Neutral Citation Number: [2025] HWHC 2685 (Fam)

Case No: FA-2025-000058

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/10/2025

Before :

THE HONOURABLE MR JUSTICE HAYDEN

- -

Between :

W

Appellant

- and -

Gender Recognition Panel

Respondent

- -

- -

Gayatri Sarathy (instructed by **Good Law Project**) for the **Appellant**

The Respondent did not attend and was unrepresented

Nathan Roberts (appointed by **HM Attorney General**) as Advocate to the Court

Hearing dates: 8th and 9th July 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17th October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE HAYDEN

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 Appellant 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.

Mr Justice Hayden :

1. This is an appeal from a decision of the Gender Recognition Panel ("the Panel"). On 3rd February 2025, the Panel declined to issue a Gender Recognition Certificate ("GRC") to the Appellant. It is that decision which is being appealed.

The Gender Recognition Act 2004 ("GRA 2004")

2. In order to give context to the difficult issues that fall to be considered in this appeal, it is necessary to say something of the provenance and scope of the Gender Recognition Act 2004 ("GRA 2004"), which is the legal framework for decision-taking in this sphere. The enactment of the GRA 2004 was the UK's response to the judgment of the European Court of Human Rights ("ECtHR") in *Goodwin v United Kingdom (Application No 28957/95)* (2002) 35 EHRR 18 *("Goodwin")* and following a declaration of incompatibility made by the House of Lords in *Bellinger v Bellinger* [2003] UKHL 21, [2003] 2 AC 467 *("Bellinger")*. In *Goodwin*, the Applicant's biological sex was male, but she had undergone gender reassignment surgery. The ECtHR held that it was a breach of the Applicant's right to respect for private life, pursuant to Article 8 of the Convention, for there to be no legal recognition of her acquired gender. The ECtHR described the Applicant as having initially undergone hormone therapy, grooming classes and voice training and as having *"lived fully as a woman"* since 1985. She later underwent gender reassignment surgery at a National Health Service hospital.

3. The Court referred to various difficulties faced by the Applicant arising from the failure of the law to recognise her acquired gender. These included her inability to change her birth certificate, and different treatment as regards social security, national insurance

issues, pensions and employment. The Court recognised that it had previously held that the UK law did not interfere with respect for private life (para 73). But in the light of the then social conditions, it reassessed the appropriate application of the Convention.

4. The ECtHR regarded it as highly significant that the National Health Service recognised the condition of 'gender dysphoria' and provided reassignment surgery *"with a view to achieving as one of its principal purposes as close an assimilation as possible to the gender in which the transsexual perceives that he or she properly belongs"* (para 78). Despite this, there was no legal recognition of her changed status in law. The Court discussed medical evidence about the causes of what, in that period, was called *"transsexualism"* and noted that most Contracting States, including the UK, provided treatment, including irreversible surgery. Explicitly, the ECtHR noted, *"given the numerous and painful interventions involved in such surgery and the level of commitment and conviction required to achieve a change in social gender role"*, it could not be suggested that there was *"anything arbitrary or capricious in the decision taken by a person to undergo gender re-assignment"* (para 81). Thus, what was identified was a disagreeable situation in which post-operative transgender people were left in an intermediate zone between one gender and another. The ECtHR considered that was no longer sustainable.

5. The *Goodwin* judgment was considered by the House of Lords in *Bellinger* (supra). Their Lordships were invited to declare a marriage valid which had been entered into by a man and a trans woman. Their Lordships declined to do so on the basis that it would represent a major change in the law which required wide public consultation and debate. A change of such magnitude, it was considered, was pre-eminently a matter for

Parliament and not for the Courts. In any event, the Government had already announced a firm intention to introduce comprehensive primary legislation. The intention was realised with the enactment of the GRA 2004, which came into force on 4th April 2005.

6. The main provisions of the GRA 2004:

(a) provide for applications to be made for a GRC, for the criteria to be applied and the evidence to be provided: Sections 1, 2 and 3;

(b) established a Gender Recognition Panel to determine those applications and provided for appeals from decisions of the Panel: Section 1(3) and Schedule 1;

(c) provide for the consequences of the issue of a GRC, including the creation and maintenance of the Gender Recognition Register, described in Schedule 3;

(d) provide for a prohibition on disclosure of protected information about a person who has made an application: Section 22; and

(e) provided for limited amendments to the Sex Discrimination Act 1975.

7. The key provisions of the GRA 2004, for the purpose of this appeal, are as follows:

(i) Section 1 provides:

"(1) A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of –

(a) living in the other gender…

(2) In this Act "the acquired gender", in relation to a person by whom an application under subsection (1) is or has been made, means –

(a) in the case of an application under paragraph (a) of that subsection, the gender in which the person is living…

(3) An application under subsection (1) is to be determined by a Gender Recognition Panel."

(ii) Section 2 provides:

"(1) In the case of an application under section 1(1)(a), the Panel ***must*** *grant the application if satisfied that the applicant –*
(a) has or has had gender dysphoria,
(b) has lived in the acquired gender throughout the period of two years ending with the date on which the application is made,
(c) intends to continue to live in the acquired gender until death, and
(d) complies with the requirements imposed by and under section 3…"
(my emphasis)

(iii) Section 3 provides:

"(1) An application under section 1(1)(a) must include either –
(a) a report made by a registered medical practitioner practising in the field of gender dysphoria and a report made by another registered medical practitioner (who may, but need not, practise in that field), or
(b) a report made by a registered psychologist practising in that field and a report made by a registered medical practitioner (who may, but need not, practise in that field)
…
(4) An application under section 1(1)(a) must also include a statutory declaration by the applicant that the applicant meets the conditions in section 2(1)(b) and (c)
…

> *(6) Any application under section 1(1) must include –*
>
> *(a) a statutory declaration as to whether or not the applicant is married [or a civil partner],*
>
> *(b) any other information or evidence required by an order made by the Secretary of State, and*
>
> *(c) any other information or evidence which the Panel which is to determine the application may require, and may include any other information or evidence which the applicant wishes to include*
>
> *...*
>
> *(8) If the Panel which is to determine the application requires information or evidence under subsection (6)(c) it must give reasons for doing so."*

(iv) Pursuant to Section 4(1):

> *"If a Gender Recognition Panel grants an application under section 1(1) it must issue a gender recognition certificate to the applicant."*

8. When considering the statutory requirements in Section 2(1)(b) and (c), the Panel is required to survey the broad canvas of the available evidence. Sir Andrew McFarlane (P) emphasised this in *AB v Gender Recognition Panel* [2025] 1 WLR 227 *("AB")*:

> *"61. The statutory basis for the grant of a gender recognition certificate is that the applicant is 'living in the other gender' [s 1(1)(a)]. By s 2(1)(a) the Panel 'must grant the application' if satisfied that the applicant has, or has had gender dysphoria and 'has lived' in the acquired gender for the past two years (and intends so to live for the rest of their lives). In addition the evidential requirements of s 3 must be complied with. In order to be satisfied that an applicant has lived, and will continue to 'live' in the acquired gender, a Panel must take account of all of the available and relevant evidence. The medical evidence required*

> *by s 3 from a registered doctor or psychologist practising in the field of gender dysphoria must include 'details of the diagnosis of the applicant's gender dysphoria'. Whilst information in any medical report will sit alongside all of the other evidence in the case which must be considered on the question of whether the applicant has been 'living in the other gender' [s 1(1)(a)], that issue, in contrast to the diagnosis of gender dysphoria, is not to be determined by considering the medical evidence alone."*

9. It follows from the above that it is not for the medical witness to 'diagnose' whether an Applicant is 'living in the other gender'. That was a decision for the Panel in which *"the medical report will sit alongside all of the other evidence in the case"*. The President continued:

> *"63. At paragraph 7 of the decision letter, the Panel states: 'Even if [Dr Longworth's] reports are accepted as confirmation of gender dysphoria for the purposes of the Gender Recognition Act 2004, they are far from providing a firm diagnosis' [emphasis added]. That statement is at odds with the clear conclusions of both Dr Longworth and Dr Lorimer, who were both clear that the appellant was suffering from gender dysphoria and that was their diagnosis.* ***It is not the role of the medical witness to go further and to 'diagnose' whether or not an individual is 'living in the other gender', that is a matter of fact for the Panel on the basis of the totality of the evidence.*** (my emphasis) *Whilst what is said in a medical report may detract from a finding that a person is living in one gender or another, that is not a matter for medical diagnosis as the Panel's statement appears to suggest."*

10. Pursuant to Section 9(1):

> *"Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman)."*

11. Under Section 12:

> *"The fact that a person's gender has become the acquired gender under this Act does not affect the status of the person as the father or mother of a child."*

I signal, for reasons that I shall turn to, that I consider this provision to be a significant one in the context of this application.

12. Section 8 of the GRA 2004 is a gateway to appeal. It provides that:

> *"(1) An applicant to a Gender Recognition Panel under section 1(1) ... may appeal to the High Court or Court of Session on a point of law against a decision by the Panel to reject the application.*
>
> *(2) An appeal under subsection (1) must be heard in private if the applicant so requests."*

Transparency

13. I am satisfied that this appeal raises a point of law, as required by Section 8 above. This is not controversial: see *Jay v Secretary of State for Justice* [2019] Fam 87; *AB (supra)*; *Distinctive Properties (Ascot) Limited v Secretary of State for Communities and Local Government* [2015] EWHC 729. I was, however, surprised to see that

Section 8(2) appears to devolve to the Appellant the decision as to whether this Court sits in private. This raised a preliminary issue. Protecting the privacy of the Appellant, where appropriate and when they wish it to be so, is self-evidently important (Article 8 ECHR). The issues in these cases generally, and certainly in this one are, however, of legitimate public interest and as such, in my view, require weight to be given to the freedom of the press (Article 10). Each of these Articles qualifies the right it propounds so far as may be lawful, necessary, and proportionate. The exercise involved was described by Sir Mark Potter (P) as *"one of parallel analysis in which the starting point is presumptive parity"*, see *A Local Authority v W and others* [2005] EWHC 1564 (Fam); *Re: S (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 FLR 591.

14. The Family Court now operates on the presumption that a Transparency Order will be permitted in every case, unless there is a legitimate reason not to do so. The scope of this is that journalists and legal bloggers can report on what they witness in Court, request documents, etc. The names of the parties, however, are frequently anonymised because of the nature of the cases the Family Court hears. Ms Sarathy, Counsel on behalf of the Appellant, agreed that we should interpret 'private' (Section 8(2)) in this way, having regard to the principles of transparency, which are now ubiquitous in the Family Court. Accordingly, the press has been present.

The Regime of the GRA 2004

15. It is important to identify the central philosophy of the GRA 2004, which is intended to facilitate gender recognition, predicated on the realisation that protracting an

Applicant's life in an intermediate zone between two genders serves very little purpose and generates what ought to be avoidable distress. Baker LJ put it in these terms in *Jay* (supra):

> *"93. I agree with Ms McCann's central submission that the GRA is a statue designed to facilitate gender recognition, that the statutory regime is permissive rather than restrictive, and that the evidential requirements are ancillary to the statutory criteria and any directions made by the panel must not be elevated to a status which sideline or undermine the statutory criteria or frustrate the process."*

16. This philosophy finds expression in Schedule 1, para 6 of the GRA 2004:

> *"6(4)A Panel must determine an application without a hearing unless the Panel considers that a hearing is necessary."*

17. Thus, the GRA 2004 mandates consideration of the application without a hearing. Hearings are not prohibited but they are exceptional. In this application, the Panel identified an issue which they concluded required them to obtain further evidence from the Applicant. The chronology is important.

18. On 22nd March 2024, the Applicant applied to the Panel for a GRC. The documents he provided are set out in his statement. It is convenient to list them here, but I will refer to them in greater detail below. They include:

    (i) evidence of having lived as male for two years prior to making the application, bank statements, university and student finance letters, a university transcript, a HMRC P45 form, a mobile phone bill, a council tax bill, a water bill, and a social housing statement; and

(ii) medical reports from: (a) Dr. Pasterski, chartered psychologist, dated 29th January 2020; (b) Dr. Anna Barnes, a consultant psychiatrist, dated 28th February 2024; (c) a deed of change of name dated 1st April 2016; and (d) a Statutory Declaration that the Applicant had lived as male since April 2016 and intends to continue to live as male until death, dated 21st March 2024.

19. On 9th August 2024, the Panel gave directions seeking further information regarding the Applicant's desire to conceive a child. I set the Directions out in full, again, they are manifestly important:

> *"**DIRECTIONS:***
>
> *1. We need your full birth certificate, or a certified copy of it.*
>
> *2. We see from Dr Barnes' letter that you are hoping to conceive a child with your partner. We would like you to tell us more about this, because we wonder if it is incompatible with your declaration to live as a man for the rest of your life. You can write us an email, or you can ask for an oral hearing on a secure online platform if you prefer to explain to us in person. If you do, you would be asked for some convenient dates/times. It may help you to know that if you wanted to tell us in person, we think this would take no more than half an hour. Please think about this, and let the Team know what you prefer within a month of these directions.*
>
> ***8/8/2024**"*

20. Several points require to be identified in the above Directions. I note that the significance of the wish to conceive is identified, by the Panel, as potentially relevant not to whether the Applicant is currently living in *"the acquired gender"* (Section 2(1)(b) GRA 2004) but as to whether he *"intends to continue to live in the acquired gender until death"*. It is the prospective criteria that they have in focus. The Panel afforded the Applicant the opportunity of attending to give evidence, on a secure online platform but did not order it, leaving open the opportunity for further evidence to be received by letter or email.

21. The Applicant responded immediately:

> *"If possible I'd like to book an in person appointment to explain more about my desire to have children as well as the fact I have been living as male for the past 8.5 years. Could I also bring my birth certificate to this appointment or does that have to be submitted separately? I am available at any time and on short notice too."*

The Applicant's Representations at the Oral Hearing

22. The Panel arranged an oral hearing, conducted remotely on 20th August 2024 ("the Oral Hearing"). The Applicant prepared a note to read to the Panel because he stated that he was nervous and wanted to get his thoughts clear. He had been told that the hearing would take *"no more than half an hour"*. In many ways, it is fortunate that he prepared the note because this enables me to have an accurate record of what he said. I set the note out in full:

> *"Before we start, I just want to let you know that I'm neurodivergent so I've written down everything I want to say and I was hoping you'd let me read this and then answer any questions that arise after. Just because I know otherwise I'll lose my train of thought and I want to make sure you have all the*

information you need from me. I suppose I should go back to the start a little bit. I knew from a very, very young age that I wanted to be a boy, I thought that everyone felt that way so it wasn't really different to me. I only discovered what being transgender meant at around 11 but got scared out of coming out. When I did eventually come out at 17, I immediately changed my name, pronouns, and the way I presented. When I went to my doctor to get referred to the GIC, they told me that testosterone is permanently gonadotoxic, and that if I did want children I needed to start trying straight away, especially as having pre-existing fertility issues was going to make it a little more difficult. For me, I've also always known I wanted to be a parent, it was never a question of if, it was always a question of when. Obviously the waiting list to see the GIC is really long so I thought I had more than enough time. I suffered a miscarriage 17 and again at 19. I then discovered that actually testosterone doesn't make you permanently infertile so I took a break and started testosterone and had top surgery. I only took testosterone for 6 months before a relationship breakdown and I decided to seek IVF as a single person. I'm still on the IVF journey 4 years and another miscarriage later but the plan with my GIC has always been to restart testosterone as soon as I give birth. I toyed with the idea of surrogacy, but the cost is so prohibitive and it is not supported by the NHS. My only real option is to carry a child by myself. I plan to stick to he/him pronouns and present as male throughout my pregnancy and everyone is aware of this. As my pregnancy is so high risk with my previous miscarriages and medical history, I have actually already met my pregnancy team. The midwife deals specifically with transgender men who carry a pregnancy themselves so it's actually very common for transgender men to take this path. There's actually a whole network of us that I have reached out to. The McConnel case ruled that giving birth is not a female only thing. That it is possible to be a male mother, as the term is no longer gendered.

> *I've spoken to lots of other trans men and have discovered that being rejected a GRC based on the desire to have children is becoming more common. I'm actually quite alarmed about this entire process because as far as I know there is no requirement for even medical transition in order to gain a GRC, much less a requirement for sterilisation. So I'm a little bit confused and worried that this is affecting my application despite living as male for almost 9 years now. I know it said that this is incompatible with my declaration to live as male for the rest of my life but I intend to give birth as a man and be known as dad by my child, despite being down as mother on their birth certificate."*

23. It is convenient, while dealing with this chronology, to note that following the Oral Hearing, the Applicant provided further medical evidence, as requested by the Panel, during the hearing. It is also important to highlight that contrary to what the Applicant appears to have said in his note, the Panel had not indicated that the desire to conceive was *"incompatible"* with living as a man until death but that they had *"wondered if it is incompatible"*. The purpose of the hearing was to investigate the issue further.

24. As foreshadowed above, the Applicant had, pursuant to the requirements of Section 3 GRA 2004, filed Dr. Pasterski's report and Dr. Anna Barnes' report. These address the issue of gender incongruence which I do not consider to be contentious in this case. There is no actual written record of the Panel's request for further expert reports, at least none within the papers before me. However, what is clear is that two reports from Dr. James Barrett, two reports from Dr. Leighton Seal and a report from Dr. Jonny Coxon were forwarded to the Panel by the Applicant, on 25th September 2024, and that the

Panel confirmed receipt of them as providing sufficient evidence of gender incongruence, on 27th September 2024.

The Medical Evidence

25. Ms Sarathy has helpfully and concisely summarised the key conclusions of the medical reports, which I can substantially adopt. This background is a relevant aspect of the wider evidential canvas and, accordingly, needs to be set out.

Dr. Barrett's first report dated 23rd August 2019

26. Dr. Barrett is a Consultant Psychiatrist specialising in Gender Dysphoria Medicine, Lead Clinician at the Gender Identity Clinic of the Tavistock and Portman NHS Foundation Trust ("the Tavistock Clinic"). He recorded ("Presenting Issues and Concerns") that *"[W] was enthusiastic to commence treatment with testosterone and, ultimately, to have a bilateral mastectomy and male chest reconstruction"*. He stated ("Medical History") that W had *"now abandoned any attempt at assisted fertility"*. Ms Sarathy submits that this reflected the Applicant's view at the time of the meeting with Dr. Barrett that, after several failed attempts, he had abandoned hope of obtaining IVF on the NHS. Dr. Barrett's summary of the Applicant's condition was that he was *"much more settled in a male role and [were it not for a medical issue that does not require to be mentioned] it would be very reasonable for treatment with testosterone to commence."* For the avoidance of doubt, I do not consider that the Panel is suggesting that the Applicant has attempted to conceal his wish to become pregnant. In any event, such a conclusion cannot be supported by the evidence, which is suffused with the Applicant's candour. Dr. Barrett referred the Applicant to local fertility services because

he considered that the Applicant was likely to lose his natural fertility as a result of treatment and was eligible for fertility preservation by means of gamete storage.

Dr. Seal's first report dated 4th November 2019

27. Dr. Barrett advised that the Applicant should obtain an endocrinology assessment with Dr. Seal, a Consultant Endocrinologist at the Tavistock Clinic. Dr. Seal advised that the Applicant's function had reached a range suitable for testosterone therapy. He suggested that the Applicant commence on *"Testogel 16.2 mg/g, 2 applications once a day"*, a testosterone replacement therapy gel.

28. As stated above, the Applicant then commenced testosterone therapy on 15th November 2019, which he continued until April 2020. While the Panel states that *"Dr Seal's report makes no mention of [the Applicant] wanting to conceive"*, I agree with Ms Sarathy that given the Applicant's openness throughout the investigations, that is not to be inferred as his having been disingenuous with Dr. Seal but entirely explained by the fact that Dr. Seal's focus was concentrated on an unrelated area of expertise.

Dr. Pasterski's report dated 29th January 2020

29. Dr. Pasterski is a Gender Identity Specialist and Clinical Psychologist at the Harley Street Gender Clinic. Her report sets out a diagnosis of gender dysphoria. This is the first report on which the Applicant relied for the purposes of his application. The report recorded ("Background") that *"[W], who was assigned female at birth, is aged 21 years old and presently living full-time in the male social gender role"* and that:

> *"Practically speaking, [W] has transitioned to the male social gender role full-time. He changed his name by deed poll in April 2016 and has lived full-time since then. He is known in all contexts as male and as [W], including on his UK driving license, UK passport, with his university and with his GP surgery.*
>
> *With respect to taking steps toward physical gender change, [W] wears a binder, has started with testosterone therapy and generally presents as masculine. In future, he plans to undertake gender confirming genitoplasty. [W] wishes now to move forward with bilateral mastectomy with the view to achieving a more naturally masculine appearance and sense of self."*

30. Dr. Pasterski also stated ("Opinion"):

> *"[W]'s presentation is consistent with a diagnosis of gender dysphoria (302.85) / female to male transsexualism (F64.0) according to DSM-5 and ICD-10-CM criteria. ...*
> *It is my opinion that [W] has met the guidance criteria for gender confirming surgery outlined by the World Professional Association for Transgender Health (WPATH): (1) [W] has a persistent and well-documented history of gender dysphoria, present for longer than two years; (2) [W] possesses the capacity to consent to treatment; (3) [W] is of the age of majority for the United Kingdom; and (4) [W] reported no disqualifying health concerns and presented with no disqualifying psychiatric history. In sum, I support [W] in going forward with bilateral mastectomy under your care."*

31. She recommended that the Applicant should proceed with his consultation regarding bilateral mastectomy. He underwent that procedure soon after, in February 2020.

Dr. Barrett's second report dated 15th January 2021

32. Dr. Barrett's second report recorded that the Applicant *"presented in a male role"* and *"was enthusiastic to receive the first of 2 opinions in connection with phalloplasty"*. He stated ("Mental Health History"):

> *"This patient is about to undergo IVF fertility treatment with the aspiration of becoming pregnant and for this reason has stopped all hormone treatment. He is allowed 3 cycles, as I understand it, and should he become pregnant no further treatment will be possible until the baby is born and things are once again stable."*

33. Consistently with the Applicant's evidence that he intends to resume treatment after he conceives, the report stated:

> *"In a sense, this patient is in a situation where everything is on hold until his current fertility issues have been resolved by either the birth of the baby or the abandonment of fertility treatment. If the first of these is the case, which I hope, it would not be sensible for him to consider moving forward until he is able to both look after the child and himself."*

The phrase *"everything is on hold"* does not strike me, with respect to Dr. Barrett, as entirely apposite, but it does broadly resonate with the concept of the disagreeable *"intermediate zone"* between two genders, first termed in *Goodwin*. The matrix here is plainly different, though the experience must surely be similar. The Applicant's strong gender identity is not discarded, or put on ice, but is navigated alongside his equally strong reproductive instincts.

Dr. Seal's second report dated 1st February 2021

34. The purpose of Dr. Seal's second report was to obtain a further endocrinological assessment. The report recorded ("Presenting Condition") *"Gender Dysphoria / Gender Incongruence"*; *"Bilateral Mastectomy and Male chest reconstructive surgery – Feb 2020 (in private sector)"*; and *"Currently off Testosterone – planning to conceive (Private IVF)"*. Dr. Seal also noted that the Applicant had informed him that he had *"stopped taking testosterone therapy in April 2020 with the aim of achieving fertility"* and that the Applicant was *"planning an IVF process in March or April"*. Dr. Seal recommended that the Applicant have his diabetes optimised to increase the chance of conception and successful pregnancy.

Dr. Coxon's report dated 11th January 2023

35. Dr. Coxon is the Clinical Assistant to Dr. Seal. The report recorded ("Presenting Condition") *"Gender incongruence; trans man"*; *"Male chest reconstruction surgery, February 2020"*; *"Started taking testosterone therapy around November 2019. Stopped around April 2020 with the aim of achieving fertility (having been on Testogel, 2 applications daily)"*; and *"Had rounds of IVF (around January and June 2022) unsuccessful"*.

36. Under *"Medical History"* the report noted:

> *"The last consultation in the core side of the clinic here was with Dr J Barrett, January 2021: there was a supportive first opinion for a referral for genital surgery. It was noted that [W] was about to undergo IVF so was off testosterone therapy.*

> ...
>
> *As above, [W] tried IVF twice, using sperm donors (once privately in the UK, once in [abroad], not able to secure on the NHS "on the basis of being trans", which seems worrying), he is aiming to try again in [abroad] around October 2022, focusing on optimising diabetes control between now and then."*

37. Dr. Coxon also noted that they had discussed whether to recommence testosterone therapy for a short period, ahead of his intention to try IVF for a third time. It recorded that *"on balance, [W] would prefer to do everything he possibly can to maximise his chances of fertility and although one could consider short burst of the testosterone therapy, he would prefer to stay off it until he has tried that next IVF treatment"* and that *"once the issue of fertility has been resolved one way or another, testosterone therapy can of course be recommenced."*

Dr. Anna Barnes' report dated 28th February 2024

38. Dr. Barnes is a Consultant Psychiatrist at the Tavistock Clinic. Her report also contains a diagnosis of gender dysphoria, with the Applicant's gender identity recorded as male. This is the second report on which the Applicant relied for the purposes of the Application.

39. Dr. Barnes noted that the Applicant presented, in what she describes as, *"a straightforwardly male role"*; observing that he *"lived fully as [W] and a man since around the time of his 2016 legal name change"*; that he had *"no regret"* associated with the transition; and living in his acquired gender *"continued to feel right"*. She stated that she was *"supportive"* of his application for a GRC. The report recorded

(under "Testosterone therapy and fertility"): *"[W] was endorsed for testosterone therapy by Dr Barrett in 2019. He took Testogel 2 pumps between November 2019 and April 2020, but reported that he did not notice any significant masculinising changes. He then stopped it in order to try to conceive. He does not anticipate that being pregnant will make him significantly dysphoric. Since stopping testosterone therapy he has completed 3 full rounds of IVF and a frozen transfer. He sadly had a miscarriage in January 2024. (He reported that he also previously had 2 miscarriages in 2016 and 2018, at a time when he had been to conceive via artificial insemination.) He currently has one frozen embryo and is considering his options, including surrogacy. He reported that it is not clear why he is struggling to conceive… He is not sure when he will restart testosterone therapy. He wants to have at least 2 children and he may restart testosterone therapy temporarily when he has had 1 child, or may wait until he has completed his family."*

40. The report further stated:

> *"[W] had privately funded chest surgery in 2020… Once he has finished IVF he intends to seek privately funded revision surgery. In the longer term he thinks that he will 'definitely' want genital surgery and is leaning towards metoidioplasty. He also thinks that he is likely to want a hysterectomy and oophorectomy. However, he would not seek these surgeries until he has completed his family in a few years' time."*

41. Dr. Barnes referred the Applicant to local NHS clinics for egg freezing and recommended speech and language therapy while he paused testosterone therapy.

The Panel's Decision

42. The above effectively summarises the breadth of the medical evidence before the Panel. The Panel met on 13th December 2024, the 'Reasons for the Decision' are dated 3rd February 2025, communicated to the Applicant on 21st February 2025. This was a differently constituted Panel from that which had given directions on 8th August 2024 (see para 19 above). The focus of their consideration is on the Statutory Declaration that the Applicant had lived as a male throughout the period of seven years before the date of the Panel meeting and had intended to live in that gender until death. The written reasons contain the following paragraph:

> *"(ii) Your declared intention to live in the male gender for the future: Dr Barnes' report of 22 February 2024 led to the Panel's directions on 8 August 2024. The Panel wanted your input on whether your wish to conceive a child was incompatible with your declared intention to live as in the male gender for the rest of your life. The Panel Directions offered you the opportunity to explain either by email, at a face to face or via a secure video hearing why you thought it was not incompatible to live as a man when trying to conceive and carry a pregnancy. You did not take up any of these options but did send further medical evidence."*

The Panel's Error

43. The above is plainly wrong. The Applicant did take up the offer of a remote meeting. He did so speedily and with obvious anxiety. His contribution had plainly been identified by the earlier Panel as crucial to the decision. The fact that the newly constituted Panel were apparently unaware of the Applicant's contribution is fatal to the integrity of their decision. It cannot stand. This is not a minor procedural error.

44. I have considered whether I should remit this decision back to the Panel for further consideration. Both Counsel discouraged me from such a course. Their respective arguments have addressed the fundamental interpretative questions that the application presents, and both submit that they require resolution by the High Court which, on this application, now has all the available evidence before it. I note that in other appeals from the Panel, either to this Court or to the Divisional Court, those Courts have substituted their own decision rather than remit. I also note that in the final sentence of their Reasons, the Panel certify that the case raises a point of law. I agree with both Counsel and propose to tackle the point that this appeal raises. The Panel takes a neutral stance on the appeal.

45. It is clear that the appeal presents points of great sensitivity in a sphere which is both complex and contentious. For this reason, I invited the Attorney General to appoint an Advocate to the Court in order that any countervailing arguments to those advanced by the Appellant could be properly identified and evaluated. I am grateful to the Attorney General for instructing experienced Counsel, Mr Nathan Roberts, who has conducted the role of Advocate to the Court with paradigm efficiency and fairness. Mr Roberts emphasises that the submissions are not his personal opinions and not intended to be those of the Attorney General, nor indeed, any other government body. They are focused on assisting the Court in the resolution of the appeal and, in the light of my request, seek to highlight any arguments which can reasonably be presented in opposition to the appeal.

46. It is important to be clear what this appeal is not about. It is not the role of this Court to adjudicate on the meaning of gender or sex, or to seek to redefine the word man, or for that matter, woman. Neither is the Court concerned with issues of policy. Ultimately, as the Panel identified, this appeal concerns whether the Applicant has lived in the acquired male gender for two years from the date of his application and whether he intends to do so until death. The initially constituted Panel, in its Directions of 8th August 2024, took a more restrictive view of the issues in focus, but I agree with the second Panel that, on a proper construction, two questions fall for consideration here: (i) has the Applicant lived as a man for the relevant period; and (ii) does he intend to do so until death.

47. In the Panel's written decision, they make the following observations:

> *"5. In your further medical evidence, the practitioners who were aware of your medical history and continuing intentions for conceiving a baby did not question their diagnoses of gender dysphoria. This is not surprising since gender dysphoria and its more up to-date wording of 'gender incongruence' are broad umbrellas. Given the scope of gender dysphoria/gender incongruence, it is rarely necessary to doubt a specialist's diagnosis and we do not do so here, but it is still necessary to decide whether, in the circumstances of your application, you have lived throughout the period in the other gender and intend to do so."*

48. No objection can be taken to these stated propositions. The Panel continues thus:

> *"6. The Gender Recognition Act sets out rigorous conditions to ensure that a certificate is granted only where an applicant is securely set in their acquired gender. The Act gives a straightforward choice: male or female. Some aspects biological sex (sic) such as childbearing and associated reproductive*

> *issues will, in the Panel's view, almost certainly be relevant in assessing an individual's genuine and enduring adoption of their new gender. In this area, gender and biological sex remain entwined."*

49. I have given the above passage very considerable thought. It contains a cornucopia of concepts. When the Panel say that the Act gives a *"straightforward choice"*, i.e. male or female, they are referring to the conviction or security of the Applicant in their acquired gender. An Applicant who exhibits insecurity of gender or gender fluidity would not, therefore, meet the applicable statutory criteria. In this sense, the conditions for granting the certificate are both *"rigorous"* and binary.

50. The Panel goes on to say that some *"biological aspects"* such as *"childbearing"* or *"associated reproductive issues"* will *"almost certainly be **relevant**" (my emphasis)* when evaluating whether the Applicant is living *"in the acquired gender"*. I emphasise the word relevant, above, because it seems clear that the Panel is not indicating that these are determinative factors. Their invitation to the Applicant to attend to give evidence also signals that they regard these *"biological aspects"* as requiring further exploration. The earlier Panel, I remind myself, said *"we would like you to tell us more about this, because we wonder whether it is incompatible with your declaration to live as a man for the rest of your life"* (see para 19 above). The reasoning plainly permits of the prospect that *"childbearing"* and living in the male gender may not be irreconcilable, however counterintuitive that might at first appear. I repeat that what the Panel says, is that these factors are *"almost certainly ... relevant"* when determining whether the criteria are met. I would go further; they will, in my view, always be relevant. The question arises as to in what way they are likely to be so.

51. For reasons which I will turn to below, I entirely agree with the way in which the Panel has framed this question. The Panel considers that their significance lies in illuminating whether the Applicant has a *"genuine and enduring adoption of their new gender"*, not whether childbearing itself is inherently inconsistent with the statutory requirements. This Panel is highly specialist and well versed both in the applicable law and the lived experience of the applicants whose applications come before them. Para 6 in the written decision (set out at para 48 above) is, in my view, a succinct distillation of a great deal of knowledge and experience in this sphere. Moreover, I consider it accurately reflects the approach in the case law.

52. Finally, when the Panel says, *"in this area, gender and biological sex remain entwined"*, I understand that to be a recognition that the lexicon of the GRA 2004 predates the refinement and clarification of sex and gender in: *For Women Scotland* [2025] UKSC 16 ("FWS").

53. As will already be obvious, terminology in this evolving area strives for precision but is subject to metamorphosis. To understand the Panel's point, it is necessary, at least for me, to look to a glossary. In *Elan-Cane* at first instance ([2018] EWHC 1530 (Admin) at [96]) the difference between *"gender"* and *"sex"* was described as follows: *"sex is now more properly understood to refer to an individual's physical characteristics, including chromosomal, gonadal and genital features, whereas gender is used to refer to the individual's self-perception"*. The Supreme Court arrived at a broadly similar description at [2021] UKSC 56 at [3], per Lord Reed, with whom Lord Lloyd-Jones, Lady Arden, Lord Sales and Lady Rose agreed:

> *"The term "gender" is used in this context to describe an individual's feelings or choice of sexual identity, in distinction to the concept of "sex", associated with the idea of biological differences which are generally binary and immutable."*

54. The GRA 2004 predates the contemporary lexicon and uses the words 'sex' and 'gender' interchangeably, as the Supreme Court noted in *FWS* (supra) at [97]:

> *"We do not draw any inference from this as to the intended breadth of the rule set out in section 9(1). In our judgment, the words in parenthesis are more likely to be intended to forestall any argument that might have arisen if the rule referred only to gender and not to sex (or only to sex and not to gender) and to reflect the fact that the words "gender" and "sex" were used interchangeably in legislation at the time the GRA 2004 was introduced."*

55. For completion, the GRC regards sex as binary and may only record an Applicant as male or female, and not 'non-binary' (see *R (Castellucci) v Gender Recognition Panel* [2024] EWHC 54 (Admin)). If a certificate is granted, the Applicant is granted a new birth certificate, in accordance with their certified sex (see Section 10 and Schedule 3). I also note that there is no prohibition on a fresh application for a GRC, save that it cannot be made until the expiry of six months from the refusal (Section 8(4)).

56. I have already discussed above, the general principle that the GRA is 'permissive', rather than 'prescriptive'. By this is meant, the Act leans actively towards the facilitation of gender recognition, recognising the pervasive distress in *"the overwhelming sense that one has been born into the wrong body, with the wrong anatomy and the wrong physiology"* (see *R (C) v Secretary of State for Work and*

Pensions [2017] UKSC 72, at para 1). I reiterate that this is reflected in the prescribed procedure, i.e. the applications ***"must"*** be considered *"without a hearing"* save in exceptional circumstances as mandated by para 6(4) of Schedule 1 to the GRA 2004.

57. There is scant authority as to what living *"in the acquired gender"*, prescribed in Section 2(1) GRA, actually means. I have been referred to three cases: *Carpenter v Secretary of State for Justice (No 2)* [2015] EWHC 464 (Admin); *Jay v Secretary of State for Justice* (supra); and *AB* (supra). I have already discussed *Jay* and *AB* above, *Carpenter*, I will consider below.

58. There is no statutory definition or Guidance as to the meaning of living in one's acquired gender (for convenience, I will adopt Counsel's term *"the LAG Condition"*). Mr Roberts has referred to this as *"a matter of some political controversy"*. It is not the role of this Court to adjudicate on political controversy. The principal question which I address in this appeal is the statutory construction of the words which Parliament has used in the GRA 2004: namely, what is intended by the phrase living *"in the acquired gender"*?

59. The starting point in statutory interpretation is always to give the words of the statute their ordinary and natural meaning. In this case, however, I find this principle has limited, if any, scope. This is a statute which is, for the reasons that I have mentioned, *"permissive"*. The architecture of the Act mandates the grant of the application when the criteria are met, it does not construct a discretionary framework. Again, as I have alluded to, the procedure prescribed by the Act has a summary complexion to it, rigorously restricting the ambit of any oral evidence. The overall purpose and intent of the Act is to assist and protect a specific group of people facing the challenge of living

with gender incongruence who have developed a secure identity in the opposite gender to that which they were born in. It is crafted as a humane piece of legislation. Its provisions must be interpreted purposively.

60. Some assistance can be found in the case law. In *R (McConnell) v Registrar General for England and Wales* [2019] EWHC 2384 (Fam), Sir Andrew McFarlane P was confronted by a similarly challenging question of interpretation. Para 1 of the judgment articulates it thus:

> *"In this case the court is required to define the term 'mother' under the law of England and Wales. Down the centuries, no court has previously been required to determine the definition of 'mother' under English common law and, it seems, that there have been few comparable decisions made in other courts elsewhere in the Western World. Hitherto, a person who has given birth to a child has always been regarded as that child's mother. The issue arises in modern times where an individual, who was born female, undergoes gender transition and becomes legally recognised as male before going on to conceive, carry and give birth to a child, with the result that the parent who has given birth is legally a man rather than a woman. The question posed to this court is: Is that man the 'mother' or the 'father' of his child?"*

61. In that case, Mr McConnell, a trans man, was undertaking fertility treatment. He suspended testosterone therapy to commence the treatment and obtained a GRC whilst treatment was ongoing. Unlike the Applicant in this case, Mr McConnell did not disclose his ambition to become pregnant to the Panel. This caused the President to enquire whether there was to be any challenge to the validity of the GRC, in the light of the close chronological alignment of the GRC application with the Claimant's

treatment. The President was told by Counsel that neither the Secretary of State for Health and Social Care nor the Secretary of State for the Home Department would be challenging the validity of the certificate. The certificate was, therefore, treated as valid.

62. Whilst the issue was whether Mr McConnell should be recorded as the *"mother"* or *"father"* on the birth certificate, the President made broader observations:

> *"139. It is pertinent to ask whether the role of 'mother' is as entirely gender specific as Miss Markham's assumption requires. It is undoubtedly the case that throughout history the role of being a gestational mother has been undertaken by females, but is being female the essential or determining attribute of motherhood? There is a strong case to be made for the role of 'mother' being ascribed to the person, irrespective of gender, who undertakes the carrying of a pregnancy and who gives birth to a child. In that regard, being a 'mother' is to describe a person's role in the biological process of conception, pregnancy and birth; no matter what else a mother may do, this role is surely at the essence of what a 'mother' undertakes with respect to a child to whom they give birth. It is a matter of the role taken in the biological process, rather the person's particular sex or gender.*
>
> *140. The law has, in recent times, readily recognised mothers, who are to be regarded as male, and fathers, who are to be regarded as female. Long before the GRA 2004, transgender parents were accepted in the family courts in their acquired gender.*
>
> *141. On the facts of* [JK, R (On the Application of) v The Secretary of State for the Home Department & Anor [2016] 1 All ER 354]*, the transgender woman who was the father of the two children, and who remained registered as 'father' following*

> *the court's ruling, was, by a time soon after the second child's birth, to be recognised for all purposes as female. It is accepted in these proceedings that the effect of GRA 2004, s 12 was that JK's GR certificate did not affect her status as 'father' to those children; JK is thus a female father. The same would be true had it been the other way around and a mother had subsequently been granted a GR certificate recognising an acquired male gender, that person would be a male mother."*

63. The President concluded, at para 142, *"the concept of a male mother is therefore not unknown to the law"*, he summarised his principal conclusions in this way:

> *"279. The principal conclusion at the centre of this extensive judgment can be shortly stated. It is that there is a material difference between a person's gender and their status as a parent. Being a 'mother', whilst hitherto always associated with being female, is the status afforded to a person who undergoes the physical and biological process of carrying a pregnancy and giving birth.* ***It is now medically and legally possible for an individual, whose gender is recognised in law as male, to become pregnant and give birth to their child.*** *Whilst that person's gender is 'male', their parental status, which derives from their biological role in giving birth, is that of 'mother'.* (my emphasis)
>
> *280. At paragraph 149, I set out my preliminary conclusions with respect to domestic law, these can now be firmly stated as:*
>
> *a) At common law a person whose egg is inseminated in their womb and who then becomes pregnant and gives birth to a child is that child's 'mother';*
>
> *b) The status of being a 'mother' arises from the role that a person has undertaken in the biological process of conception, pregnancy and birth;*

> ***c) Being a 'mother' or a 'father' with respect to the conception, pregnancy and birth of a child is not necessarily gender specific, although until recent decades it invariably was so. It is now possible, and recognised by the law, for a 'mother' to have an acquired gender of male, and for a 'father' to have an acquired gender of female;*** (my emphasis)
>
> *d) GRA 2004, s 12 is both retrospective and prospective. The status of a person as the father or mother of a child is not affected by the acquisition of gender under the Act, even where the relevant birth has taken place after the issue of a GR certificate."*

64. The concepts the President was addressing are undoubtedly challenging, but the above passages reflect both the day-to-day realities for the individuals concerned and how those realities have been accommodated by the evolution of the case law. In the case of *AP, Garçon and Nicot v France* (no. 79885/12, 6 April 2017), it was established that a trans person cannot be required to undergo surgery through which they consequentially forgo their right to procreate (in consequence of sterilisation). The focus in *AP* (supra) was on interference with physical integrity but the same principles are engaged. The Court considered various requirements that France had imposed on applicants for gender recognition:

(i) The first requirement was to demonstrate an *"irreversible change in appearance"*. In practice, this meant long-term hormone use and/or surgical intervention, both of which would certainly or very likely result in sterility [120]. Because this went to a person's physical integrity, the State enjoyed only a narrow margin of appreciation [123]. The Court noted that sterilisation concerns an essential human bodily function with implications for *"multiple*

aspects of individuals' integrity, including their physical and mental well-being and their emotional, spiritual and family life" [128]. The requirement amounted to a breach of Article 8 ECHR;

(ii) The second requirement was to *"prove the existence of a gender identity disorder"*. In relation to this matter, member states had a wide discretion [140] and there was no breach [144]; and

(iii) The third requirement was to undergo a medical examination. This did not breach Article 8 [154].

65. The ECHR's recognition of the invidious and, as they found, irresolvable conflict between an individual's physical integrity and their emotional and family life finds expression in the GRA 2004, which permits the right to obtain legal gender recognition while retaining the capacity to procreate. Parliament plainly chose not to impose what has been referred to as a 'sterilisation' requirement. The decision in *AP* (supra) established, for the first time, a violation of the Convention, in particular, Article 8, if an individual was compelled to be confronted with and make such a choice. Accordingly, under our domestic legislation, a trans man might fulfil the LAG condition whilst having no surgical intervention of any kind and remaining physiologically female. Ms Sarathy argues, by parity of analysis, that this must inevitably give rise to the physical possibility of a trans man conceiving and carrying a child.

66. The Applicant's circumstances are set out, variously, above. His medical situation, which has nothing to do with his hormone treatment, presents challenges to childbirth. It may take him some time successfully to carry a baby. It may ultimately not be possible. He plainly perceives the Panel's decision as imposing a sterility requirement

upon him. His statement to the Panel which, of course, was inadvertently not considered by the decision-makers, contained the following:

> *"I'm actually quite alarmed about this entire process because as far as I know there is no requirement for even medical transition in order to gain a GRC, much less a requirement for sterilisation. So I'm a little bit confused and worried that this is affecting my application despite living as male for almost 9 years now. I know it said that this is incompatible with my declaration to live as male for the rest of my life but I intend to give birth as a man and be known as dad by my child, despite being down as mother on their birth certificate."*

67. Ms Sarathy's first ground of appeal takes this point:

> *"The Panel erred in concluding that the desire to become pregnant, the taking of steps to facilitate a pregnancy, or becoming pregnant was "inconsistent with living in the male gender" for the purposes of s.2(1)(b) and (c) (§7). The effect of that interpretation was to require the Appellant – and other transgender persons – to abandon the right to choose to conceive biological children (or take steps to conceive) as a precondition to obtaining a GRC. Such an interpretation is inconsistent with the State's obligations under Article 8 of the ECHR (Ground 1)."*

68. Though submitting that the point can be argued either way, Mr Roberts says that if, in truth, the Decision is not multifactorial and can therefore be distilled into one determinative reason, as expressed at para 9, that *"we find [pregnancy] to be inconsistent with living in the male gender"*, that would mean, *"in practice that no trans male applicant who had been pregnant in the previous two years or who wished ever to be pregnant in the future could meet the LAG condition"*. This, he says, is

"arguably a form of sterility". Certainly, on the facts of this case, it would constitute a significant interference with the Applicant's reproductive rights and is, at very least, difficult to reconcile with the State's obligations under Article 8 of the ECHR. Furthermore, it also jars, strikingly, with the permissive objectives and philosophy of the GRA 2004.

69. It is important to note that the Applicant had given extensive information about his personal circumstances to the Panel. Indeed, the information regarding his pregnancies was precisely what led to the Panel requesting him to attend to give evidence. Against this backdrop therefore, the following passages of the Decision, strike me as particularly significant:

> *"8. The evidence before the Panel leads us to make the following findings of fact: As to question (i), prior to the two year period of living in the male gender, you took steps to achieve a pregnancy, though your pregnancies resulted, sadly, in miscarriage. Certainly by 2021, you were again taking active steps to conceive a baby with a view to carrying it to term while presenting as living in the male gender. Although your IVF treatments in January and June 2022 were unsuccessful, the latter attempt was within the statutory period. In early 2024, you sadly had had another miscarriage. This pregnancy was within the statutory two year period. You still hoped to conceive and carry a baby yourself, and you were to be referred for further egg storage on the NHS. There is no indication that you have, or had abandoned your hope to conceive and carry a baby at that time. As to (ii) your statutory declaration dated 21 March 2024 stated that you had lived in the male gender for seven years and intended to live the rest of your life in the male gender. During that period you had three rounds of fertility treatment including*

> *IVF and unsuccessful pregnancies. Your application was made on 22 March."*

70. Having set out these findings of fact, each of which related to the Applicant's endeavours to conceive, the Panel went on, in the following paragraph, to draw its conclusions:

> *"9. On these facts the Panel concludes on balance of probabilities that you were not living in the male gender throughout the period of two years down to the date of your application. For the same reasons, we are unable to accept that you were living in your acquired gender throughout the 7 years stated in your Statutory Declaration. In so far as those professionals practising in the field of gender dysphoria consider you to be living in your acquired gender in the circumstances as we find them, we reject their views. The medical practitioners and psychologist practising in the field of gender dysphoria are tasked with diagnosing and treating gender dysphoria. They may offer opinions on matters such as whether a patient is living in their acquired gender and on the patient's future intentions, but their opinions are just that. The Panel considers their opinions when assessing all the evidence, but our task is to find whether the statutory conditions for granting a Gender Recognition Certificate are satisfied. Medical opinion and legal analysis may yield different results and do so on these facts."*

71. Finally, and in entirely unambiguous language, the Panel observed:

> *"10. Pregnancy is a fundamentally female biological function and we find it to be inconsistent with living in the male gender. The Panel accepts that you have changed important documents to reflect a male identity and have had a bilateral mastectomy*

but while these provide some evidence that you were living in the acquired gender, they do not outweigh the combination of other factors identified in paragraph 9."

72. The language in the above paragraph (10) is inconsistent with the approach the Panel identified, at para 6 of their Decision, which I consider was correctly formulated (see para 51 above). I have very little hesitation in concluding that the Decision in this case was not ultimately 'multifactorial', to use Mr Roberts' expression, as it is required to be, but manifestly distilled into one central premise, i.e. that pregnancy is inconsistent with living in the male gender. Having accurately identified the correct approach, i.e. considering the whole of the evidence when seeking to establish whether the Applicant has a *"genuine and enduring adoption of their new gender"*, the Panel did not carry that through to their ultimate analysis. Effectively, they changed course and wrongly elevated pregnancy as *"fundamentally inconsistent"* with living as a male, thereby giving that factor determinative weight.

73. This analysis Ms Sarathy construes as generating a precondition which is inconsistent with the State's obligations under Article 8. As I have set out above (para 68), Mr Roberts also agrees that if the decision is not multifactorial, it might construct a requirement which is *"arguably a form of sterility"*, and therefore a breach of Article 8. Clearly it is not permanent sterility caused by medication, neither is it physical and permanent interference with the Applicant's body, which were both facets of the evidence in *AP*, but it is a significant interference with the Applicant's Article 8 rights. Mr Roberts, when putting these issues to the assay, also makes the perfectly proper points that:

> *"...in AP sterility was, in effect, a precondition for a GRC. However, in C's case, he can (on the GRP's reasoning) in principle complete his family planning efforts and obtain a GRC two years later. Further or alternatively, C can have a child by some other arrangement than his own pregnancy, e.g. potentially adoption or surrogacy (subject to the practicalities of being able to do so, noting that C has said he cannot do so)."*

74. Though *"in principle"* that may be correct, the enquiry must, in my judgement, straddle both objective and subjective considerations, in which context I also bear in mind the Applicant's *"pre-existing fertility issues"*.

75. If it were contended that pregnancy is *"inconsistent with being male"*, it might logically be unobjectionable. However, for all the reasons considered above, living in an acquired gender is, necessarily, a far more subtle and nuanced concept. To interpret the LAG condition in the way that I consider that the Panel has done, also serves to offend one of the established rules of statutory construction, namely that it leads to both absurdity and inconsistency. Menstruation, for example, must surely be a fundamentally female biological function, and yet that will not preclude the grant of a GRC.

The Evidence Relating to the Applicant's Genuine and Enduring Adoption of his New Gender

76. It is important to place all the above in the context of the Applicant's circumstances. Mr Roberts, in his skeleton argument, suggests that there are three categories of evidence, which he emphasises may be relevant in this context:

> *"(i) Physical / physiological features. Gender dysphoria is, in its essence, an incongruence between a person's sense of self and their biological features (see C at [2] above). Accordingly, some trans people make changes to their bodies through surgery or medical treatment such as hormone treatment. This is politically controversial because some people may argue that sex/gender is purely a matter of identity and does not require any bodily modification at all. Others may argue that no amount of bodily modification can alter someone's underlying biological sex."*

77. I reiterate, the Panel's earlier emphasis and my own conclusion that the relevance of the LAG condition is in assessing the Applicant's *"genuine and enduring adoption of their new gender"*. Accordingly, I regard the physical / physiological aspects of the evidence as illuminating the issue of the Applicant's resolve to live as a man. I entirely eschew any argument as to whether sex / gender is purely a matter of identification. That does not fall within the remit of this appeal.

78. It is pertinent to note here that the Applicant underwent a double-mastectomy. Thirlwall J in *Carpenter (No 2)* (supra) considered that undergoing surgery was *"overwhelming evidence"* in support of all the Conditions [para 23]; and that *"Where an applicant has undergone surgery, or plans to do so, that fact is highly relevant, if not central, to his or her application."* The arguments in this case illustrate that undergoing surgery might not always be as evidentially overwhelming (of the LAG conditions being met) as Thirlwall J contemplated. However, it does not, to my mind, diminish their significance in assessing an applicant's enduring adoption of a new gender.

79. The second category of evidence that Mr Roberts suggests is:

> *"(ii) Self-identification. This might be evidenced by changing one's sex designation on various documents (such as a passport or driving licence). It might also be evidenced by using facilities and services ordinarily designated for those of their acquired sex (such as a trans man using the men's lavatories). The subjects of self-identification and facilities use are also matters of political controversy. For example, the question of whether trans people can, under the Equality Act 2010, use the facilities aligned with their acquired sex is the subject of a judicial review recently brought by the Good Law Project and others (permission hearing pending)."*

80. How the applicant conducts their life is plainly relevant when evaluating the sincerity of their commitment to their new gender. I am not sure whether words such as *"self-identification"* assist. What is required is an overview of the broad canvass of the life the Applicant is living, has lived, and intends to live, which should, as the Act plainly contemplates, be easily and readily apparent.

81. Finally, it is suggested:

> *"(iii) Behaviours. This might include doing activities, or presenting in a way, that is more typically associated with one sex than another. An example might be a trans person's choice of clothing or makeup or a trans person adopting a name typically regarded as feminine or masculine (or at least adopting*

> *a neutral name which dissociates from a clearly gendered birth name). Again, this category of evidence is controversial; both sides of the political debate might argue that this reduces sex into a series of stereotypes, none of which are intrinsically linked with sex and the perpetuation of which may be argued to be damaging."*

82. As I indicated during exchanges, I am not attracted to this latter point. If I may inject a note of levity (which nonetheless illustrates a point), the England Women's National Football Team, with back-to-back successes in the UEFA European Championship, conveniently illustrate that very few activities these days can be intrinsically associated with one sex rather than another. I consider such assumptions can only lead me into the quicksand of stereotyping.

83. Having reasoned that the evidence supporting the LAG Conditions is best achieved by surveying the broad canvass of an applicant's life, I embark on that exercise in respect of this Applicant. In doing so, for reasons that I have already identified, I indicate that I regard him as a frank and honest chronicler of his transgender development.

84. The Applicant is a trans man, in his mid-twenties. He knew from a *"very very young age"* that he wanted to be a boy. The sincerity of that statement, I find to be reinforced by his manifestly authentic observation that he thought *"everyone felt that way"*. Only when he approached adolescence did he begin to realise that the way he felt was different from those around him. His initial reaction was to be afraid and avoidant. At seventeen he *"came out"* (his phrase). He changed his name, immediately, to a boy's name, by deed poll and, at the same time, adopted the use of male pronouns. He also

started to dress as a male. This he has continued to do throughout the entirety of his adult life thus far. Having changed his name by deed poll, the first step on his transition journey, he was able to change the gender marker on his NHS number. Thereafter, he changed his name on all records with his name and gender on it. When he booked a holiday abroad in 2019, he also changed his name and gender on his passport. I mention this separately because I had a sense that the passport was also, for him, a landmark in his change of identity.

85. The Applicant plainly had started reading widely about transgender issues. This curiosity and thirst for knowledge on these issues remains and is evident in the document prepared for the Panel, which illustrates not only that he is familiar with the case law, but that he has spent considerable time analysing and understanding it.

86. Still a teenager, the Applicant went to see his doctor to seek a referral to the Gender Identity Clinic ("GIC"). He was obviously keen to have testosterone treatment, but he was informed by his doctor that testosterone can be permanently gonadotoxic. As it transpires it is not, but its effects can vary greatly, dependent on a range of factors. Even at this very young age, it is obvious that the Applicant wanted to be a parent. He has stated that this has never been a question of 'if', but always only a question of 'when'. He was already aware that the waiting list to see the GIC was long, and so he thought he had enough time to become pregnant. At age seventeen and nineteen, he suffered miscarriages. There can be no doubt that he felt an urgency to get pregnant in order that he could focus on completing his transition.

87. For completeness, the Applicant started using a binder in 2016, which he used daily until he secured a privately funded bilateral mastectomy in February 2020. At some point during this period, the Applicant began to regard himself as having transitioned. He started using male toilets and changing rooms. In his statement, the Applicant says that he took up Taekwondo for a period in 2016. It struck me as rather a random remark. I note that this sport is equally popular with women and girls, but I sense that in mentioning it, the Applicant regarded it as a facet of what he perceived to be his burgeoning masculinity.

88. There are some other factors which the Applicant identifies as illustrating his living as a man. He started purchasing minoxidil over the counter in an attempt to grow more facial hair. He also started singing (2018) in a men's choir, which he still enjoys. I should record that the Applicant has a degenerative spine disease. Nonetheless, with necessary adjustments, he still enjoys playing sport. He is a member of a team which is mixed but he has *"a male-gender marker"*, i.e. he plays as a male.

89. The Applicant discontinued testosterone therapy in approximately April 2020. He had been in a relationship and the couple had planned, at some point in the future, to pursue IVF. Following the breakdown of the relationship, the Applicant decided to pursue IVF as a single person, which required him to stop the testosterone therapy. As to his future plans, he has stated the following:

> *"17. After I have had children, I plan on restarting testosterone therapy and to seek referral for bottom surgery (likely metoidioplasty, hysterectomy and oophorectomy). I definitely want bottom surgery and sought a referral for that surgery previously. Given that the NHS waiting list for bottom surgery is around 6 years, I had hoped to get that referral and then have*

> *enough time to have children before I reached the front of the queue, but my fertility issues have meant that it has taken longer than I expected.*
>
> *18. I recently finished a course of speech and language therapy that began in December 2024 to learn techniques to make my voice sound deeper and more masculine in delivery."*

90. The Applicant addresses his desire to conceive in the following passages:

> *"20. I had always dreamt of having a big family. I would like at least two children, but I would of course also be happy with just one. My ideal situation would be to have one child and then continue trying for a second. To do this, I would need to have a caesarean section (because of my disabilities) and then wait 12-18 months before immediately having another. Thereafter I would want to restart testosterone therapy and seek referral for bottom surgery.*
>
> *21. I have considered, and reflected on, how conceiving and carrying a child would affect my decision to live in the male gender. I expect that being pregnant will cause me some dysphoria, but I believe experiencing a level of dysphoria for nine-months will be worth it for a lifetime of love having a family. I have also of course considered other options but have always concluded that carrying my own children is the only achievable and affordable option for me.*
>
> *22. I have considered surrogacy as a means to have children, and I was a part of the Surrogacy UK Facebook group for a while. I understand that finding a surrogate is not straightforward. I do not have a family member or friend who would be willing and able to be a surrogate. I also understand that, while you do not technically pay a surrogate, you have to*

> *pay their expenses, which can total up to £50,000. That is far beyond my means and always will be."*

91. At risk of overburdening this already extensive judgment, I consider it important to record the Applicant's own thoughts on the key issue of living as a male whilst carrying his own child. The following passages strike me as most pertinent:

> *"25. Beyond these barriers, I have felt more inclined to carry children as other trans men pave the way by increasingly carrying their own pregnancies. I have already met my pregnancy team at the pre-pregnancy unit at Kings College Hospital, because I am ... diabetic which increases the risk of miscarriage, and they wanted a consultant to help me to reduce that risk. My midwife there told me that they have helped several transgender men who had carried pregnancies and that as a result they thought it was becoming a specialism for them. The existence of support services like my midwife and dedicated organisations such as Equality for Trans Families, Trans Fertility Co, and Tommy's, who provide support for trans fathers who carry pregnancies, speak to the fact that this is an increasingly common path for transgender men to take. There is also a whole network of trans men who have or wish to conceive and carry a baby themselves who provide support to each other. I connect with those networks of trans men primarily through Facebook support groups including:*
> ● *"UK Trans* Parents/Parents to be" which has 231 members and 2,700 followers (UK based);*
> ● *"FTM8 Dads" which has 3,900 members (worldwide); and*
> ● *"Birthing and Breast or Chest Feeding Trans People and Allies" which has 7,800 members (worldwide).*
>
> *26. Accordingly, I am confident that my decision to carry my own child is not incompatible with my living as male since 2016 and*

> *my continuing intention to do so. Based on the growing membership of the above groups, I am also confident that this experience is widely shared and will continue to grow."*

92. Much of this information was before the Panel but in this appeal, the Applicant's team prepared a statement adding further detail. As I am considering the application afresh, I concluded it was appropriate to have regard to it.

93. It is clear that there are two main currents coursing through the Applicant's life: his clear and settled identification as male, in which sex I find there is abundant evidence that he continues to live; and his desire to have a family. In my judgement, there is nothing further he could do to reconcile these two powerful instincts. To require him to abandon either one for the other would be to dismantle and fracture the person he is. The GRA 2004 and the case law which preceded it recoiled from compelling such an invidious choice. The GRA 2004, having had regard to the direction of the domestic and European jurisprudence, specifically circumvented such an outcome. For all the reasons discussed above, I am satisfied that the Applicant continues to live in his acquired gender and intends to do so for the rest of his life. Accordingly, I allow the appeal and grant the Certificate.