been treated to date and the long term effects of social transition, puberty blockers and cross sex hormones. It would not be right for me to comment on all of this, but I note that some of the recommendations of the report have already led to changes, for example NHS Scotland has very recently announced that those who are under 18 will not be prescribed hormones.

59. The inherent jurisdiction is flexible, and judges do extend existing boundaries from time to time to meet the needs of a particular case. There could be a situation, for example, where a child is extremely vulnerable or where the proposed medical providers are not regulated in this country and the safeguards that have been relied upon in other cases do not apply. Since this judgment was sent to the parties in draft the President of the Family Division has handed down judgment in *EF V LM and J* [2024] EWHC 922 which highlights concerns about Gender GP. Situations such as those could potentially lead to a judge being persuaded it was appropriate to intervene. In this case, however, Q does not have any mental health problems, nor does it appear that he is personally the subject of coercion in his home or socially although I am not sure I share the Guardian's confidence that Q is able to consider all the evidence about gender dysphoria and the treatment available in a balanced and unbiased way (something that is beyond many adults). The father is prepared to give an assurance that he will not facilitate Q seeking treatment through Gender GP or any other offshore agency whilst he remains under 18 and so seeking treatment offshore does not apply.

60. The controversy over treatment of young people (whether privately or through the NHS) for gender-related distress or dysphoria is a matter of public interest, but it is something which should fall to be considered by medical and associated professions and their regulators, or if need be, the government. Although Gender Plus is a private provider the hormone clinic requires continued registration. Those who treat Q could be liable in negligence if they do not provide a proper standard of care or fail to abide by guidelines without good reason. Ms Phillimore submits that safeguards to date have not been sufficient for many young people, but once again, such issues are a matter for regulation and professional standards rather than a judge sitting in the Family or High Court.

61. Given all that I have set out above I do not think there is any realistic basis upon which I would override Q's consent to treatment by a regulated provider or clinician in this country. Therefore there is no legitimate purpose in adjourning the case.

62. In any event I find that it is in Q's best interests to bring the proceedings to an end. The Guardian's evidence is that he is a very mature child and that his views are very much his own. His attitude has hardened very considerably over the last few months. The proceedings themselves, which may have provided him with some protection to date, are causing him to become more entrenched in his views about treatment and increased his anger towards his mother. Q is aware of the law and this creates its own expectations. With the lines still drawn, I can see a danger that the battle itself could distract Q from focussing on the advantages and disadvantages of any proposed treatment, and what he wants for himself throughout his life. He is impressive, hardworking and intelligent. It is vital that he engages fully in the assessment that is being offered to him and prepares himself to make some very important decisions if he is offered medical intervention

thereafter. Given the advice from the Cass Review any doctor will have to exercise great caution before prescribing hormones to a minor, and so it seems quite likely he will have to wait for another two years, but that time will go fast. He needs calm and dispassionate advice over the coming months and years, and the ability to recognise it as such.

63. I will therefore discharge the interim orders that are in place. Given the Guardian's evidence that a referral to an offshore body such as Gender GP would not be safe for Q, I consider it right to ask the father to give the court an undertaking that he will not fund or facilitate it whilst he is a minor. I understand that he is prepared to do this. I do not make any declaration as to medical or other treatment.

64. I also decline to make the broader declaration sought by Ms Phillimore that any prescribing of puberty blockers or hormone treatment to a person under the age of 18 by a private clinic should be subject to the oversight of the court. In doing this I have firmly in mind the warning from Lord Philips of Worth Matravers as to the dangers of a court grappling with issues which are divorced from the specific facts of a case. The debate is properly being conducted elsewhere, and in my judgment I should leave it at that.

65. For much of the time before me the parents were not represented and so the burden of all the legal work fell upon the Guardian's team. This has been conducted with great efficiency and skill. The parents did an excellent job representing themselves in very difficult circumstances but I am sure they have been very glad to have lawyers acting for them at this hearing (and so far as the mother is concerned, in October 2023 too). The court has certainly benefited by having clear and focussed submissions from all counsel. I know that solicitors and counsel for both of the parents have acted at reduced rates in order to ensure that they can be represented.

66. I wish Q the very best in the path he chooses in the coming years, and hope that in time it will be possible for the relationship between him and his mother to be mended. I know he will read this judgment, and hope it will provide some explanation to him for the decisions that have been made, even if he does not agree with all of them.