

Family Law Aspects of Trans Identities

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Gender Recognition Act 2004

- *Goodwin v the UK (Application No. 289574/95) [2002] No. 2 FLR 487* and *I v the UK (Application No. 25680/94) [2002] No.2 FLR 518*
- Gender Recognition Act 2004
- Government Consultation in 2018, response in 2020
- Benefits
- Process
- Criticisms
- Marriage/Civil Partnership

The Equality Act 2010

- Protected characteristic
- Definition: *“proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex”*.
- Requirements
- Reach

People who transition after having a family

Re C (Children) [2006] EWCA Civ 1765

- This was an appeal by a father (who had changed gender and was now living as a woman) against an order made by Coleridge J within contact proceedings that there should be a 20 month moratorium on further proceedings and against the decision to decline the appointment of NYAS as the child's guardian.
- The children, two girls aged 11 and 8, did not know that their father was transgender.
- Thorpe LJ was concerned that the children would find out about their father's gender reassignment by chance or casual talk and that this would be more difficult for them and M.

People who transition after having a family

Re C (Children) [2006] EWCA Civ 1765

- Per Thorpe LJ:
- *“...these children, who have to deal with a fact of life that very few children have to deal with, both need, and are entitled to, professional help. Denial of that help to the children could hardly be more clearly contrary to their welfare”*
- The Order of Coleridge J was set aside, the children were joined as parties and NYAS appointed as guardian.
- In terms of direct contact, however, Thorpe LJ said that this was *“a long way down the line”* and should not divert the court from the critical issue in the case, which was *“that the children must understand the truth and be brought to knowing the truth”*.

People who transition after having a family

T (A Child) [2008] EWCA Civ 85

- A transgender Father ('F') appealed an order of McFarlane J (as he then was) which ordered that the 8 year old son should be told of his origins.
- F's objections were threefold: (1) it was premature, (2) F disagreed with the process proposed by the guardian and (3) there were risks to F's contact if the work was done prematurely.
- McFarlane J had found that the child needed to be told, he was old enough to understand if explained in appropriate terms and that NYAS was the appropriate forum to tell him.
- It was therefore ordered that the child would be told who his biological father was, the fact that F had undergone gender reassignment surgery and who his paternal grandparents were.

People who transition after having a family

T (A Child) [2008] EWCA Civ 85

- F appealed that order and appealed the refusal to stay that order. The issue, however, was that the life story work had already begun. The subject of the appeal, therefore, was academic and Wall LJ held that there was no purpose to be served in an appeal. However, he made it clear in any event that McFarlane J had a wide discretion, his judgment was conventional and there was no gross error in the exercise of his discretion.
- Wall LJ went on to say that he hoped F would resume their relationship with their son but said:
- *“I think it is very difficult sometimes for people in the applicant’s position to realise the effect of a change of gender on others. For such people, it is a moment of happiness – they have now, at long last, achieved what they have always actually wanted and they feel fulfilled in their new gender. That is not the same for others and it is more difficult, I think, for others to come to terms”*

People who transition after having a family

J v B (Ultra-Orthodox Judaism Transgender) [2017] EWFC 4

- The case involved 5 children (aged 12, twins aged 8, aged 5 and aged 2) who were brought up in the North Manchester Charedi Jewish community.
- The father ('F') left the marriage and the community in June 2015 to live as a transgender woman and had had no contact with the children following leaving.
- F wanted to be sensitively reintroduced to the children and for them to be helped to understand the new way of life for F and that the opposition from the Charedi community should be faced down.
- M opposed direct contact because it would lead to her and the children being ostracised by the community to such an extent that they would have to leave.

People who transition after having a family

J v B (Ultra-Orthodox Judaism Transgender) [2017] EWFC 4

- Jackson J said:
- *“I find this a very troubling case. These children are caught between two apparently incompatible ways of living, led by tiny minorities within society at large. Both minorities enjoy the protection of the law: on the one hand the right of religious freedom, and on the other the right to equal treatment. It is painful to find these vulnerable groups in conflict”.*
- He identified 15 ‘formidable’ arguments in favour of direct contact with F and only two arguments against contact, namely F’s dependability and the community’s reaction to direct contact. In relation to F’s dependability, he said that if this were the only obstacle to contact it could probably be overcome. The central question was the reaction of the community.

People who transition after having a family

J v B (Ultra-Orthodox Judaism Transgender) [2017] EWFC 4

- Having considered the evidence, he concluded:
- *“I can see no way in which the children could escape the adult reaction to them enjoying anything like an ordinary relationship with their father. In the final analysis, the gulf between these parents – the mother within the ultra-Orthodox community and the father as a transgender person – is too wide for the children to bridge. They would be taught one thing in their daily lives and asked to do the opposite on repeated, conspicuous forays into the outside world, which they would have to keep quiet about afterwards.”*
- *“So, weighing up the profound consequences for the children’s welfare of ordering or not ordering direct contact with their father, I have reached the unwelcome conclusion that the likelihood of the children and their mother being marginalised or excluded by the ultra-Orthodox community is so real, and the consequences so great, that this one factor, despite its many disadvantages, must prevail over the many advantages of contact.”*

People who transition after having a family

J v B (Ultra-Orthodox Judaism Transgender) [2017] EWFC 4

- He therefore refused F's application for direct contact and ordered indirect contact four times a year and a 12 month Family Assistance Order. He concluded by saying that:
- *"This outcome is not a failure to uphold transgender rights, still less a "win" for the community, but the upholding of the rights of the children to have the least harmful outcome in a situation not of their making"*.
- F appealed and that case is reported as **Re M (Children) [2017] EWCA Civ 216** and the lead judgment was given by Sir James Munby, P (as he then was). F succeeded on all three grounds of appeal.

People who transition after having a family

Re M (Children) [2017] EWCA Civ 216

- Ultimately, Munby P held that Jackson J had given up too easily and the best interests of the children were served by them having more contact with F. The courts must persevere and “never say never”.
- The matter came before the High Court again in 2020 and reported as **A (Children) (Contact: Ultra-Orthodox Judaism: Transgender Parent) [2020] EWFC 3**, heard by Mr Justice Hayden.
- The matter had been listed for a rehearing in 2018 but F had not been able to devise a plan for the children which did not involve a catastrophic impact on their lives. It was then agreed that a careful narrative be constructed to help the children make sense of the situation and indirect contact was agreed in line with Jackson’s order. A s91(14) order was also made to prevent any further applications until 2020.
- Ultimately, none of the children were prepared to meet F and the views of the community remained unchanged. As such F did not pursue the application, recognising that it would be counter-productive and emotionally harmful.

Birth registration issues

- The Queen on the application of JK [2015] EWHC 990 (Admin)
- *“The UK’s birth registration scheme was well within that margin of appreciation, and the state was entitled to conclude that the interference with the art.8 rights of people in J’s position was outweighed by the interference with the rights and interests of other individuals and the public interest that would be caused by not having such a restriction”*

Birth registration issues

- The Queen on the application of TT [2019] EWHC 2384 (Fam)
- *“There would seem to be a pressing need for government and parliament to address square on the question of the status of a trans male who has become pregnant and given birth to a child.”*

Birth registration issues

- **The Queen on the application of Alfred McConnell**
[2020] EWCA Civ 559
- Interpretation of S9(1) of the GRA and exception in s12.
- *“In the present context...Article 3(1) of the UNCRC requires that the best interests of children generally should be taken into account as a primary consideration when striking a balance in legislation..... the view that Parliament has taken is that every child should have a mother...Others may take a different view and in time may be able to persuade Parliament.... What cannot be doubted is that Parliament has taken into account the best interests of children as a primary consideration.”*

Fertility and Surrogacy

Birthing trans parents

- s33(1) of the Human Fertilisation and Embryology Act 2008 states that *“the woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs and no other woman, is to be treated as the mother of the child”*. The act of carrying and giving birth to a child makes that woman the legal mother.
- s12 Gender Recognition Act 2004 states that in relation to Parenthood *“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”*.
- Para 280 (d) McFarlane P in TT says *“GRA 2004, s12 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”*

Fertility and Surrogacy

Consider this:

- So far, there has been no successful uterine transplant into transgender women for the purposes of achieving a pregnancy via IVF and subsequent birth.
- What would be the legal position if this were to happen?
- If TT is followed, then the trans woman (regardless of whether they have a GRC) would have to be the legal mother as they gave birth.
- Could this be the time when the government finally acts in relation to legal parenthood for trans people and modernising the registration laws?

Fertility and Surrogacy



News > UK

Womb transplants for trans women 'many years off' – UK surgeon

Professor Richard Smith, from Imperial College London, said 'currently, there is not technical feasibility'.

Jane Kirby • Wednesday 23 August 2023 05:10 BST



“My suspicion is a minimum of 10 to 20 years.”

A leading surgeon in the US who established the uterus transplant programme at the [University of Alabama](#) said it was “medically possible”.

“I think there’s a lot of providers, such as myself, who would envision that is the case,” Dr Paige Porrett told the [MailOnline](#) last week.

“I think that it is certainly medically possible. The future is wide open.

“I think it’ll happen in the future, but there’s going to be a lot more work that our community needs to do to be able to offer that safely.”



But there is the risk that we will rush into this because we have patients who are very interested.

Professor Mats Brannstrom

And the chief physician at the University of Gothenburg in [Sweden](#), who helped deliver the first live birth from a transplanted uterus in 2014, said he regularly gets email inquiries from males.

Fertility and Surrogacy

Non-birthing trans parents

- Issue is much more complex.
- Practitioners and clinicians are generally of the view that if the non-birthing trans parent has a GRC then if they have conceived using ART and are married to the birthing mother or in a CP with them, they will be automatically be the father or second female parent according to their acquired legal gender.
- If they are not married to or in a CP with the birthing mother, then they should be able to complete the relevant HFEA Forms WP and PP to be nominated as the legal father/second female parent in their acquired legal gender.
- **BUT:**
- Registrar General doesn't seem to be on the same page and this issue is ripe for legal challenge.

Fertility and Surrogacy

Excerpt from HM Passport Office's current handbook

(B2 Registration of a birth within 12 months - in the presence of the informant
(i) legal parenthood 5a

B2 Registration of a birth within 12 months - in the presence of the informant

General

Legal Parenthood

5a. For the purpose of a birth registration, the woman who carried the child and gave birth is the child's mother and legal parent at birth.

The Human Fertilisation and Embryology Act 2008 contains provisions regarding who can be treated as the father or second female parent of a child born to a woman as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination (see B2a).

N.B. Where a person obtains a Gender Recognition Certificate (GRC) (or an interim GRC) it does not affect their status as the legal mother, father or second female parent of a child and, where their inclusion in the birth entry is appropriate, they must be recorded in the entry in line with their birth sex.

B2 Registration of a birth within 12 months - in the presence of the informant

'Father/Parent?'

In every case 'Father' or 'Parent' must be selected to indicate whether the child's parenthood is mother and father or mother and second female parent (see B2a). This will determine whether 'FATHER' or 'PARENT' will be shown in the heading of space 4. Register pages must be carefully checked before the informant signs to ensure the correct parenthood is shown.

Fertility and Surrogacy

Compare to surrogacy:

- Surrogate and any spouse are initial legal parents.
- Intended parents could both be trans or only one of them trans.
- Provided the gametes of at least one of them are used to create the embryo they will be eligible to apply for a parental order (assuming the other s54 factors are met too).
- Regardless of whether the trans IP has a GRC or not, when they obtain their new birth certificate after applying for the parental order, both will be named as 'Parent' – a non-gendered term.

Fertility preservation:

- Change in storage laws in July 2022 – can now preserve gametes for own treatment for up to 55 years – re-consent every 10 years.

Bell v Tavistock

- **Bell v Tavistock [2020] EWHC 3274 (Admin)**
- **Bell v Tavistock [2021] EWCA Civ 1363**
- Complaint
- *Gillick* Competence
- Appeal
- Impact and Significance

Children who wish to transition

Puberty blocker cases:

- AB v CD & Ors [2021] EWHC 741 (Fam)
- Child 'XY' was born a boy and aged 15 during these proceedings.
- Matter heard after the first instance Bell v Tavistock case but before the appeal.
- Application by the mother, 'AB' for a declaration that she and the father, 'CD' had the ability to consent on behalf of XY to the administration of puberty blockers.
- The issue, following the first instance decision of Bell, was whether the parents could consent to the treatment or whether it required an application to court, either as a matter of legal requirement or as a matter of good practice.
- XY started on puberty blockers in July 2019 having been declared competent to sign the consent forms by Professor Butler at UCLH.
- Next prescription due April 2021 – Bell v Tavistock judgement had come out.

Children who wish to transition

Puberty blocker cases:

- AB v CD & Ors [2021] EWHC 741 (Fam)
- After the Bell judgment, NHS England (NHSE) issued an amendment to the Service Specification for GIDS requiring that each patient currently receiving treatment should be assessed and a 'best interests' application should be made to the court in the event that the clinical review determined that the patient should continue with the puberty blockers.
- 2nd Respondent (Tavistock and Portman NHS Foundation Trust) said it would take at least 3 months to review XY's case.
- Clinicians and parents all agreed that XY should continue with the treatment.
- GPs are entitled to prescribe medications without following the procedures set out by NHSE and XY's GP had continued to prescribe.

Children who wish to transition

Puberty blocker cases:

- AB v CD & Ors [2021] EWHC 741 (Fam)
- It was not clear whose consent was being relied upon to make the administration of puberty blockers lawful, post Bell.
- AB therefore made the application because of the uncertainty as to the lawfulness of parental consent and the concern that the GP might decline to prescribe further.
- Questions for the court to consider:
 1. Do the parents retain the legal ability to consent to treatment?
 2. Does the administration of puberty blockers fall into a 'special category' of medical treatment by which either:
 - An application must be made to the court before they can be prescribed?
 - As a matter of good practice an application should be made to the court?

Children who wish to transition

Puberty blocker cases:

- AB v CD & Ors [2021] EWHC 741 (Fam)
 1. Do the parents retain the legal ability to consent to treatment?
 - Do they retain that right even where a child is Gillick competent? ‘concurrent right to consent’
 - No fresh assessment of XY’s Gillick competency had been carried out post-Bell.
 - Judge considered the matter on both bases – not Gillick competent and Gillick competent
 - *“...very essence of Gillick is...that a parent’s right to consent or ‘determine’ treatment cannot trump or overbear the decision of the child”*
 - In this case – parents and child agree.
 - Parents retain PR and whilst parents cannot trump a Gillick competent child’s view, they retain the ability, responsibility and right to consent on behalf of the child – e.g., if child is unconscious or declines to make a decision.
 - If XY is Gillick competent – XY has not objected to parent giving consent on their behalf so doctor can rely on consent of parents
 - If XY not Gillick competent – parents can consent on XY’s behalf
 - Whether or not XY is Gillick competent, parents retain the right to consent to the treatment.

Children who wish to transition

Puberty blocker cases:

- AB v CD & Ors [2021] EWHC 741 (Fam)

2. Is there a special category of medical treatment requiring court authorisation and do puberty blockers fall within it?

- There is a special category of medical treatment in relation to sterilisation of girls and women which require court authorisation.
- January 2020 Mr Justice Hayden, Vice President of the Court of Protection, produced guidance concerning when applications relating to medical treatment should be made to the court:
 - Para 11 (d) 'where it is proposed that an experimental or innovative treatment to be carried out (e) a case involving significant ethical question in an untested or controversial area of medicine'
- Arguments made that placing puberty blockers into a special category requiring court authorisation would amount to direct discrimination under the Equality Act. Lieven J declined to address the discrimination arguments.
- Held – no requirement or best practice obligation to seek court authorisation where parental consent is given to puberty blockers.

Children who wish to transition

Puberty blocker cases:

- AB v CD & Ors [2021] EWHC 741 (Fam)

Conclusions

- The parents' right to consent to treatment on behalf of the child continues even where a child is Gillick competent, save where the parents are seeking to override the decision of the child.
- Parents are, in general, in a position to understand and weigh up matters and consider what is in the long and short term best interests of their child.
- *"The gravity of the decision to consent to PBs is very great, but it is no more enormous that consenting to a child being allowed to die. Equally, the essentially experimental nature of PBs should give any parent pause for thought, but parents can and do routinely consent on their child's behalf to experimental treatment, sometimes with considerable, including life changing, potential side-effects"*
- *"It may well be that, given the particular issues involved, additional safeguards should be built into clinical decision making, for example by a requirement for a second opinion. Any such requirement is a matter for the regulatory and oversight bodies and may be a matter considered by the Cass Review"*
- Lieven J concluded that if the matter were to be finely balanced or disagreement between the clinicians then the matter could be brought to court but *"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"*

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
- O v P & Anor [2024] EWHC 1077 (Fam)
 - Two separate cases, both judgments came out in May 2024.
 - Both involved Gender GP, an online and offshore private gender clinic.
 - Both involved natal female to male adolescents and in both cases the adolescent had a diagnosis of autism.
 - Both cases couldn't find an expert in the UK to give evidence.
 - In Re J – M was in favour of PBs and F was against.
 - In O v P – F was in favour of PBs and M was against.

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
 - J was aged 16.5 years old
 - January 2023 started cross-hormone treatment with testosterone injections every 3 months. Last injection was August 2023. Next would be November 2023 – parties agreed this would be deferred.
 - Issues:
 - J's capacity to consent to receiving hormone treatment
 - Whether the court should, in any event, exercise its powers under the inherent jurisdiction and/or CA 89 to prevent further hormone treatment
 - Court didn't need to determine these issues as there was a measure of agreement.

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
 - F was firmly opposed to any person under 18 being prescribed cross-hormone treatment but accepted that J would undergo, with M's support, an assessment with a new clinic in London Gender Plus which would take 6 months.
 - Purpose of the judgment was to take stock of the issues and evidence to date.
 - Cass Review was published in April 2024 but not available during the hearing in February 2024.
 - Deliberately not consulted in this judgment.

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
 - Complication – treatment not on NHS but via internet provider Gender GP.
 - J had only had direct consultation with one representative of Gender GP – an unregistered counsellor.
 - Gender GP issued a private prescription for both PBs and hormone treatment, but J had never taken up the PBs. J’s NHS GP then prescribed testosterone.
 - F made an application under CA 89 and under the inherent jurisdiction of the High Court for the court’s intervention by way of declaratory relief to ensure that J is not treated with PBs or cross-sex hormones without the court’s approval.

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
 - Judgment considered the legal framework for children being able to consent to medical treatment
 - Under 16 and assessed as Gillick competent – treating clinicians can rely on the child’s consent without needing the consent of a parent;
 - Under 16 and not assessed as Gillick competent – consent to treatment can be given by the parent with PR – a parent with PR can act alone;
 - Over 16 but under 18 – default position is s8 Family Law Reform Act 1969 – consent is treated as if child were of full age and not necessary to obtain consent of parent – but if that person who would otherwise be able to consent by virtue of s8 does not have mental capacity to do so, s2(1) Mental Capacity Act 2005 will apply.
 - As J’s capacity was not in issue, judgment didn’t need to consider this.
 - As M had given an undertaking not to consent to further prescriptions court did not need to make a s8 PSO but it could have done on the basis that the circumstances are exceptional.

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
 - Expert consultant paediatric endocrinologist – critical of Gender GP re the dose of testosterone prescribed. Described it as a “highly abnormal and frankly negligent approach”.
 - J was at risk of sudden death due to the ‘dangerously high’ dose of testosterone.

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
 - F's position:
 - i. Court should rule now on J's capacity to consent to further treatment from Gender GP;
 - ii. Even if the court finds that J has capacity, court should override consent by exercising inherent jurisdiction;
 - iii. Court should rule on F's wider case and hold that, irrespective of the consent of a capacitous child and/or one parent, treatment with PBs or hormones should only be authorised with the approval of the court;
 - iv. Court should make the declaration sought at this stage;
 - v. General guidance should be given for deployment in similar cases.

Children who wish to transition

Puberty blocker cases:

- Re J (Transgender: Puberty Blockers and Hormone Replacement Therapy) [2024] EWHC 922 (Fam)
 - Court found that as F was not arguing against J having a 6 month assessment with Gender Plus, there was no issue falling for determination by the court other than to endorse the accepted plan.
 - Judge offered a preliminary indication that if the option of J resorting to Gender GP for a further prescription becomes live then there will need to be careful consideration of
 - Capacity to consent to that particular option;
 - Whether the circumstances are such that the court should exercise the inherent jurisdiction to prohibit him from doing so.

Children who wish to transition

Puberty blocker cases:

- O v P & Anor [2024] EWHC 1077 (Fam)
 - Q aged 16. Born female but identifies as male.
 - M applied for a PSO under CA 89 and under inherent jurisdiction to prevent F from arranging for Q to access treatment for gender dysphoria.
 - F applied for the interim orders to be discharged and proceedings to come to an end.
 - Guardian directed to provide an addendum report to consider Q's family circumstances.
 - Q was living with F, his new partner and her child, who was also a natal female who identified as trans and who was in a relationship with Q.
 - M agreed that Q could have the 6 month assessment with Gender Plus.

Children who wish to transition

Puberty blocker cases:

- O v P & Anor [2024] EWHC 1077 (Fam)
 - M's case
 - Invited court to adjourn until after the assessment with Gender Plus;
 - Invited court to make a declaration that any proposed prescribing of PBs or gender affirming hormones to a person under 18 by a private provider must be subject to the oversight of the court – following the publication of the Cass Report;
 - CoA decision of Bell v Tavistock and decision of Lieven J in AB v CD cannot survive the findings of the Cass Review.
 - F's case
 - Invited the court to dismiss the proceedings.
 - Q should be assessed and left to make the decision as to their treatment.
 - s8 Family Law Reform Act 1969 applies.
 - Gender identity and freedom to define it falls under protection of Article 8 ECHR.

Children who wish to transition

Puberty blocker cases:

- O v P & Anor [2024] EWHC 1077 (Fam)
 - Judd J
 - Rejected criticisms of M for continuing the proceedings;
 - Her lack of confidence in the treatment is shared by others;
 - *“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”*;
 - *“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 acknowledging the Cass Review findings – Judd J found that they do not justify a first instance judge from departing from the decisions in Bell and AB v CD.
 - Starting point is s8 FLRA 69 – Q is entitled to consent to own treatment whether or not parents agree.

Children who wish to transition

Puberty blocker cases:

- O v P & Anor [2024] EWHC 1077 (Fam)
 - Judd J
 - No realistic basis upon which judge could override Q's consent to treatment by a regulated provider or clinician in this country.
 - Therefore, no legitimate purpose in adjourning the case and found that it was in Q's best interests to bring the proceedings to an end.
 - *"Given the advice from the Cass Review any doctor will have to exercise great caution before prescribing hormones to a minor..."*
 - Declined to make the declaration sought by M that any prescribing of PBs or hormone treatment to a person under 18 by a private clinic should be subject to the oversight of the court;
 - *"The debate is properly conducted elsewhere"*

Children who wish to transition

The Cass Review.

- Conducted by Dr Hilary Cass.
- Independent review of the Gender Identity Services for Children and Young People.
- Commissioned by NHS England and NHS Improvement in Autumn 2020.
- Report published in April 2024.
- Some of the findings:
 - The rationale for early puberty suppression remains unclear, with weak evidence regarding the impact on gender dysphoria, mental or psychosocial health. The effect on cognitive and psychosexual development remains unknown.
 - The use of masculinising/feminising hormones in those under the age of 18 also presents many unknowns, despite their longstanding use in the adult transgender population. The lack of long-term follow-up data on those commencing treatment at an earlier age means we have inadequate information about the range of outcomes for this group.
 - Toxicity of the debate on this issue has made clinicians fearful of working in this area, which has the effect of reducing the already slim pool of experts.

Children who wish to transition

The Cass Review.

- Some of the recommendations:
 - Children/young people referred to NHS gender services must receive a holistic assessment of their needs to inform an individualised care plan, which will be overseen by a paediatrician/child psychiatrist. This should include screening for neurodevelopmental conditions, including autism spectrum disorder, and a mental health assessment.
 - The option to provide masculinising/feminising hormones from age 16 is available, but the Review recommends extreme caution. There should be a clear clinical rationale for providing hormones at this stage rather than waiting until an individual reaches 18. Every case considered for medical treatment should be discussed at a national Multi-Disciplinary Team.
 - Encourage participation in data linkage study – to address the “remarkably weak evidence” available.

Marriage

- **AP v JP [2019] EWHC 3105 (Fam)**
 - Marriage declared void by Cobb
 - Raises concerns about amendment to s11 MCA and ability to apply for Decree of Nullity
- **P v P (Transgender Applicant for Decree of Nullity: Human Rights) [2024] EWHC 1197 (Fam)**
 - Victim Status
 - Right to Marry, Art.12
 - Interpretation of S.11

Conclusion

Reform, Reform, Reform!

- Need to have clearer laws in respect of legal parentage for trans people conceiving children via artificial reproductive techniques.
- Birth registration laws need to be updated – outcome of TT sidestepped this but it's an inevitability so should be grappled with now.
- The consequence of having unclear legal parentage rules is that trans people will have to mount expensive and time-consuming legal challenges.
- Issue of whether young people should be prescribed puberty blockers will likely remain controversial.
- Cass Review may have an impact on subsequent judicial decisions – will PBs and hormone treatment be considered a 'special category' of medical treatment which requires court authorisation in every case?

