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| **Neutral Citation Number: [2012] EWCA Civ 1233** |
|  |  | Case No: B4/2012/2077 |

**IN THE COURT OF APPEAL (CIVIL DIVISION)  
ON APPEAL FROM WILLESDEN COUNTY COURT  
HIS HONOUR JUDGE COPLEY**

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|  |  | Royal Courts of Justice Strand, London, WC2A 2LL |
|  |  | 4 October 2012 |

B e f o r e :

**LORD JUSTICE MAURICE KAY  
LORD JUSTICE MUNBY  
and  
SIR STEPHEN SEDLEY**  
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|  | **Re G (Children)** |  |

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**Miss Eleanor Platt QC and Miss Joy Brereton (instructed by Bindmans LLP) for the appellant (father)   
Miss Joanne Ecob (instructed by Williams & Co) for the respondent (mother)   
  
Hearing date : 7 September 2012**   
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**HTML VERSION OF JUDGMENT**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Lord Justice Munby :**

1. This is a father's appeal from a judgment and order of His Honour Judge Copley sitting in Willesden County Court on 27 July 2012. Judge Copley was hearing proceedings brought under Part II of the Children Act 1989 by the mother of five children: three girls, aged respectively 11, 8 and 5, and two boys, aged respectively not quite 10 and 3. For the reasons set out in his judgment, Judge Copley made a residence order in favour of the mother. His order provided for the father to have extensive contact. He directed that the children were, with effect from the new term starting in September 2012, to attend the schools proposed by the mother rather than those proposed by the father: in the case of the eldest girl, the A school, in the case of the four other children, the B school. Hitherto, the three girls have been attending the C school and the elder boy the D school.
2. Before us neither parent has challenged the living arrangements for the five children as settled by Judge Copley; they had in fact been agreed save for various aspects of the father's contact. There are two issues. First, the father says that Judge Copley should have made an order for shared residence. Second, and on any view of much greater importance in the circumstances of the case, the father says that Judge Copley was wrong to accept the mother's proposals for the children's education.

Background

1. Both the mother and the father come from families which have for many generations been part of the Chassidic (Hasidic) or Chareidi community of ultra orthodox Jews. They were married in 2000. It was an arranged marriage. According to the mother it was not a happy marriage. Matters came to a head in October 2010 when the father, at the mother's request, left the family home. It is clear that the marriage has irretrievably broken down.
2. These are matters which I must explore in more detail in due course when I come to examine the evidence before Judge Copley, but it is not in dispute that, as explained to Judge Copley by Dayan Friedman, in the Chareidi community the Torah – the Pentateuch – governs every aspect of a person's life: food, dress, education, speech, communal responsibility, respect for elders, religious education, culture and heritage. As Judge Copley said, they are a very religious people, to the extent that the practice of their religion – observance might be a better expression – becomes a way of life. Outwardly visible manifestations of the community's observance include, for men, beards and long hair at the sides – peyos – and the wearing of the kippah; and, for women, covering the hair in public, frequently by wearing a wig, and the wearing of modest dress. Importantly for present purposes, the children of the Chareidi community attend single sex schools. Indeed, according to the father's evidence, mixed gender schools are strictly forbidden according to the leading Hallachic authorities of our generation.
3. It is common ground that the Chareidi community is at one end of the spectrum of observance of those who consider themselves to be Orthodox Jews. The mother, although she no longer considers herself to be a member of the Chareidi community, and no longer wishes to adhere to all the observances of the community, still considers herself to be an Orthodox Jew. She observes, and ensures that the children when they are with her observe, what she considers to be an Orthodox Jewish life, albeit one at the other spectrum of observance of those who consider themselves to be Orthodox Jews. For instance, she observes the Sabbath (perhaps less strictly than would be thought necessary in the Chareidi community) and keeps what she considers a Kosher house. There may be some in the Chareidi community who consider that the mother is no longer observing an Orthodox Jewish life, but that is not a matter which it would be proper for the court to explore nor, so far as we are concerned, does anything turn on the resolution of this essentially doctrinal or theological issue. The father for his part ensures that the children, when they are with him, adhere to all the observances of the Chareidi community, as the entire family did before the parents' separation.
4. The difference between the mother's style of observance and that of the father is exemplified in certain of the materials before Judge Copley. A letter from the Principal of the school describes the B school as:

"a Modern Orthodox school. No boy at the school has *peyos*. All the children come from homes where television is taken for granted. The school is coeducational in its teaching. Aside from lessons, boys and girls participate equally in most activities."

The father, in a witness statement dated 4 April 2012, having described the strict rules of Kosher observed by the Chareidi community, continues:

"It is therefore unlikely that our children would be able to eat in the homes of the children who attend [the B school] if there is any doubt that food served there is kosher. Indeed, I would consider it my duty to prohibit my children from going to the homes of children from [the B school or the A school]. The same difficulties would arise with attending parties with children from those schools … I would be willing to invite those children to my home provided I am certain that they are not a negative influence, for example talking about TV programmes, movies or the internet."

He adds:

"… ultra orthodox parents will not allow their children to socialise and mix with children attending non religious schools as children who are raised in a less orthodox or secular environment will be exposed to television and different social values. Chareidi children are not allowed to watch television and, in the main, they come from homes where there is no access to the internet or social network such as Facebook and Twitter. Strict Chareidi parents will not allow their children to mix with children who are using the internet or watching television for fear that their own children will become corrupted."

1. There is a dispute, which we are in no position to decide and which there is no need for us to resolve, as to whether the mother has been ostracised by the Chareidi community. What, sadly, is clear is that she has become estranged from her own family because of her apparent rejection of Chareidi observance. So have the children, who no longer have contact with their maternal grandparents, aunts, uncles and cousins. The father is concerned that, for the reasons explained in the passages from his statement which I have referred to, they may also lose contact with their cousins on the paternal side.

The hearing before Judge Copley

1. The hearing before Judge Copley was spread over three days. He heard evidence from the mother and father and read and heard evidence from various other witnesses. He had a report dated 17 January 2012, and an addendum report dated 12 March 2012, from a CAFCASS officer, Mrs Angela Adams, each prepared in accordance with section 7 of the 1989 Act. He was provided with detailed written submissions, both on the facts and on the law, by Miss Eleanor Platt QC and Miss Joy Brereton on behalf of the father and by Miss Joanne Ecob on behalf of the mother.

The appeal

1. The father's application for permission to appeal filed on 10 August 2012 was initially considered on the papers by Hughes LJ. By an order dated 23 August 2012 he adjourned the father's application to the full court, with the appeal to follow in the event of permission being granted. In his reasons he said "If the only issue were shared or single residence I would refuse permission."
2. The appeal came on for hearing before us on 7 September 2012. Before us, as before Judge Copley, the father was represented by Miss Platt and Miss Brereton, the mother by Miss Ecob. We heard full argument on both points. At the end of the hearing we announced that we had decided to refuse the father permission to appeal on the shared residence issue and that although we gave him permission to appeal on the education issue we had decided to dismiss his appeal. We said that our reasons would be delivered in writing in due course. This we now do.

A preliminary point: shared residence

1. Judge Copley had the benefit of written submissions from counsel which included detailed reference to the relevant authorities on shared residence, including the recent summary of the relevant principles by Black LJ in *T v T (shared residence)* [[2010] EWCA Civ 1366](http://www.bailii.org/ew/cases/EWCA/Civ/2010/1366.html" \o "Link to BAILII version), [[2011] 1 FCR 267](http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/2010/1366.html), [25]-[27]. His judgment on the point was brief and expressed in terms referential to the recommendations in the CAFCASS report. Miss Platt submitted that it was at least arguable that Judge Copley had misapplied the law, that his judgment was inadequately reasoned, and that his decision was plainly wrong. I do not agree.
2. As Lord Hoffmann explained in *Piglowska v Piglowski* [[1999] 1 WLR 1360](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1999/27.html" \o "Link to BAILII version), 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account." It is therefore of itself neither here nor there that Judge Copley did not rehearse the case-law to which he had been taken. There is, in my judgment, nothing in what he said, either in his judgment or in the course of the colloquy following judgment when Miss Brereton was unsuccessfully seeking permission to appeal, which even begins to indicate any misunderstanding of the relevant law. His judgment if brief – and brevity itself is not a ground of appeal – was adequate in the circumstances. It is impossible to contend that his decision was plainly wrong. Another judge might have come to a different conclusion, but that is not enough.
3. This was pre-eminently the kind of situation which might well strike different judges in different ways. It is, in the context of child law, the same kind of situation which in *Piglowska* Lord Hoffmann was considering in the context of ancillary relief. Having referred (at 1373) to "guidelines … derived by the courts from values about family life which it considers would be widely accepted in the community", he continued:

"But there are many cases which involve value judgments on which there are no such generally held views. The present case is a good example. Which should be given priority? The wife's desire to continue to live in the matrimonial home … or the husband's desire to return to England and establish himself here …? In answering that question, what weight should be given to the history of the marriage and the respective contributions of the parties to the family assets? These are value judgments on which reasonable people may differ. Since judges are also people, this means that some degree of diversity in their application of values is inevitable and, within limits, an acceptable price to pay for the flexibility of the discretion conferred by the Act … The appellate court must be willing to permit a degree of pluralism in these matters."

1. In common with Hughes LJ, I would refuse permission to appeal.

The importance of the education issue

1. The real issue in this case is that relating to the children's education.
2. I wish at the outset to stress the importance of the issue. It is, in the circumstances of this case, of transcendental importance not merely to the father, the mother and the children but also to the Chareidi community and, for reasons I will come to, the larger society of which it forms part.
3. Any issue about a child's education is always, of its nature, important. In the circumstances of this case it is, however, an issue about far more than education. Nor is it just an issue about 'lifestyle choice', in the sense in which that label is attached to disputes about relocation, whether to a different part of the country or from one country to another, or in the sense in which one talks, for instance, about a Bohemian or hippy lifestyle. Nor is it just an issue about religion, as that expression might be perceived from some points of view.
4. For the nominal Anglican, whose sporadic attendances at church may be as much a matter of social convention as religious belief, religion may in large part be something left behind at the church door. Even for the devout Christian attempting to live their life in accordance with Christ's teaching there is likely to be some degree of distinction between the secular and the divine, between matters quotidian and matters religious. But there are other communities, and we are here concerned with such a community, for whom the distinction is, at root, meaningless, for whom every aspect of their lives, every aspect of their being, of who and what they are, is governed by a body of what the outsider might characterise as purely religious law. That is so of the devout Muslim, every aspect of whose being and existence is governed by the Quran and the Sharia. It is so also of the ultra-orthodox Jew, every aspect of whose being and existence is governed by the Torah and the Talmud.
5. I therefore agree entirely with what Hughes LJ said when adjourning the matter to the full court. The issue, he said, is:

"not simply a matter of choice of school but a much more fundamental one of way of life. 'Lifestyle' scarcely does the issue justice. It is a matter of the rules for living."

The approach of the court

1. Time was when the solution to a case such as this would have been simple. The court would have declined to become involved and deferred to parental authority, that authority being of course exclusively the father's. According to Sir William Balliol Brett MR, the court could not interfere with "the sacred right of a father over his own children." A father had a legal right to control and direct the education and bringing up of his children, and the court would not interfere with him in the exercise of his paternal authority, unless by his gross moral turpitude he forfeited his rights or had by his conduct abdicated his paternal authority: *In re Agar-Ellis, Agar-Ellis v Lascelles* (1883) 24 ChD 317. That was, to quote the words of Lord Upjohn in *J v C* [[1970] AC 668](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1969/4.html" \o "Link to BAILII version), 721, the dreadful case where the Court of Appeal permitted a monstrously unreasonable father to impose upon his daughter of 17 much unnecessary hardship in the name of his religious faith.
2. The retreat from that high water mark of judicial abstention is traced in the speeches of the Law Lords in *J v C* and subsequently in *Gillick v West Norfolk and Wisbech Area Health Authority* [[1986] AC 112](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1985/7.html" \o "Link to BAILII version). The speech of Lord Scarman in the latter case demands particular attention. For present purposes there are two centrally important developments to be noted.
3. The first was the eventual realisation that the child's welfare as judicially determined is paramount. In 1924 Lord Cave LC could treat this as established principle: *Ward v Laverty* [1925] AC 101, 108. The principle was put on a statutory basis in section 1 of the Guardianship of Infants Act 1925. It has been part of our statute law ever since, now enshrined in section 1(a) of the Children Act 1989 which provides that:

"When a court determines any question with respect to … the upbringing of a child… the child's welfare shall be the court's paramount consideration."

1. The other equally important development was the dethroning of the father from his privileged position vis-à-vis the mother. The Guardianship of Infants Act 1886 marked an important step in that direction, but the 1925 Act put the matter beyond all argument. The preamble to the 1925 Act read as follows:

"Whereas Parliament by the Sex Disqualification (Removal) Act, 1919, and various other enactments, has sought to establish equality in law between the sexes, and it is expedient that this principle should obtain with respect to the guardianship of infants and the rights and responsibilities conferred thereby:"

The second limb of section 1 was in the following terms:

"the court … shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, … is superior to that of the mother, or the claim of the mother is superior to that of the father."

1. Ever since then, men and women, husbands and wives, fathers and mothers have come before the family courts, as they come today, on an exactly equal footing. The voice of the father carries no more weight because he is the father, nor does the mother's because she is the mother. The weight to be attached to their views, if opposed, is to be determined on the basis of the merits or otherwise of the views being expressed, not on the basis of the gender of the person propounding them. The second limb of section 1 of the 1925 Act finds no place in section 1 of the 1989 Act, though it still appeared in section 1 of the Guardianship of Minors Act 1971, no doubt because by the late 1980s Parliament thought that it went without saying. And no doubt for that reason the true significance and importance of section 1 of the 1925 Act is sometimes forgotten. But it was, and remains, fundamental.
2. If then the welfare of the child is paramount, two obvious questions arise: first, what do we mean by welfare; and, second, by reference to what standard or yardstick is welfare to be assessed?
3. 'Welfare', which in this context is synonymous with 'well-being' and 'interests' (see Lord Hailsham LC in *In re B (A Minor) (Wardship: Sterilisation)* [1988] AC 199, 202), extends to and embraces everything that relates to the child's development as a human being and to the child's present and future life as a human being. The judge must consider the child's welfare now, throughout the remainder of the child's minority and into and through adulthood. The judge will bear in mind the observation of Sir Thomas Bingham MR in *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124, 129, that:

"the court should take a medium-term and long-term view of the child's development and not accord excessive weight to what appear likely to be short-term or transient problems."

That was said in the context of contact but it surely has a wider resonance. How far into the future the judge must peer – and with modern life expectancy a judge dealing with a young child today may be looking to the 22nd century – will depend upon the context and the nature of the issue. If the dispute is about whether the child should go on a school trip the judge will be concerned primarily with the present rather than the future. If the question is whether a teenager should be sterilised the judge will have to think a very long way ahead indeed.

1. In *In re McGrath (Infants)* [1893] 1 Ch 143, 148, Lindley LJ said:

"The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."

Those words are as true today as a century ago. Evaluating a child's best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child's welfare and happiness or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment, and the child's social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach. As Thorpe LJ once remarked (*In re S (Adult Patient: Sterilisation)* [2001] Fam 15, 30), "it would be undesirable and probably impossible to set bounds to what is relevant to a welfare determination."

1. To this I would add two points.
2. I have referred to the child's happiness. Very recently, Herring and Foster have argued persuasively ('Welfare means rationality, virtue and altruism', (2012) 32 Legal Studies 480), that behind a judicial determinations of welfare there lies an essentially Aristotelian notion of the 'good life'. What then constitutes a 'good life'? There is no need to pursue here that age-old question. I merely emphasise that happiness, in the sense in which I have used the word, is not pure hedonism. It can include such things as the cultivation of virtues and the achievement of worthwhile goals, and all the other aims which parents routinely seek to inculcate in their children.
3. I have also referred to the child's familial, educational and social environment, and his or her social, cultural, ethnic and religious community. The well-being of a child cannot be assessed in isolation. Human beings live within a network of relationships. Men and women are sociable beings. As John Donne famously remarked, "No man is an Island …" Blackstone observed that "Man was formed for society". And long ago Aristotle said that "He who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a god". As Herring and Foster comment, relationships are central to our sense and understanding of ourselves. Our characters and understandings of ourselves from the earliest days are charted by reference to our relationships with others. It is only by considering the child's network of relationships that their well-being can be properly considered. So a child's relationships, both within and without the family, are always relevant to the child's interests; often they will be determinative.
4. I should add that there has been no suggestion in the present case that the interests of any of the five children with whom we are concerned are or may be in conflict with the interests of any of the others. We are therefore not concerned with the point about the application of section 1(a) of the 1989 Act in such a situation which, although raised before them, their Lordships avoided deciding in *Birmingham City Council v H (A Minor)* [[1994] 2 AC 212](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1993/9.html" \o "Link to BAILII version) but which the lower courts have had to consider on a number of occasions: see *Birmingham City Council v H (No 2)* [1993] 1 FLR 883, *Re T and E (Proceedings: Conflicting Interests)* [1995] 1 FLR 581, *In re A (Children) (Conjoined Twins: Surgical Separation)* [[2001] Fam 147](http://www.bailii.org/ew/cases/EWCA/Civ/2000/254.html), and *Re S (Relocation: Interests of Siblings)* [[2011] EWCA Civ 454](http://www.bailii.org/ew/cases/EWCA/Civ/2011/454.html), [[2011] 2 FLR 678](http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/2011/454.html).
5. So much for welfare, how is it to be assessed? The answer was provided by Lord Upjohn in *J v C* [[1970] AC 668](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1969/4.html" \o "Link to BAILII version), 722:

"the law and practice in relation to infants … have developed, are developing and must, and no doubt will, continue to develop by reflecting and adopting the changing views, as the years go by, of reasonable men and women, the parents of children, on the proper treatment and methods of bringing up children; for after all that is the model which the judge must emulate for … he must act as the judicial reasonable parent."

1. Lord Upjohn's reference to changing views is crucial. The concept of welfare is, no doubt, the same today as it was in 1925, but conceptions of that concept, to adopt the terminology of Professor Ronald Dworkin, or the content of the concept, to adopt the corresponding terminology of Lord Hoffmann (see *Birmingham City Council v Oakley* [[2001] 1 AC 617](http://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/2000/59.html" \o "Link to BAILII version), 631), have changed and continue to change. A child's welfare is to be judged today by the standards of reasonable men and women in 2012, not by the standards of their parents in 1970, and having regard to the ever changing nature of our world: changes in our understanding of the natural world, technological changes, changes in social standards and, perhaps most important of all, changes in social attitudes.
2. If the reasonable man or woman is receptive to change he or she is also broad-minded, tolerant, easy-going and slow to condemn. We live, or strive to live, in a tolerant society increasingly alive to the need to guard against the tyranny which majority opinion may impose on those who, for whatever reason, comprise a small, weak, unpopular or voiceless minority. Equality under the law, human rights and the protection of minorities, particularly small minorities, have to be more than what Brennan J in the High Court of Australia once memorably described as "the incantations of legal rhetoric".
3. Religion – whatever the particular believer's faith – is not the business of government or of the secular courts, though the courts will, of course, pay every respect to the individual's or family's religious principles. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, after all, demands no less. The starting point of the common law is thus respect for an individual's religious principles, coupled with an essentially neutral view of religious beliefs and a benevolent tolerance of cultural and religious diversity.
4. It is not for a judge to weigh one religion against another. The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or on the tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, so long as they are "legally and socially acceptable" (Purchas LJ in *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, 171) and not "immoral or socially obnoxious" (Scarman LJ in *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, 244) or "pernicious" (Latey J in *Re B and G (Minors) (Custody)* [1985] FLR 134, 157, referring to scientology).
5. The Strasbourg jurisprudence is to the same effect. Article 9 of the European Convention provides as follows:

"1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The protection of Article 9 is qualified in two ways. In the first place, the Convention protects only religions and philosophies which are "worthy of respect in a 'democratic society' and are not incompatible with human dignity": see *Campbell and Cosans v United Kingdom (No 2)* [(1982) 4 EHRR 293](http://www.bailii.org/cgi-bin/redirect.cgi?path=/eu/cases/ECHR/1983/3.html), [36]. I mention the point only for completeness; it plainly does not arise in this case, because the parents' beliefs are in each case clearly worthy of respect. Secondly, whilst religious belief and thought are (subject to that overriding qualification) given absolute protection by Article 9(1), the "manifestation" of one's religion in "worship, teaching, practice and observance" is subject to the qualifications referred to in Article 9(2).

1. The important point for present purposes is that the Convention forbids the State to determine the validity of religious beliefs and in that respect imposes on the State a duty of what the Strasbourg court has called neutrality and impartiality: see, for example, *Moscow Branch of the Salvation Army v Russia*[(2007) 44 EHRR 46](http://www.bailii.org/cgi-bin/redirect.cgi?path=/eu/cases/ECHR/2006/828.html" \o "Link to BAILII version), [58], where the court said that:

"The State's duty of neutrality and impartiality … is incompatible with any power on the State's part to assess the legitimacy of religious beliefs."

1. Within limits the law – our family law – will tolerate things which society as a whole may find undesirable. A child's best interests have to be assessed by reference to general community standards, making due allowance for the entitlement of people, within the limits of what is permissible in accordance with those standards, to entertain very divergent views about the religious, moral, social and secular objectives they wish to pursue for themselves and for their children. We have moreover to have regard to the realities of the human condition, described by Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, [50]:

"… society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done."

1. Where precisely the limits are to be drawn is often a matter of controversy. There is no 'bright-line' test that the law can set. The infinite variety of the human condition precludes arbitrary definition.
2. Some things are nevertheless beyond the pale: forced marriages (always to be distinguished of course from arranged marriages to which the parties consent), female genital mutilation and so-called, if grotesquely misnamed, 'honour-based' domestic violence. Plainly, as I wish to emphasise, we are not here in that territory.
3. Some aspects of even mainstream religious belief may fall foul of public policy. A recent striking example is *Westminster City Council v C and others* [[2008] EWCA Civ 198](http://www.bailii.org/ew/cases/EWCA/Civ/2008/198.html" \o "Link to BAILII version), [[2009] Fam 11](http://www.bailii.org/ew/cases/EWCA/Civ/2008/198.html), where this court held on grounds of public policy that a 'marriage' valid under both Sharia law and the lex loci celebrationis, despite the manifest incapacity of one of the parties, was not entitled to recognition in English law. Again, I emphasise, we are not here in that territory.
4. Some manifestations of religious practice may be regulated if contrary to a child's welfare. Although a parent's views and wishes as to the child's religious upbringing are of great importance, and will always be seriously regarded by the court, just as the court will always pay great attention to the wishes of a child old enough to be able to express sensible views on the subject of religion, even if not old enough to take a mature decision, they will be given effect to by the court only if and so far as and in such manner as is in accordance with the child's best interests. In matters of religion, as in all other aspects of a child's upbringing, the interests of the child are the paramount consideration.
5. There are many examples of the working out of these principles in the family courts. Sometimes, as in the cases involving blood transfusions for the children of Jehovah's Witnesses, the issue is literally one of life or death (using those words in the secular sense). The tenets and faith of Jehovah's Witnesses will not prevent the court ordering a child to receive a blood transfusion, even though both the parents and the child vehemently object: see, for example, *Re E (A Minor) (Wardship: Medical Treatment)* [1993] 1 FLR 386.
6. But the clash between a parent's religious beliefs and a loved child's welfare may arise in many other contexts. Consider, for example, the wrenchingly sad case of *Re S; Newcastle City Council v Z* [[2005] EWHC 1490 (Fam)](http://www.bailii.org/ew/cases/EWHC/Fam/2005/1490.html" \o "Link to BAILII version), [[2007] 1 FLR 861](http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWHC/Fam/2005/1490.html), where the question was whether, within the meaning of section 16(2)(b) of the Adoption Act 1976, a mother was unreasonably withholding her consent to the adoption of her son on the basis of religious beliefs that were reasonable and genuinely held. I adjudged that she was. As I said [56]:

"Religious belief is no more determinative of whether a parent is acting reasonably than it is of whether something is in a child's best interests. Whilst the court will no doubt be slow to conclude that a parent faithfully striving to follow the teachings of one of the great religions of the world is acting unreasonably, there is nothing to prevent the court coming to that conclusion in an appropriate case. Everything must depend upon the facts and the context. In this, as in so many other areas of family law, context is everything."

1. Often issues of this kind arise, as in the present case, following the breakdown of the parental relationship in a situation where the parents have different religious beliefs or follow different religious observances. Examples to which we were referred are *Re J (Specific Issue Orders: Muslim Upbringing and Circumcision)* [1999] 2 FLR 678, affirmed *Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* [[2000] 1 FLR 571](http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/1999/3022.html" \o "Link to BAILII version), where there was a dispute between a Muslim father and a Christian mother as to the circumcision of their 5-year old son, and *Re S (Specific Issue Order: Religion: Circumcision)* [2004] EWHC 1282 (Fam), [2005] 1 FLR 236, where a similar dispute arose between a Muslim mother and a Hindu (Jain) father. We were also taken, and appropriately in some detail, to *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, where custody was in dispute between a father who was a member of the Church of England and a mother who was a Jehovah's Witness, and to *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, where residence and contact were in issue because the father was a member of the Exclusive Brethren.
2. None of this is at all controversial but it requires to be clearly understood because it is the essential legal landscape against which the issue in the present case falls to be determined.
3. In the present context I can do no better than to set out what Scarman LJ (as he then was) said in *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, 244-245, in a passage understandably much relied upon by Miss Platt. It is a long passage but it demands citation in full as a powerful and compelling statement of principle by one of the greatest and most socially sensitive judges of his generation. He was speaking in 1975, although for some reason the case was not reported until 1981, but his words remain as true today as then:

"We live in a tolerant society. There is no reason at all why the mother should not espouse the beliefs and practice of Jehovah's Witnesses. It is conceded that there is nothing immoral or socially obnoxious in the beliefs and practice of this sect. Indeed, I would echo the words of Stamp LJ in *T v T* (1974) 4 Fam Law 190 in which he said this of the Jehovah's Witnesses – and what he said is, indeed, borne out by such evidence as we have in this case:

"Many families bring up their children as Jehovah's Witnesses and the children are good members of the community, although perhaps a little isolated from other children in certain respects. They are different but the same thing could be said of Presbyterians, Catholics and indeed any other religious faith."

It is as reasonable on the part of the mother that she should wish to teach her children the beliefs and practice of the Jehovah's Witnesses as it is reasonable on the part of the father that they should not be taught those practices and beliefs.

It is not for this court, in society as at present constituted, to pass any judgment on the beliefs of the mother or on the beliefs of the father. It is sufficient for this court that it should recognize that each is entitled to his or her own beliefs and way of life, and that the two opposing ways of life considered in this case are both socially acceptable and certainly consistent with a decent and respectable life. What follows from that? It follows, in my judgment, that there is a great risk, merely because we are dealing with an unpopular minority sect, in overplaying the dangers to the welfare of these children inherent in the possibility that they may follow their mother and become Jehovah's Witnesses. Of course, most of us like to play games on Saturdays, to go out to children's parties and to have a quiet Sunday – some of us will go to church, and some of us will not. This appears to be the normal and happy, even though somewhat materialistic, way of life, accepted by the majority of people in our society. It does not follow, however, that it is wrong, or contrary to the welfare of children, that life should be in a narrower sphere, subject to a stricter religious discipline, and without the parties on birthdays and Christmas that seem so important to the rest of us. These are factors that must be considered, but I think it is essential in a case of this sort to appreciate that the mother's teaching, once it is accepted as reasonable, is teaching that has got to be considered against the whole background of the case and not as in itself so full of danger for the children that it alone could justify making an order which otherwise the court would not make."

1. How then is the court to decide in such a case? I quote again from Scarman LJ (at 248):

"… when one has, as we have here, two good parents, indeed, two unimpeachable parents, each of them following very different ways of life, which have led to the matrimonial breakdown, it does not follow that, because one parent's way of life is more acceptable to most of us, it is contrary to the welfare of the children that they should adopt the way of life of the other parent that is acceptable only to a minority, and a tiny minority at that."

He continued:

"It seems to me that when one has, as in this case, such a conflict, all that the court can do is to look at the detail of the whole circumstances of the parents and determine where lies the true interest of the children."

He had earlier (at 247) commented that:

"There can be little doubt that one's development as an adult is determined to a substantial extent by the conditions of childhood. This makes it imperative in the long term that conditions in childhood should be acceptable to the children."

1. In *Re R (A Minor) (Residence: Religion)* [1993] 2 FLR 163, to which Miss Ecob appropriately directed our attention, Purchas LJ, with whom Balcombe LJ agreed, said much the same (at 171):

"It is no part of the court's function to comment upon the tenets, doctrines or rules of any particular section of society provided that these are legally and socially acceptable."

However, he continued:

"The impact of the tenets, doctrines and rules of a society upon a child's future welfare must be one of the relevant circumstances to be taken into account by the court when applying the provisions of s 1 of the Children Act 1989. The provisions of that section do not alter in their impact from one case to another and they are to be applied to the tests set out in accordance with the generally accepted standards of society, bearing in mind that the paramount objective of the exercise is promoting the child's welfare, not only in the immediate, but also in the medium and long-term future during his or her minority."

Having then quoted from Scarman LJ's judgment in *Re T*, Purchas LJ continued (at 172):

"That authority merely supports the fact that it is against the normal standards of society that the provisions of the Act must be applied. A further reference to this approach is to be found in the judgments of this court, in a different context admittedly to the present consideration, in the case of *C v C (A Minor) (Custody: Appeal)* [[1991] 1 FLR 223](http://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/1990/9.html) in the judgment of Balcombe LJ, where emphasis is made in the context of a lesbian relationship that it is the generally accepted standards that are to be applied when judging the welfare of the child."

1. As will be apparent, the approach of both Scarman LJ in *Re T* and Purchas LJ in *Re R* is entirely consistent with what Lord Upjohn had said in *J v C*. What Purchas LJ referred to as "the normal standards of society" or "generally accepted standards", or what I have referred to above as general community standards, are what Lord Upjohn referred to as the "views … of reasonable men and women, the parents of children, on the proper treatment and methods of bringing up children."

The evidence

1. The parents' evidence was extensive. I need not go further through their witness statements but instead focus on those parts of their evidence summarised by Judge Copley in his judgment.
2. The mother gave evidence of her own experiences. She said that she had wanted to go to university and get a teaching degree but that her parents would not hear of it. It was not religious enough. They wanted her to get married as soon as possible and have a family. She said the philosophy was "A girl's purpose in life is to get married and have children". That was what she had to do, and what she did. But although fulfilling the role expected of her, she was determined to gain qualifications. She stayed up late at night, studied through the Open University, and obtained both a BA and then a Master's Degree. She told Judge Copley it was a big struggle. But she succeeded. She was Head of the English Department of the school where she was teaching until recently. She has moved this term to teach at another school.
3. She explained why she wanted the children to go to Orthodox but not ultra-Orthodox schools. She wishes them to have opportunities she did not have, and the father did not have, to study for A levels and go to university if they want to, and to get jobs and support themselves. She wants to give them, as she put it:

"Career-wise and education-wise the opportunities which they would not have under the Chareidi education system".

She said that the father, going through the Chareidi system, does not have the skills and educational background to go out and get a job. She said a lot of boys end up getting married without having the skills to support their families. The father, she said, falls into that category. She said:

"As a mother, I feel that I would be failing my children if I did not give them the opportunity to access education, to go university if they want to, so that when they are older they can support themselves and their families."

1. She accepted that the change of schools she proposed would involve a change of lifestyle, but was confident that the children would cope. She said there might be changes in her lifestyle, and that the children might watch television.
2. The father in his evidence said that he has no secular qualifications, only Talmudic qualifications. He is still pursuing Talmudic studies. He teaches for about one hour a day at the Talmudic college (yeshiva) where he studies. He accepted that, as a rule, boys do not take A levels as they have by then started full time religious education and ceased secular education. He accepted that beyond GCSEs his oldest son would probably have no non-Talmudic qualifications.
3. The evidence of three witnesses called by the father was important and revealing. Dayan Ehrentreu was until 2006 a judge of the London Beth Din and is now the senior judge of the European Beth Din in Basel in Switzerland. In cross-examination he accepted that not many people from the Chareidi community go to university. He said the majority do not. Asked about people from the Chareidi community becoming doctors, he said that male doctors were "very rare". For women, he said it was "not impossible".
4. Dayan Friedman said in evidence that it was very important for children to attend single sex schools to keep their purity and innocence, and so that they were more prepared for marriage. It would be demoralising for them to attend mixed schools. In cross-examination he said that in general each parent has an equal role in deciding education, although it was mainly the responsibility of fathers:

"Women mainly stay at home and make it a safe and happy place."

And, further:

"The prime responsibility of the woman is to look after the house and look after the children."

He went on to say that, in the Chareidi community, daughters were educated to be responsible mothers and not to go to university. He accepted that the schools that the father proposes do not participate in university entrance. His response to Miss Ecob's suggestion that career opportunities were limited was, "Could be." When asked for a "Yes" or "No" answer, he said that girls could take Open University. When asked if that was rare, he replied, "Let's say it's not frequent." Re-examined by Miss Platt, he said that seminaries give higher education; that boys go to Talmudic college, which does not have secular education. He referred to opportunities in America and Israel.

1. The Head Teacher of the C school was asked about educational opportunities. Asked about pupils becoming doctors, she said "No". Lawyers, "Not that I know", she said. She agreed that normal tertiary education was forbidden, and when asked why said:

"The lifestyle would not conform to our ethos".

She said, "The girls could go to Open University, or go to Israel." When it was put to her that girls from the Chareidi community had less opportunities, she said "Possibly."

The CAFCASS report

1. On the matters with which we are concerned, Mrs Adams stood by her original recommendations, both in her second report and in her oral evidence. I can concentrate, therefore, as Judge Copley did, on what she said in her first report. Mrs Adams set the scene in paragraphs 7-8:

"The children are part of a Chassidic Jewish Community. Their mother wishes for her children to grow up in a different, more modern, Jewish community more in line with the sort of lifestyle she wishes to embrace since her separation.

The children are part of families that have been Chassidic for many generations. Changes to their religious life will represent changes in relationships with grandparents, aunts and uncles and cousins. Changes in their religious education will have a profound effect upon their Jewish religion and thus upon every aspect of their lifestyle and the beliefs in which they are raised."

She added in paragraph 25:

"[Mother] also feels that her three daughters will have more opportunity to make decisions about their life and relationships in a more modern community, to pursue a higher education and career opportunities that will enhance their economic well being in later life. She feels there would be pressure on them to marry young and start a family at a young age. Her own experience of choosing to end an unhappy relationship within that community has influenced her in this respect. Given that this is a way of life that has changed little for many generations, I am of the view that there may be some weight in these assertions."

1. The crucial passages are to be found in paragraphs 19, 32-39. They are so important that I set them out in full:

"The school issue is, in my assessment, not a question of the quality of the educational establishment as all those cited appear to offer a good overall education. The issue appears to be that the choice of school will determine the future religious life and the cultural upbringing of [the children]. [Father] wishes for the children to remain in the religious community to which they now belong and to which their families for generations have belonged.

…

If the children were to go to the schools of [father's] choosing, I think there is a high risk that their relationship with their mother would become problematic. It would cause emotional confusion for them to depend upon their mother for love and care, yet have her choices presented as undesirable, and maybe feel that they should not listen to her.

Conversely, if the children go to a school of [mother's] choosing, there will be considerable losses also. I do not doubt that their relationships within their current community and with the family would change, including with their father, and may even be lost in some instances. Already they are estranged from their maternal grandparents as a result of choices made by [mother]. There will also be losses in relation to tradition and religious heritage.

Whilst it is evident that either decision regarding schooling will result in losses, I have viewed this dilemma as one where I have tried to assess in which situation the children will have the most choices about relationship with both parents in the future, and the most choice about how they wish to live in the future.

It is evident that relationships can be jeopardised within the Chassidic community when a decision is taken to live in an alternative way. I am concerned that the children would have difficulty making a decision to embrace their mother's lifestyle when they are older as they would be fearful of leaving behind everything they had grown up with, which it undoubtedly would entail.

On the other hand, within the sort of community their mother proposes, they would be able to return to their religious roots when older. They can continue to participate in religious activities when with their father, supported by their mother. The community which they would become a part of is more likely to be accepting of difference.

I also think that there is some merit in the observation that a more accepting community composed of children from a variety of backgrounds will make it easier for the children to adjust to being children of a separated family …

I think it more likely that the children will achieve greater economic success if they are given aspirations in relation to careers that exist outside the Jewish community.

Whilst bearing in mind the losses in each possible outcome, I have come to the conclusion that it is in the children's best interests to reside with their mother and to move to schools of her choosing. I think it will be easier for them to make the transition at a younger age, when children are often more adaptable in terms of peer groups."

The judgment

1. Judge Copley made clear that he had in mind what he called the strictures set out in *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239. He described the first and principal issue as being that of the schools. He said:

"I decide the case, not on any view of mine as to the beliefs of the parents, but by considering all the circumstances and all the evidence to determine where lie the interests of the children."

1. The heart of Judge Copley's reasoning is to be found in the following passages in his judgment:

"Miss Platt QC and Miss Brereton remind me of Mrs Adams' evidence, that the educational issue is not a question of the quality of the educational establishment. I disagree. Whilst, of course, a change of schooling in this case would involve a change of lifestyle, the whole basis of this case and the mother's stated motives for wanting to change schools is for the purpose of giving the children the best education and therefore employment opportunities."

A little later he continued:

"I, of course, have regard to the evidence of the Children and Family Reporter and her recommendations; and in this case, and quite independently – apart from the incidents to which I have referred in relation to the quality of the education available at the respective establishments proposed by mother and father – I agree with her views and recommendations.

I am in no doubt at all that, not only is the mother motivated by the best intentions, but that the schools to which she wishes to send them will provide infinitely superior opportunities for these children to gain a much fuller and wider education, not only at secondary level but also at tertiary level should they choose that – the father's own evidence and that of his witnesses bears this out -- and thereafter they will have much greater job opportunities. Accordingly, and, as I say, independently and for the reasons that I have given, I see no reason to depart from Mrs. Adams' recommendations in relation to schooling, residence and contact."

1. Judge Copley's thinking is further illuminated by his interchanges with Miss Brereton when she was seeking permission to appeal:

"MISS BRERETON: … I know that your Honour has focused very much on the educational opportunities, but this case, as you would have gleaned from the documents and the way this case was conducted, is not just, with respect … about the education.

JUDGE COPLEY: I thought I had made it plain in the course of my judgment that I entirely accept that it affects the whole way of life.

MISS BRERETON: Your Honour, the trouble is this order does actually affect the whole way of life.

JUDGE COPLEY: Yes. Of course it does.

…

JUDGE COPLEY: But I have made it plain I thought, Miss Brereton, that it follows as night follows day that – and as I think I said at the outset – that a change in the schooling amounts to a change in the way of life. I entirely accept that.

MISS BRERETON: But your Honour has, with respect, has focused on the educational opportunities for the future.

JUDGE COPLEY: Yes. Well that is the basis of it.

MISS BRERETON: And we say that that is under-estimating, or attaching insufficient weight, to the fact that their way of life will create educational opportunities of a different nature, that the opportunities will be there; and that is not the reason to change these children's school.

JUDGE COPLEY: Well, I have found that, on the evidence that was being presented to me, even by the father and the witnesses that he called, that the opportunities for the children in their present system will not be what they are if they go to the schools that the mother proposes.

MISS BRERETON: Your Honour, I accept that. But our position is that you attach too much weight to those educational opportunities as ----

JUDGE COPLEY: That is the whole basis of the ----

MISS BRERETON: -- opposed to the fundamental change that will be required for these children, and that the court has attached insufficient weight to the changes that these children will need to make in terms of a change of the way of life.

JUDGE COPLEY: Yes. Thank you very much, Miss Brereton."

1. Judge Copley them explained why he refused permission to appeal:

"As I have indicated, it has been clear to me throughout that a change of the schooling will mean to a very large extent a change of the children's way of life – not entirely, because they will still maintain contact with the father and … will be taken by him on the weekends that he has them, to the synagogue. And the case is looking at the best interests of the children, and I, like the CAFCASS officer, Mrs Adams, am entirely satisfied that it is in the best interests of these children to have the much fuller more rounded and much more extensive education that is available to them at the schools that the mother proposes than if they were to go to those that the father proposes. It seems to me to be clear beyond peradventure that it must be in their best interests for them to be given those opportunities and notwithstanding the change of lifestyle that will necessarily follow to some extent. "

The father's case

1. The father's notice of appeal contains no fewer than 22 grounds of appeal, not all of which relate to the one issue with which we are now concerned. I do not propose to rehearse them one by one, though I have them all very much in mind. The fundamental complaint is that Judge Copley was, so it is said, plainly wrong in his decision about the children's schooling. Complaint is also made that he failed to consider the law in relation to change of lifestyle, save for what is said to be his fleeting reference to *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239. It is said that, contrary to the various authorities that had been cited to him, he appears to have formed an adverse view of the Chareidi way of life including education. It is said that he failed to consider and did not mention various criticisms that had been made of Mrs Adams' assessment and that he could and should have departed from her recommendations and reasons.
2. The grounds of appeal can be summarised as follows. It is said that Judge Copley:

i) attached too much weight to the potential educational opportunities for the children if they were educated outside the Chareidi school system, was plainly wrong to give "any" weight to his view that the children would achieve greater economic success if they were to have a career outside the Jewish community, and attached too much weight to financial considerations;

ii) failed to give sufficient weight to the significant effect that the proposed changes of school would have on the children's lifestyle, religious upbringing and emotional welfare;

iii) failed to take into account the fact that the parents had followed the Chareidi way of life throughout the marriage and had agreed to educate their children in accordance with the principles of Chareidi Judaism;

iv) failed to consider the fact that the mother's choice of lifestyle and school was motivated, so it is said, by her wish to change her own lifestyle rather than the welfare needs of the children; and

v) failed to recognise the importance of the outcome of any decision not merely for the children but also for the Chareidi community as a whole.

This was elaborated by Miss Platt and Miss Brereton in their skeleton argument and by Miss Platt in her oral submissions.

The mother's response

1. Miss Ecob submits that Judge Copley, in common with Mrs Adams, had very much in mind all the matters to which Miss Platt and Miss Brereton draw attention; that he was entitled to give weight to Mrs Adams' report, which Miss Ecob says was a carefully considered and appropriately researched piece of work which did not contain inappropriate generalisations; that there is nothing to suggest that he had formed an adverse view of the Chareidi way of life; that he did not err in law; and that there is no basis upon which we could properly interfere.
2. Miss Ecob lays stress on the fact that, since the parents' separation in October 2010, the children have already been exposed to significant lifestyle changes and will continue to be exposed to their mother's less orthodox ways as a result of the choices she has made. She draws attention to Judge Copley's finding, "I am in no doubt at all that … the mother [is] motivated by the best intentions" and to the fact that much of the evidence on which, in the final analysis, he based his findings came from the father's own witnesses. She submits that, faced with clear evidence of irreconcilable differences in the parents' ways of life, Judge Copley acted entirely within the legitimate exercise of his discretion in choosing the path for the children which afforded them the best opportunity to access educational opportunities now and in the future, the best prospect of maintaining good relationships with both their father and their mother, and the best prospect of being able to choose for themselves in due course a greater or lesser religious way of life.
3. Finally, Miss Ecob submits that, whatever the basis upon which the parents married and initially agreed to bring up the children, it is wrong in principle to deny a mother the opportunity to make alternative choices for her children if they are in their best interests. In any event, no such commitment can fetter the judicial obligation to decide the matter in accordance with the children's best interests and having regard to the 'welfare checklist' in section 1(3) of the 1989 Act. She points out that Judge Copley was not making a decision of general application to the Chareidi community as a whole; he was making a decision in relation to *these particular* children in the particular circumstances in which *they* find themselves.

Discussion

1. I am unable to accept Miss Platt's submissions on behalf of the father, attractively though they were put. On the contrary, I agree in essence with Miss Ecob's powerful submissions on behalf of the mother.
2. I must first clear the ground. I do not accept that Judge Copley either misunderstood or misapplied the law. He referred, appropriately, to *Re T (Minors) (Custody: Religious Upbringing)* (1981) 2 FLR 239, and went on, in the passage from his judgment which I have already quoted, to summarise, correctly, the key principle. There is nothing, either in his judgment or in the colloquy with Miss Brereton following judgment, to suggest that he did not then proceed faithfully to apply it. I refer again in this context to what Lord Hoffmann said in *Piglowska*.
3. Nor can I accept the criticisms of the CAFCASS report. On the contrary, Mrs Adams provided what, if I may respectfully say so, was a carefully reasoned, nuanced, sensitive and, in the final result, powerful analysis which Judge Copley was entitled to accept as, with one important exception, he did. In relation to that one point – which was ultimately a matter of fact or evaluation of the evidence on which he was at least as well equipped as her to come to a conclusion – he was entitled to differ from Mrs Adams, not least in the light of the oral evidence he had heard from the father's own witnesses. His difference with Mrs Adams on that one point, important though the point was, did not in any way vitiate her overall analysis and conclusion, which in my judgment he was plainly entitled to accept. Indeed, given all the evidence he had heard, Judge Copley would, as it seems to me, have required very powerful reasons – which in truth were lacking – to justify departing from her analysis.
4. There is one other point which needs to be made at this stage. Judge Copley, in analysing the potential advantages to the children of the kind of education the mother was proposing was not, as I read his judgment, focusing on the merely economic or financial advantages that might accrue to the children. True it is that Mrs Adams had at one point used the phrase "economic success" but it is quite clear that Judge Copley was, appropriately, taking a much broader and more all-embracing view of the likely advantages as he saw them. For example, he referred in his judgment to "the best education and therefore employment opportunities" and to "much greater job opportunities" and it is quite clear, read in the context of how the case was being put on behalf of the mother and of the evidence which he had chosen to highlight earlier in his judgment, that what Judge Copley had in mind was not just employment as a means of earning money but the potential pursuit by the children of professional careers and vocations. I note in this connection that, in refusing permission to appeal, Judge Copley referred to the "opportunities" that would become available to the children if they received "the much fuller more rounded and much more extensive education that is available to them at the schools that the mother proposes."
5. This brings me at last to the heart of the issue.
6. Stripped down to bare essentials the dispute between the parents which Judge Copley had to resolve was whether, on balance, the mother's arguments based on education should prevail over the father's arguments based on way of life. It is quite clear that Judge Copley understood the significance of the issue and understood that it extended far beyond the narrowly educational. He recognised that the mother's proposals would involve what he called "a change of lifestyle". As he said to Miss Brereton, "I entirely accept that it affects the whole way of life … Of course it does … it follows as night follows day that … a change in the schooling amounts to a change in the way of life."
7. How then was Judge Copley to resolve the dispute?
8. In the first place, he had to take into account the present reality that, following the parental separation in October 2010, the children had not been following an exclusively Chareidi way of life. When with their mother they were inevitably exposed to her significantly less strict form of observance. So already, and in significant part, what the father would have wanted for his children, was simply not possible. But the father's case was, of course, and correctly, that one must not overstate the significance of what had happened. If the children continued within the Chareidi educational system they would have less – very much less – exposure to the non-Chareidi way of life than if they were educated in the way the mother wanted. Judge Copley, as we have seen, was acutely aware of this reality.
9. At this point a fundamental issue has to be grappled with. What in our society today, looking to the approach of parents generally in 2012, is the task of the ordinary reasonable parent? What is the task of a judge, acting as a 'judicial reasonable parent' and approaching things by reference to the views of reasonable parents on the proper treatment and methods of bringing up children? What are their aims and objectives? These are questions which, in the forensic forum, do not often need to be asked or answered. But in a case such as this they are perhaps unavoidable.
10. In the conditions of current society there are, as it seems to me, three answers to this question. First, we must recognise that equality of opportunity is a fundamental value of our society: equality as between different communities, social groupings and creeds, and equality as between men and women, boys and girls. Second, we foster, encourage and facilitate aspiration: both aspiration as a virtue in itself and, to the extent that it is practical and reasonable, the child's own aspirations. Far too many lives in our community are blighted, even today, by lack of aspiration. Third, our objective must be to bring the child to adulthood in such a way that the child is best equipped both to decide what kind of life they want to lead – what kind of person they want to be – and to give effect so far as practicable to their aspirations. Put shortly, our objective must be to maximise the child's opportunities in every sphere of life as they enter adulthood. And the corollary of this, where the decision has been devolved to a 'judicial parent', is that the judge must be cautious about approving a regime which may have the effect of foreclosing or unduly limiting the child's ability to make such decisions in future.
11. The point arises in its most obvious and extreme form where the issue before the court is whether to require a teenager to submit against their wishes to life-saving medical treatment. There, as Nolan LJ once observed (*In Re W. (A Minor) (Medical Treatment: Court's Jurisdiction)* [1993] Fam 64, 94), the duty of the court is to ensure so far as it can that children survive to attain the age of 18 at which an individual is free to do with his life what he wishes. A poignant example is provided by the aftermath of *Re E (A Minor) (Wardship: Medical Treatment)* [1993] 1 FLR 386, where Ward J (as he then was) had required a 15¾ year old Jehovah's Witness to have a blood transfusion despite his, and his parents', vehemently expressed religious objections. A few years later, not long after he had attained his majority, E's leukaemia returned. He refused a blood transfusion, going bravely to his death steadfast in his religious faith.
12. But the point arises equally, if in less extreme form, in the kind of case with which we are here concerned. So, in my judgment, Judge Copley was entitled to proceed as he did, just as he was entitled to accept Miss Adams' analysis. To repeat:

"Whilst it is evident that either decision regarding schooling will result in losses, I have viewed this dilemma as one where I have tried to assess in which situation the children will have the most choices about relationship with both parents in the future, and the most choice about how they wish to live in the future."

1. Applying that approach to the particular facts of the present case, and bearing in mind his acceptance of Mrs Adams' analysis, it seems to me that there were four key strands in Judge Copley's reasoning.
2. The first focused on educational opportunity. Here the evidence was clear and the choice stark. Whatever may be the practice in relation to education down to the point when children takes GCSEs, it is clear that, even for boys, the educational options narrow drastically thereafter in the Chareidi system and that tertiary education as generally understood hardly features at all. Career opportunities for boys in professions such as medicine and the law are very limited indeed, for girls virtually non-existent. The contrast with the wider community could hardly be greater. It is hard to imagine how either law or medicine could operate today without the women who at every level and in such large numbers enjoy careers which they find fulfilling and from which society as a whole derives so much benefit. Take the law: when I was called to the Bar in 1971 there were 2,714 barristers in practice at the independent bar of whom only 167 (some 6%) were women; by 2011 there were 12,673 of whom 4,106 (some 32%) were women. That is a measure of just how far society has moved in the last 40 years. And that, in my judgment, is the kind of societal reality to which a family judge must have regard in a case such as this. It is, after all, the reality which is daily on display in our family courts. The present case, as it happens, is typical of many: all three counsel who appeared before us were women, so too were the two solicitors, and so too was the CAFCASS officer. Judge Copley, in my judgment, was plainly entitled to conclude, as he did, that:

"the schools to which she wishes to send them will provide infinitely superior opportunities for these children to gain a much fuller and wider education, not only at secondary level but also at tertiary level should they choose that – the father's own evidence and that of his witnesses bears this out – and thereafter they will have much greater job opportunities",

just as he was entitled to accept Mrs Adams' view that it was:

"more likely that the children will achieve greater economic success if they are given aspirations in relation to careers that exist outside the Jewish community."

1. The second strand in Judge Copley's reasoning was his acceptance of Mrs Adams' analysis of the emotional impacts on the children:

"If the children were to go to the schools of [father's] choosing, I think there is a high risk that their relationship with their mother would become problematic … Conversely, if the children go to a school of [mother's] choosing, there will be considerable losses also … I also think that there is some merit in the observation that a more accepting community composed of children from a variety of backgrounds will make it easier for the children to adjust to being children of a separated family … I think it will be easier for them to make the transition at a younger age, when children are often more adaptable in terms of peer groups."

In relation to this Mrs Adams made a particularly powerful point:

"It would cause emotional confusion for them to depend upon their mother for love and care, yet have her choices presented as undesirable, and maybe feel that they should not listen to her."

In my judgment, Judge Copley was plainly entitled to proceed on this basis.

1. The third strand in Judge Copley's reasoning was his acceptance of a very important point made by Mrs Adams:

"I am concerned that the children would have difficulty making a decision to embrace their mother's lifestyle when they are older as they would be fearful of leaving behind everything they had grown up with … On the other hand, within the sort of community their mother proposes, they would be able to return to their religious roots when older."

Again, in my judgment, Judge Copley was plainly entitled to proceed on this basis.

1. The fourth and final strand in Judge Copley's reasoning was his view, shared with Mrs Adams, that on balance the children's interests were best served by what the mother was proposing. He was, in my judgment, plainly entitled to come to that conclusion.
2. It follows that the father's appeal must in my judgment be dismissed. This court can interfere only if it can be shown that Judge Copley was plainly wrong. He was not. I would, however, go further. Far from being plainly wrong Judge Copley was, as it seems to me, in all probability right in the decision to which he came. I suspect that, had I been in his position, having heard all the evidence he heard, I would have come to precisely the same conclusion.

Conclusion

1. It was for these reasons that, at the end of the hearing, I agreed with my brethren that on the first point we should refuse permission to appeal and that on the second point, although it was appropriate to grant permission, we should nonetheless dismiss the appeal.

Postscript

1. There is one final matter I must emphasise because I should not want anything I have said to be misunderstood.
2. This is not a case where the State – the court – is seeking to intrude uninvited into the private sphere of this particular family or of the community or communities of which they are part. These are not care proceedings, what family lawyers call public law proceedings, brought under Part IV of the 1989 Act; they are what family lawyers call private law proceedings, brought in accordance with Part II of the Act. The court – the State – is involved in the present case only because the parents have been unable to resolve their family difficulties themselves, whether with or without the assistance, formal or informal, of their community, and because one of the parents, in this case the mother, has therefore sought the assistance of the court.
3. In such circumstances the court cannot decline jurisdiction. And the judges must necessarily determine the case according to law, in this instance the law as laid down by Parliament in section 1(a) of the 1989 Act.
4. Very different considerations arise in the case of care proceedings. There the State is seeking to intervene in family life. It can do so, however, only if public authority can persuade the court that a child has suffered or is at risk of suffering "significant" harm and, moreover, as a result of the parental care not being what it would be "reasonable" to expect a parent to give: section 31(2) of the 1989 Act. There is, therefore, a preliminary threshold that must be surmounted before the State can intervene. Moreover, the family is entitled in such a case to all the protections afforded by Articles 8 and 9 of the Convention and by Article 2 of the First Protocol to the Convention.
5. Nothing I have said should be understood as suggesting that care proceedings would be appropriate, let alone that care proceedings might succeed, in the kind of circumstances which we have here been considering. Quite the contrary.

**Sir Stephen Sedley :**

1. I agree.

**Lord Justice Maurice Kay :**

1. I also agree.