



IN THE FAMILY COURT
SITTING AT MANCHESTER

[2017] EWFC 4

30 January 2017

Before :

MR JUSTICE PETER JACKSON

Between :

J

Applicant

– and –

B

– and –

The Children

Respondents

Alison Ball QC and Sara Mann (instructed by Morecrofts) for the Father
Peter Buckley (instructed by Steinbergs Solicitors) for the Mother
Jane Walker (instructed by Alfred Newton Solicitors) for the Children

Hearing dates: 29-30 November, 7-9 December 2016, Judgment date 30 January 2017

JUDGMENT:

J v B (Ultra-Orthodox Judaism: Transgender)

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the family members must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Mr Justice Peter Jackson:

Introduction

1. These proceedings concern five children, their parents, and their community.
2. The children are A (a boy aged 12), B and C (twin boy and girl, aged 8), D (a boy aged 5) and E (a girl aged 2).
3. Their parents' marriage ended in June 2015, when their father left home to live as a transgender person. She now lives as a woman and has had no contact with the children since she left. I will for the most part use the feminine pronoun when speaking of her, although her outward identity was of course male when she was at home and she retains that identity in the minds of the children, and indeed in the mind of the community.
4. The community is the North Manchester Charedi Jewish community. The reason why the father has had no contact with the children is to be found in the attitude of the community to people in her position.
5. The father's application was issued in January 2016. The children were joined as parties in February and in June the case was transferred to High Court level. The final hearing took place before me in November/December over the course of five days, with judgment being reserved.
6. Evidence was given by the parents, by five witnesses in respect of Jewish law and customs, by Dr Emma Morris and Ms Judy Henry (jointly instructed experts from the Anna Freud Centre), and by the Children's Guardian.
7. After the evidence was heard, I had a meeting with 12-year-old A.
8. The father's case is that she should be sensitively reintroduced to the children, who should be helped to understand her new way of life and allowed to enjoy regular and significant contact with her outside the community. The opposition of the community should be confronted and faced down.
9. The mother had been opposed to any contact but, having seen the professional advice, now accepts that the children should have indirect contact with their father three times a year. She opposes direct contact of any kind during their childhoods as that, she claims, will lead to the children and herself being ostracised by the community to the extent that they may have to leave it.
10. The Children's Guardian and the Anna Freud Centre conclude by a narrow margin and with evident reluctance that the benefits to the children of resuming contact with their father would be outweighed by the harmful community reaction that would be visited upon the family. They recommend

indirect contact only, with a course of life story work to explain the father's departure to the children.

11. These circumstances give rise to an exceptionally difficult welfare assessment. I approach matters in this sequence:
 - Terminology
 - Narrative of events
 - The law
 - The evidence
 - The welfare checklist
 - Assessment and conclusion

Terminology

12. *Charedi*: This describes a number of groups within Orthodox Judaism characterised by strict adherence to Jewish law and distancing from modern secular culture. Members are sometimes referred to as Chassidic, strictly Orthodox or ultra-Orthodox. There are about 50,000 Charedim in the United Kingdom, mainly congregating in North London, North Manchester and Gateshead. Community members live at close quarters with each other. Visiting the home of the mother and children in this case, the Guardian said this:

"The children live in a community that appears to function in isolation from others despite it being in the centre of a diverse geographical area of Manchester. The houses surround a village green, and having sat on several occasions, I have observed only Jewish families engaged in their everyday routines. However as near as around the corner the population is varied and diverse."

13. *Halacha*: Jewish Law, regarded by Orthodox Jews as deriving from the Torah (centrally the Pentateuch, the first five books of the Bible), and the collection of rabbinical writings contained in the Talmud. For a Charedi family (as explained in *Re G (Children)* [2012] EWCA Civ 1233), Jewish law governs behaviour in the realms of food, dress, education, speech, communal responsibility, respect for elders, religious education, culture and heritage. Outwardly visible manifestations of the community's observance include, for men, beards and long hair at the sides 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. Access to television, to the mass media, and to the internet or social media is not permitted.

14. *Gender dysphoria*: Based on the Greek (*dys-phoria*: hard to bear), this is the medical term for the condition in which a person who has been assigned one gender at birth on the basis of their physical sex self-identifies as belonging to another gender. People who experience gender dysphoria are in no way mentally ill, but they often suffer great stress from hiding their identity.
15. *Transgender*: This describes people whose gender identity differs from their birth sex, including transsexual people (those who intend to undergo, are undergoing or have undergone a process of gender reassignment to live permanently in their acquired gender). There is no official figure for the number of transgender people, but international research suggests that up to 1% of the population may experience some form of gender incongruence. In the UK, it has been estimated by the gender identity charity GIRES that 130,000 people (0.2% of the population) are sufficiently affected to have considered medical intervention, and of these 15,000 are actually receiving treatment.
16. *Gender reassignment/transitioning*: The complex and protracted process of altering one's birth sex. This includes some or all of the following cultural, legal, and medical adjustments: telling one's family, friends, and/or co-workers; changing one's name and/or sex on legal documents; hormone therapy to create the physical characteristics of the other gender; and possibly some form of surgery.

Narrative of events

17. These parents, who are now in their 30s, come from very large Charedi families. The mother's family is mainly to be found in the UK, the father's in the USA. Their marriage in 2001 was an arranged marriage, celebrated both civilly and religiously, and the five children were born between 2004 and 2014. The family has lived at the heart of the North Manchester community, within which the mother has a large number of family members.
18. The older children attend single-sex faith schools. A is now in his second year in secondary school and will celebrate his bar mitzvah in 2017. B and D attend the boys primary school previously attended by A. C attends a girls' primary school, where E would be expected to join her.
19. The mother has taught since the early years of the marriage, and currently works at the school attended by C; the father has only worked more recently, and that part-time. It is clear that the father was much at home and fully involved with the children, but I am of the view (having considered amongst other things, reports from the schools, including one school that has employed both parents) that the mother has generally been the more organised and energetic parent in practical matters.
20. The father claims that she was subjected to a wide variety of domestic abuse by the mother, something that is denied. The father also claims that the

mother was aware from a very early stage in the marriage that she identified as being transgender. The mother does not accept this. She says that the father suffered from passing bouts of anxiety and depression, becoming worse from 2013 onwards, but that the father could not explain these to her. In September 2013, the police came to the home after receiving a report that the father had complained to another person of feeling suicidal.

21. The parents have their own perspectives on events within their marriage. Both perspectives are honestly held, and it is unnecessary to choose between them.
22. Unfortunately, during her last year at home the father confided in A about her unhappiness and desire to leave. She did not explicitly describe her gender issues, but did once allow A to see photographs on her mobile phone of male friends dressed as women, something she described in evidence as "*dropping a hint*" to him. The relationship between the father and A being a close one, this placed a heavy burden on the child. His schoolwork and behaviour deteriorated during the time before the father's departure and he began to receive counselling through his school, which continues.
23. At the end of June 2015, the father left the home and moved away from the Manchester area. The mother did not learn of the departure until she received a text message later in the day.
24. The father alleges that she fled the relationship and the community because the environment was oppressive, and from fear of the community reaction, extending even to threats towards her life. Again, it is not necessary to reach conclusions about this.
25. What is undoubtedly true is that the father's efforts to maintain contact with the children were ignored or rebuffed. She further alleges that the children were told that the reason for her absence was that she was in a mental hospital or that she had died. The mother denies this, but explains that, on professional advice, she told the younger children that their father was in London and not well. A's counsellor, Mr R, told him about the changes that his father had undertaken. A was very shocked and upset, and initially didn't believe him. Mr R considers that A found it 'safer' just to think that his father had left.
26. At the time that she left, the father signed a change of name deed. She now lives as a woman and has a markedly different outward appearance to the male parent known to the children. She is considering hormone therapy and, in due course, surgery.
27. When issuing her application in January 2016, the father said that she would ideally like the children to move to live with her, but realised that this was not the right moment. She instead asked for visiting contact, leading to

staying and holiday contact, including over the religious festivals in due course.

28. At the first hearing of the father's application in February 2016, the mother revealed that D, then aged 4, had said at school in November 2015 that "*my daddy always takes his hand and puts it in my pants*". This was reported at the time by the school to workers at the Federation of Jewish Services ('the Fed'). Local authority children's services were briefly involved, but the case was closed. The issue then belatedly re-emerged during these proceedings, after the mother discussed it with a worker at a children's centre in May or June 2016. She says that at this point D had made a similar statement to her at bath-time. This led to a renewed investigation and finally in August D, by now aged five, was spoken to by police and social services. In August, he was interviewed under ABE conditions. The father was interviewed under caution and strongly denied any improper behaviour towards D or any of the children.
29. No action has so far been taken by the police against the father. In September, the local authority completed a Children and Families assessment and closed the case. The assessment concludes that there are no concerns because the father is not having contact with the children. If she was, consideration should be given to a comprehensive risk assessment to ensure that the children were not at risk of harm. Assessments of this kind (ducking the issue) are regrettably common and are of no real value to the children and families concerned.
30. In consequence, directions had to be given at a late stage in these proceedings to gather information about the investigation from all sources. This has happened, and I have read the documents and viewed D's ABE interview.
31. The mother, without much conviction, seeks a finding that the father touched D on his private parts in a sexual manner. The father seeks a finding that she has not touched D inappropriately. The Guardian does not support the making of a finding against the father.
32. I will deal with the issue now. This allegation would not have been pursued by anyone if this hearing had not been taking place. It has not played any significant part in the hearing or in the professional assessments. Such statements as D has made are weak and contradictory and the process of investigation has been unsatisfactory from start to finish. Having reviewed all the evidence, I conclude that there is no credible evidence that the father has behaved in a sexual manner towards D or any of the other children. So far as this court is concerned, that is an end of it.
33. Returning to the narrative, in April 2016 a meeting was held within the community. It described itself as a "Team around the children meeting". It was attended by the head teachers of the three schools, by A's counsellor Mr

R, and, representing the mother, by her brother M and sister E. It was chaired by Mrs K, a community organiser. The meeting took place without reference to the father. The Minutes state under “Background”:

“Whilst every family breakdown is difficult for children, all had felt it was valuable to discuss the additional complexities in the specific case which involves transgender within the strictly Orthodox Jewish community. By sharing information across school, housing association and family, the schools hope to identify concerns and collaborate around action points.”

Under “Specific issues”:

- *Sudden change in children’s lives with father leaving – sudden departure with little explanation having been given to the children.*
- *Identifying risks to children’s emotional and spiritual well-being due to family breakdown, loss of ‘identity’, conflict with faith and social norms.*
- *Risk of children becoming socially isolated due to other families wishing to conform to cultural norms around age appropriate teaching of gender/sexual identity. Parents may seek to ‘protect’ their children from being exposed to information that [family name] children may start sharing about these matters.*
- *Managing case within the school’s religious ethos. The schools have a duty to its parent body to uphold a religious ethos which is the premise of the school’s identity. The father has made a departure from Orthodox Jewish practice (dress styles, transgender) and this creates a tension for the children with respect to their school and social context.*
- *Consider options to increase family support so that [mother] can best support her children to achieve academically, socially and in their emotional and spiritual well-being.”*

And under “Action Plan”:

- *“Schools wanted to consult with Rabbinic and Educational experts on presenting information to the children in a consistent, managed and supportive way.*
- *Schools will closely monitor the children for behavioural changes and achievement.*
- *The family will liaise with the schools on any changes in circumstances.*

- *Schools will expect the children to be fully compliant with school rules and ethos. They will take legal advice about how they may exercise their right to preserve their ethos.”*
34. These Minutes are of interest. Not having been prepared with these proceedings in mind, they illustrate the prevailing mindset. There is at least as much concern for the community as for the children. The father was entirely ignored.
35. At the first hearing before me in July, the parties proposed to instruct a single joint expert on the requirements of Jewish law in a situation of this kind. Considering it unlikely that they would be able to agree upon an expert, I instead allowed each of them to call two informed witnesses to speak about matters such as the response of the community to a transgender family member. I also approved the instruction of the Anna Freud Centre to prepare a psychological assessment of the children and to advise on whether and how the children should be informed of the father’s transition, whether they should have contact and in what form, and what support could be provided to the children.
36. There has been a high level of tension surrounding the proceedings, as seen from these examples:
- In March, the father read letters written for the purposes of the proceedings by two of the children’s head teachers and by A’s counsellor. In response, she sent emails complaining that she was being persecuted and encouraged to commit suicide. She notified them of complaints to MPs, OFSTED and the counsellor’s professional body.
 - At a directions hearing in June, the mother’s brother M photographed the father’s witness Rabbi Abel in the court building in a way that was felt to be intimidatory.
 - In November, after reading the report of the Anna Freud Centre, which described conversations with A’s head teacher (Rabbi C) and with the community officer Mrs K, the father sent emails to them saying that they had treated her in the same way that the Nazis had treated the Jews. Rabbi C responded that he would not be spoken to like that and that if the father wished to communicate with him, she should *“be a mensch”*. The father, receiving no further response, then reported the rabbi’s statements to the police.
 - In November, on the first morning of the hearing, an unidentified member of the community posted this What’sApp message:

“HELP! SAVE!

Family [name]'s (A Mother & her 5 Children) fate is in court this morning (for the next 10 days). Please Daven [pray] for them. We can't afford to lose this case. The Rabbonim [rabbis] have asked for this message to be sent. The family know and want it to be sent. Pls forward this message. The koach of tefilloh [power of prayer] can achieve everything."

- The father has not so far been willing to give the mother a *get*, fearing that she might flee with the children to Israel.

The law

Domestic welfare law

37. The welfare of the children, individually and collectively, is the court's paramount consideration: s1(1) Children Act 1989.
38. It is to be presumed, unless the contrary is shown, that an absent parent's involvement in a child's life will further the child's welfare: s1(2A) CA 1989.
39. Expressions of the importance of such relationships are many: for example, see *Re O (A Child) (Contact: Withdrawal of Application)* [2003] EWHC 3031 (Fam), [2004] 1 FLR 1258 (Wall J):

"Unless there are cogent reasons against it, the children of separated parents are entitled to know and have the love and society of both their parents. In particular the courts recognise the vital importance of the role of non-resident fathers in the lives of their children, and only make orders terminating contact when there is no alternative."
40. 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: *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124.
41. The Court of Appeal has considered two cases concerning transgender parents: *Re C* [2006] EWCA 1765 and *Re T* [2008] EWCA Civ 85. These cases emphasise the need for children to have skilled help in learning about their father's transition so that they can adjust to the change and if possible maintain a relationship.
42. Reference has also been made to the decisions of HHJ Rowe QC in a recent series of judgments concerning a Charedi family: *Re X* [2014] EWFC B230; [2015] EWFC B237 and [2016] EWFC B29. In that case, the father of young children had left the North London Satmar community and was living a lifestyle with less strict observance of religious rules. The mother agreed that there should be some face-to-face contact. The judgments show the court's patience

and firmness in seeking to secure a continuing relationship between the children and their father, despite a level of community disapproval.

43. Ms Ball QC and Ms Mann acknowledge that the transgender issue separates this case from *Re X*, but they point to the marked impact on that family of the father leaving the ultra-Orthodox community, and argue that the court's approach in this case should be the same.

Gender recognition legislation

44. A number of pieces of equality legislation protect transgender persons from discrimination and accord rights to them: the Sex Discrimination (Gender Reassignment) Regulations 1999, the Gender Recognition Act 2004, and the Equal Treatment Directive (2004/113/EC), leading to the Sex Discrimination (Amendment of Legislation) Regulations 2008. These collectively set a statutory requirement to examine whether people who are undergoing, planning to undergo, or have undergone gender reassignment treatment, were receiving recognition of their acquired or chosen gender identity and protection from discrimination in employment, and more recently, protection from discrimination in the provision of goods, facilities and services.
45. Notably, the Gender Recognition Act 2004 gives transsexual people legal recognition as members of the sex appropriate to their gender, allowing them to acquire a new birth certificate, and according them full recognition of their acquired gender in law for all purposes, including marriage.

Equality legislation

46. In the present case, this particularly relates to the children's education.
47. The Equality Act 2010 makes it unlawful for a school to discriminate against, harass or victimise a pupil or potential pupil
 - In relation to admissions
 - In the way it provides education
 - In the way it provides any benefit, facility or service, or
 - By excluding a pupil or subjecting them to any other detriment.
48. The Act makes it unlawful for a school to discriminate against a pupil or prospective pupil by treating them less favourably because of the protected characteristics of sex, race, disability, religion or belief, sexual orientation, gender reassignment, pregnancy or maternity, or to discriminate because of the pupil's association with someone with those protected characteristics.
49. Schools with a religious character benefit from certain exceptions, but these do not permit them to discriminate on the basis of protected characteristics. For

example, a school would be acting unlawfully if it refused to admit a child because he or she is gay, or because their parents are: Department for Education Advice May 2014 paragraph 2.7.

50. The Education (Independent School Standards) Regulations 2014 include a curriculum obligation to encourage respect for other people, paying particular regard to the protected characteristics set out in the 2010 Act.
51. In the case of *Beis Aharon Trust v Secretary of State for Education* [2016] UKFTT 270 (HESC); [2015] 2531 INS, Judge Hugh Brayne, sitting in the First-tier Tribunal (Health Education and Social Care), had an appeal against the Secretary of State's determination that an Orthodox Jewish school should cease to admit new pupils. The appeal was dismissed because of a number of defaults in respect of curriculum issues. Amongst these, was the obligation to encourage respect for people of different sexual orientation or those undergoing gender reassignment. As to that, the Tribunal stated at page 22:

"The school agrees it does not acknowledge to pupils, or enable them to acquire any awareness, that some people are different because of gender reassignment. This prevents the school from encouraging respect for people who have such characteristics. People with those characteristics play a full and equal part in British society and pupils are not prepared for the experience of participating in a society, where, for example, families have same sex parents, same sex people can marry or form civil partnerships or have gender reassignment."

And at page 23:

"In our view... a school must encourage respect in relation to each of the protected characteristics. It is no defence to say that it is incompatible with the faith of the institution, nor to argue that these are matters of sex education and no sex education is required in the standards. Nor is it a defence to point to the ages of the children. The requirement does not specify how the particular regard is to be promoted, and an independent school is free to determine how to do that in an age-appropriate way."

International Conventions

52. The case law under Article 8 of the European Convention on Human Rights (ECHR) is summarised in *Re C (A Child) (Suspension of Contact)* [2011] EWCA Civ 521, [2011] 2 FLR 912: (Munby LJ):

"a) Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.

b) Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is

no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.

c) There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.

d) The court should take a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.

e) The key question, which requires 'stricter scrutiny', is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.

f) All that said, at the end of the day the welfare of the child is paramount; the child's interest must have precedence over any other consideration."

53. Article 9 of the ECHR provides that everyone has the right to freedom of thought, conscience and religion. This prohibits the court from determining the validity of religious beliefs and imposes upon it a duty of neutrality and impartiality in religious matters: see *Re G* at paragraphs 35-38.
54. Article 14 provides that enjoyment of Convention rights and freedoms shall be secured without discrimination on any ground. Accordingly, neither the father's transgender status nor her decision to leave the community should affect her entitlement to Convention rights or that of the children.
55. By virtue of s.6 Human Rights Act 1998, it is unlawful for a public authority, and hence a court, to act in a way which is incompatible with a Convention right. However, in cases where parents and children have competing rights of comparable substance, ECHR and domestic case law makes clear that the rights of the children will normally prevail.
56. The United Nations Convention on the Rights of the Child 1989 has been ratified by the United Kingdom and has persuasive effect. In addition to the above-stated principles, Article 2 protects children from discrimination on the basis of the status of their parents; Article 8 provides for respect to be paid to children's rights to preserve their identity, including nationality, name and family relations; Article 12 provides that children who are capable of forming their own views shall have the right to express those views freely in all matters affecting them, their views being given due weight in accordance with their age and maturity, and that children shall be given the opportunity to be heard in any judicial proceedings affecting them; Article 13 provides that children shall

have the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds.

The evidence

57. In the unusual circumstances of this case, I will summarise the evidence in more than usual detail.
58. The father spoke movingly about her predicament. From the age of six she had felt unhappy with who she was, but did not speak to anyone during childhood. There were some good days, but she experienced a consistent nagging feeling of incongruity that was very painful in the community setting. She could not expect any sympathy so she kept silent and prayed to God to make it go away. She had attempted to delay marriage and after it arrived discussed the problem with the mother, but they had both treated it as “*a stupid, silly issue*”. She (the father) was ultra-Orthodox and her beliefs would not allow this. At times she was able to repress the feeling through deep religious devotion. The prospect of having to leave the marriage came up many times, but the mother would make threats that she would never see the children and would be ridiculed and shunned by the community. In 2006 or 2007, she called the Samaritans and from 2011 began to speak to people outside the community. She came to realise that this was her reality, that it was not going away, and that she would have to make decisions. She twice attempted suicide by taking pills. Since transitioning, she had not had suicidal thoughts. In 2014, she began to speak to a therapist outside the community, without the mother’s knowledge. In 2015, she contacted the organisation Broken Rainbow and they gave her the confidence to leave. She described the decision as one that ensured the children would have two living parents. While this was going on, there were no outward changes, and she continued to perform her religious observances.
59. The plan to leave was formed two months before it was carried out. She had told A about 15 months before she left that she could not carry on with the marriage, and told him of her actual departure five days in advance: she was unable to countenance A being faced with her unexplained disappearance. She had shown him the photographs on her phone as a way of opening him up to the deeper underlying issue. In hindsight she regrets having implicated A in these ways.
60. Speaking of her present belief, the father said that she had let go of certain elements of her religious belief, such as rabbis being the messengers of God and the attitude that anyone who is not ultra-Orthodox should be frowned upon. She nevertheless remained an Orthodox Jew, maintaining a kosher diet to the best of her ability and attending Orthodox synagogue when she could. If she cherry-picked, she would not be alone. There are many different groups within the community. *“These are real people who live real lives like anybody else. People watch movies and do Facebook and WhatsApp; they pretend that*

they don't, but they do, just like everybody else." The mother was not, however, aware of the father's Facebook presence.

61. Having left the community, the father had been subjected to threats, most recently in February by a man that she named and who she suspected of fostering the allegations concerning D. Her previously open relationship with the mother's brother M had begun with promises of support on the latter's part that had turned to threats. She had not been consulted about any issue relating to the children since leaving, for example about counselling or choice of schools. A recent offer to pay modest child maintenance had met with no response.
62. The father spoke of the medical possibilities that are open to her, understandably wishing to keep her options open and private.
63. She was critical of the Anna Freud Centre and A's counsellor and the Guardian for lacking deep knowledge of transgender issues, and in particular of the life-threatening nature of gender dysphoria, and also for being biased in favour of the mother's good qualities and for, as she saw it, treating the mother's sister E as a third parent.
64. She said that there are quite a few ultra-Orthodox Jews who are gay or who experience gender dysphoria, but she believes that she is the first transgender person to have left a UK Charedi community. She said that she had never heard of anyone coming out as gay in the community and that LGBT is non-existent. *"So they have to get rid of me – I have sympathy with that."*
65. Asked about her emails to the head teachers and Mrs K, the father expressed her admiration for them and apologised for what she accepted were offensive messages; she had sent them in a sorrowful state, finding their attitude oppressive. She did not accept that she was now emotionally tormented; on the contrary, she was feeling confident and planned in future to work with everyone. She noted that the teachers had not approached her, but that special arrangements have now been made for her to have parents' meetings outside the community.
66. The father described missing the children and feeling for them. She would accept any contact arrangements that were considered suitable, including supervision and a requirement to assume, so far as possible, her previous male appearance in the early stages. Provided that she was allowed contact, the children should live with their mother. She would comply with professional guidance on how not to destabilise the children. She expressed some fleeting sympathy for the mother and her family, saying that, like A, they were probably confused and very angry.
67. Asked about the threat of ostracism, she said that the situation had never happened before but she thought that the community followed the law and

would probably not disobey rules. For her own part, she would prove herself, change her ways and be *“on the same page”* with any guidelines for contact.

68. Any assessment of the father must make allowances for the existential changes that she has undergone and continues to undergo. The change from living as the male head of a family with five children living in an intensely structured religious community to living as a single woman could scarcely be more striking; it has and will continue to take courage to see it through. There was undoubtedly an element of fragility and a certain anguished self-absorption in the father’s presentation. This is entirely in keeping with her situation, but it is relevant to the children’s welfare.
69. The mother spoke about how well the children have been doing in their different ways. She explained how shocked she had been at the father’s departure, so much so that she had not told her own family about it for a week. After 10 days, news of the transgender issue came out through the father’s use of Facebook: she didn’t leave the house for three months and had an extended period off work. Even now, with everyone aware that the father is a transgender person, she is not comfortable to be at public gatherings. She has received extensive support from her own family.
70. The mother denied that the marriage had faced serious difficulties and said that she had no idea that it would come to an end. The father had expressed feelings of being unhappy in his body but she did not understand. She thought it was a religious crisis, not a gender issue (she knew nothing of transgender until after the father left). From the time of E’s birth in 2014, she noted him becoming secretive and less religiously observant, something that caused her deep unhappiness.
71. The mother acknowledged that the father had been a loving father to the children. She said that she constantly tells them that their father is thinking about them and cares for them. She said that from the first moment she had made a conscious decision not to be *“that bad mother that poisons children against their father. I promote good memories and challenge negatives.”* She accepted that the children missed their father in their different ways, although A now feels deceived. She tells the children that their father is happy and thinks of them. They think that he is in London. In summary, she is prepared to bring the children up to honour and respect the father that they know and love, being the father as he was, not the father as she is.
72. The mother has been receiving therapy to help her to understand why the father made these changes. She described how extremely difficult she finds it to see the man that she was married to for 14 years, and with whom she had five children, appearing as a woman.
73. The mother described the father as having been *“severely ostracised”* by the community. She had no other experience of the reaction of the community to transgender or homosexual people, but described the problems for a

neighbour's children when their mother wanted to leave the religion and the consequences when one of her female cousins began to deviate in her style of dress. She said that she was very aware that the schools must uphold British values, but that *"the parent body are the school"*. Respect must be shown for people, no matter who they are, but at the same time the ethos of the school must be upheld, no matter what. Transgender is extremely alien to the community and against religious law. As for homosexuality, young children are not faced with it. As she put it: *"I uphold the British law within our faith."* If there is a conflict between law and faith, she would follow her faith, though she would not commit a crime. The present circumstances put her in a very difficult position.

74. The mother said that there is no way that direct contact will work out for the children, for their identity, for their culture and for their whole environment. She said this, even though she knew that she and the children are entitled to legal protection against victimization. The schools would probably not throw out the children, but the environment would become hostile. The parent body would not allow their children to play with the children, and no one can tell others how to bring up their own children. *"They will protect their children from contact. They wouldn't want my children to suffer and will have every sympathy, but their own children will come first."* The children's next schools would not have to take them, and could just say they were full. *"Are we going to get the whole community to tell them off?"* The mother can see the children being rarely invited to family events and festivities because people would be nervous about what they would say. There would be extreme supervision and the children's participation would be kept at a very basic level. Already, A is being asked questions and is reluctant to commit himself fully within his peer group. This, said the mother, is *"the reality – it's who we are"*.
75. The mother also has no confidence that the father would comply with any rules surrounding direct contact. She feels that the changes in the father's appearance could not be disguised and that the children would be extremely traumatised to see them. *"The children live in the community we brought them up in, and that's where they are staying. Contact would lead to contradiction."*
76. The father had written one letter to the children, but she had not read it to them. For the future, she was agreeable to the children having some information and knowledge, but not to them having an active relationship with their father until they were old enough to decide for themselves, perhaps at age 18. The mother had thought hard about the children's loss of relationship with their father and concluded that the impact of them having a relationship was worse than the impact of them having no relationship. She said that if the court awarded direct contact, she would of course have to obey, but the existence of an order would not make any difference to the attitude of the community to letting the children mix freely. If an order was made, she is not sure whether she could stay within the community. She would have to find somewhere where the children would be more comfortable and better able to

fit in with their situation. She did not like to contemplate this and is not sure that she would cope at all. It would have a terrible effect on the children, who are now happy and safe in the only environment they know.

77. Like the father, the mother has been placed in an extraordinarily difficult position. Both have experienced fundamental transformations. Although the mother was already bearing the greater share of the parenting responsibilities, it has been a profound shock to find herself in the socially anomalous position of being a single parent, and not at a time of her choosing, compounded by the unprecedented difficulties arising from the father's transgender status. In common with the professional witnesses, I looked for signs of malice towards the father in the mother's evidence, but could find none. Instead, the abiding impression from her evidence and from that of the father was of mutual incomprehension, of parents who had over the years become emotional strangers, and for whom the dramatic end to the marriage acted as a final severance. The mother, plainly a capable person, has responded to events in a child-centred way within the limited horizons of her upbringing. Her evidence was as sincere as that of the father. Although it was given in a more matter-of-fact tone, the stresses beneath the surface were evident.
78. Rabbi Ariel Abel, called in behalf of the father, spoke to a learned paper that he had prepared. He has been a rabbi since 1997, describing himself as mainstream Orthodox and falling under the authority of the Chief Rabbi. He is a law graduate, studying to become a solicitor. He grew up in the North Manchester Charedi community and has experience of communities in London, Liverpool and Manchester at various levels of orthodoxy. The father in this case was referred to him for assistance as a member of his congregation.
79. Rabbi Abel stated that he possessed a diploma one level below that of a judge and that he was qualified to express an opinion on Jewish law, which does not vary depending upon whether one regards oneself as orthodox, traditional or liberal.
80. Rabbi Abel emphasised the central importance of honouring one's parents within Jewish law and tradition. He said that there is scarcely any circumstance in which the obligation to honour one's father does not apply. Even if the father is an outright sinner, which is not in his view a consideration in this case, the obligation persists. He considered this aspect of the matter to have been left untreated by Rabbi Oppenheimer.
81. In relation to transgender, Rabbi Abel considered that there is a plurality of opinion and that the biblical position may be qualified. He contends that there is no valid reason why any person should plead ultra-Orthodox faith as a reason to disenfranchise a person in the position of the father. *"There is no legitimate reason to maintain that children who are transgender-parented cannot experience in the ultra-Orthodox community a full and satisfying Orthodox Jewish life, physically, spiritually, emotionally and communally."* On the contrary, there is every reason to reunite parent and child as it is the well-

- being of the nuclear family and not the social preferences of the wider community that truly matter. He points to commentary by the noted encyclopaedist, the late Rabbi Waldenberg, in support of his contention that Orthodox Judaism, correctly understood, recognises the existence of, and to a certain extent accommodates, a number of non-binary identities, including transgender. He argues that the transgender issue cannot be ignored and that parents' relationships with their children are inalienable.
82. Rabbi Abel objected to the concept (introduced by Rabbi Oppenheimer) of the faith as a club from which people could be ejected, though he observed that this evidently happens. An approach of this kind, practically amounting to a belief, raises itself to the surface, usually in worst-case scenarios. This is a social cultural reality, not a valid Orthodox reason for separating children from parents. There is a lamentable habit of censoring. Children of divorced parents can be seated separately from other children and he had experience of this, something he described as beggaring belief. In his view, this should not be accommodated or excused in Jewish or English law. On the other hand, he had never heard of total ostracism in practice, provided the contentious matter was treated privately within the family, and not paraded before the community. However, he accepted that ostracism for these children could very possibly happen if the situation was not managed correctly with professional help. What was needed was psychological support: religious teachers should be kept out of it.
83. The Rabbi accepted that the present circumstances would be a challenge to the insular North Manchester community. He argued that when it comes to matters of life and death, you have to break free and seek to work with the unfamiliar problem. He gave as an example creative arrangements that might be made to allow the father to participate in A's bar mitzvah. There are ways, and it can happen if there is a will. The issues are significant, but not insurmountable. The community is not monolithic, but multifarious. It will step back if proper arrangements are made by both parents. If the situation is unregulated, the community will take matters into its own hands. If direct contact was ordered, and the law laid down, he did not think that the community would "go to the wire" fighting an unwinnable battle.
84. Mr Robert Bernard gave evidence for the father as a representative of the GesherEU Support Network, a registered charity of which he is a trustee, that supports individuals that have left Charedi communities. He describes himself as being a progressive Jew, although he is plainly well-informed about circumstances within ultra-Orthodox communities. His organisation has supported the father in *Re X* and the father in the present case.
85. In the course of his statement, Mr Bernard writes: "*[The ultra-Orthodox] approach to religion leaves little or no room for personal deviations in the public realm. Personal decision-making is minimal with all major concerns being discussed with one's Rabbi... Leaving the community is always seen as a*

weakness in the person leaving.... The community will go to great lengths to stop this happening or to hide the fact that individuals go... There is not room here to describe the other coercive activities that keep individuals in the community even after they have lost their faith or wish to practice Judaism in a more relaxed environment or simply want to continue their education at university or college in the normal way of the country at large. However the loss of contact with children is one that is relevant here and not constrained to this case. If one partner leaves the community, the community tries to minimise the exposure of the children to the outside world. The fight to reduce contact can continue for years despite court orders giving the [absent] parent access... Anyone who does not conform to the norm may be threatened with being shunned by the community (and most probably by the family). This includes all LGBT individuals, but also includes those who lose their faith (and don't cover it up) ..."

86. Mr Bernard considered cases where a straight parent has left the community. The Charedi parent has no leeway for compromise. Exposure to the outside world is seen as dangerous for the children, who are educated to believe that the world is hostile to the Jewish community. It is common for the parents to claim that the children will be shunned by the community if they are exposed to outside knowledge. In practice, if the courts order access in a conventional way, the community will adapt, as will the children. Historically, Jewish communities hold the law in high regard and will make contact arrangements work once ordered by the court, though they will expect the family to offer no compromise and be seen to fight tooth and nail. What is important is that they have not colluded in an agreement.
87. Mr Bernard emphasised the importance to the community of its children: *"I still believe the community will want to keep the children – I can't see why the desire to keep the children in the community, which is so strong, will be affected by the sexual identity of the parent – hopefully the schools will support the children with this."*
88. Mr Bernard concludes: *"We believe that, push come to shove, they will adapt to the prevailing attitudes to LGBT individuals if and only if they are forced to do so."*
89. On examination, it became clear that Mr Bernard's organization did not have experience of children being ostracised. He emphasised the community's concern to keep children within it. He spoke of *"fearcasting"* – putting into professional minds a fear that something bad will happen to the children if the community is contradicted.
90. Rabbi Andrew Oppenheimer gave evidence on behalf of the mother. He is a rabbi, a legal academic and teacher, and an adviser to organizations and educational institutions in the Charedi community. He has extensive experience of mediating within the community and of mediating between the

community and civil society, including the Department for Education. He was until recently resident in the North Manchester area.

91. Rabbi Oppenheimer describes Charedi communities as *“warm, close-knit and supportive communities for which the teachings of Torah Judaism guide all aspects of their lives.... The teachings of the Torah also highlight integrity, respect for others, peace and justice (including respect for the law of the country) and place the family and its welfare at the heart of life... Allegiance to the lifestyle... means of necessity that members have traditional values and seek to guard their children and themselves against what they regard as the dangers and excesses of modern open society.”*
92. Rabbi Oppenheimer was clear that transgender and procedures to achieve sex change violate a number of basic principles in Torah Law, including the prohibition against castration (Leviticus 22.24) and the prohibition against wearing garments of the opposite sex (Deuteronomy 22.5).
93. In support, Rabbi Oppenheimer produces opinions from two sources of higher authority within the Charedi hierarchy:

Rabbi S.F. Zimmerman, Grand Rabbi of the Gateshead Hebrew Congregation:

“1. Transgender and procedures to affect sex-change violate basic Torah principles and are prohibited by Jewish Law/Halacha.

2. Such procedures, post facto, do not affect any change in gender status from the person’s birth status according to Jewish Law/Halacha.”

Dayan Y.Y. Lichtenstein, Chief Justice of the Federation of Synagogues in London and its Halachic (Jewish Law) authority:

“I can state categorically that Jewish law does not recognise any change in sex of male to female or female to male under any circumstances.

In the case of a man who was married and has undergone a sex change, for all religious purposes he will be considered male and will be required to give a Get (a bill of Jewish divorce) to dissolve his marriage. Any subsequent marriage could only be to a woman and it would be forbidden for him to have relations with another man.”

94. Dayan Lichtenstein gives as his opinion that Rabbi Waldenberg (under whom he personally studied) did not hold the opinion that transgender is recognised in Jewish law.
95. In regard to the attitude of the community, Rabbi Oppenheimer writes:

“Where a person decides to take action likely to be irreversible to transgender, Ultra-Orthodox community members will invariably take the view that, by embarking on that course, the transgender person has breached the contract

which they entered into when they married their wife to observe the Torah and to establish and bring up a family in accordance with its laws. Furthermore, members of the community will naturally wish to protect themselves and their families from any discussion of the painful issues involved, especially bearing in mind the sheltered position of the community from the standpoint of open society. Knowledge of transgender amongst children in the Ultra-Orthodox Jewish community is almost non-existent, for the reasons mentioned above concerning their lack of access to Internet and the media. There is no known precedent in the UK of a transgender person being accepted living in an Ultra-Orthodox community.

The result will be that community members will expect the family of the transgender person to limit their contact with him or her as far as possible. If the family of the transgender person nevertheless seeks, or indeed is forced, to maintain contact with that person, they will open themselves up to very serious consequences indeed. The families around them will effectively ostracise them by not allowing their children to have more than the most limited contact with that family's children. The impact on the family in such circumstances in terms of social isolation will be devastating.

In considering the best interests of the children the obvious conclusion from the discussion above is that the children of an Ultra-Orthodox union cannot and should not be expected to have any direct contact with the father in such circumstances. It will no doubt be argued against this approach that it is cruel, lacking in tolerance, unnecessary and denies the rights of the father. But Torah law (Halacha) has the same approach to English Family Law in this type of situation, regarding issues of residence and contact, that the interests of the children are paramount. In other words the father is expected to give precedence to the needs of the children over his own needs."

96. In his oral evidence, Rabbi Oppenheimer remarked that "ostracise" was perhaps not the best word to use for a process that would not be organised but more subtle and inevitable – "it would be so much more".
97. In his statement, Rabbi Oppenheimer had likened membership of the community to membership of the club or political party. Membership is based on a contract and if a person chooses to leave the club, they must accept the consequences of their actions. In his evidence, the Rabbi dropped this analogy. He nevertheless asserted that under the Torah and in reality a person is considered to have a choice, albeit a difficult one, as to whether they become transgender. If they do, they choose to place themselves outside the embrace of the community. In Torah law, to be gay or transgender is to be a sinner. Even though it may be looked on with compassion, and some people may extend the hand of friendship, that does not alter its unacceptability. The mother could not remain married to a person who made that decision. She should still seek in a constrained way to promote respect for the father but at the same time to protect the children from the consequences until they are old

enough to deal with them. Young people cannot deal with these issues without undermining their faith. There is too much of a conflict to understand. There is therefore an obligation to protect the children from finding things out that are likely to damage them and cause them pain and suffering, likely to damage their growth and spiritual well-being. By educating children in the way of the Torah, they are brought up as upright people.

98. Rabbi Oppenheimer has experience of advising Jewish schools in relation to compliance with the law. He stated that he fully accepts that there is a clash between the Torah and the equality laws designed to uphold the rights of protected categories of person, though he sought comfort in certain more peripheral paragraphs of the DfE Equality Act Guidance for schools [3.29-30], rather at the expense of the central theme of Guidance as paragraphs [2.6-7] – see paragraph 49 above. The heart of the issue, he said, is that the norms of society (seen in the protected characteristics) are at loggerheads with the best interests of the children (as seen from his perspective). As to Rabbi Abel's emphasis on respect for the parents, he considers that the obligation clearly falls away where it would cause pain and suffering to the children.
99. Rabbi Oppenheimer explained that excluding ideas that might damage the development of children is *"the price we pay – we limit ordinary social contact so that we transmit our spiritual ethos to the next generation"*.
100. When pressed about the impact of ultra-Orthodox custom and practice in a case such as the present, Rabbi Oppenheimer replied with some warmth that this had nothing to do with emotions or feelings – it was contrary to Torah law for the children to be exposed to transgender. Further pressed as to the basis for this assertion, the Rabbi fell back upon the overriding consideration in Leviticus to be holy and to separate oneself from anything contrary to the Torah.
101. Indirect contact, on the other hand, would not, he thought, give rise to such a risk of ostracism, as it would not enable the children to have *"a living relationship"*.
102. Asked whether a court order would make a difference to the community response, Rabbi Oppenheimer said that it might, but that the difference was unlikely to be significant.
103. Mrs K (community officer supporting organisations and schools, committee member of the family's housing association, called by the mother): She described how life within the community is notable for its gender-separate activities, meaning that the father would not now be accepted in either the male or female groups. She asserted that the community will offer a huge amount of additional support to a family with an 'absent' father, but that this would drop off if the father was to return: *"They will have a present father, yet a father that cannot properly be present for them."* She spoke of the difficulties surrounding the arrangements for a bar mitzvah. Parents will keep

their children away from these children if they are in contact with their father, and this would be particularly painful on such an important occasion.

104. Mrs K described her absolute sense of shock at receiving the father's email with its extreme references.
105. Mrs K produced the notes of the April 2016 meeting, which she had chaired. She said that the meeting had been called out of a strong sense that there was a duty to look after the children. They had never had to deal with transgender or gay issues and they questioned: "*What do we do if there is a challenge to our religious ethos? How will we manage this in the context of the child and the classes and the duty to parents?*" The meeting, she explained, was about being forearmed to deal with the "*what ifs*". The conclusion was that the participants would keep in touch and they may need to seek legal guidance if there was a challenge to the religious ethos of the schools, including about continuing to accommodate the children if the involvement of their transgender parent challenged the school's ethos and code of conduct. Mrs K accepted that the meeting had not given any consideration to the consequences for the children of the loss of their father.
106. She explained that the difficulty with a discussion of gender change was that it would lead to a discussion about sexuality, which would be against the schools' ethos. For the children, it would mean having unmanaged information about something they would find difficult to understand and that they would worry about. For the community, transgender would be very worrying and would be seen as a defection from core values, and expressive of hostility and disrespect.
107. Mrs S (foster parent, called by the mother): Mrs S grew up within the Manchester ultra-Orthodox community and now lives nearby. She identifies herself as an observant modern Orthodox Jew. She is fluent in Yiddish and Hebrew. For 15 years she has been a local authority foster carer, specialising in caring for children from the community. The children have been of all ages, the majority aged 10 or over, and have stayed for between two weeks and six years. They have variously been in care as a result of sexual abuse, neglect, parental incapacity or relationship difficulties.
108. Mrs S, who clearly has a close knowledge of the workings of the community, described its unhappiness at children being fostered outside the community, though it acknowledged that she was a preferable carer to any of the available alternatives.
109. Mrs S provided two striking instances of the way in which children exposed to 'outside influences' will be ostracised. In 2015 Child A, a 15-year-old girl who had been sexually abused in the community was placed in her care. The girl was not invited to Hanukkah gatherings by her classmates. When Mrs S challenged the mother of one of the girl's close friends about this, she explained that she could not risk her daughter hearing about "*things*" as children in the community were kept innocent and sheltered. When Mrs S

described the distress that these actions were causing, the mother did invite the girl to her house, but only under strict supervision. The child lost her best friend and all her childhood friends. She now attends a different school and has absolutely no association with her former social circle.

110. Mrs S spoke of Child B, whom she had fostered from another ultra-Orthodox community. The child, aged 14, had been sexually and emotionally abused within her family and the wider community since the age of 11. She had made statements to her school about her abuse. The response had been to put her on a plane out of the country and invent a story to explain her absence. When she was returned to the country and placed in foster care, *“all hell broke loose”*. Mrs S said that she personally had a broad set of shoulders but that it had been a struggle to protect the child at the beginning. She was rejected by her family and no longer allowed to talk to friends. As Mrs S put it, *“It’s the knowledge that is the issue.”*
111. Mrs S freely described these as *“awful case studies”*, which she related to assist the court to understand that this response was the norm where religious culture, identity and laws are breached. She said that they were not *“standout cases”*. At the beginning of her fostering career, they would have had her *“up in arms”*, but she now saw this behaviour as being unchangeable – by local authorities, foster carers, courts and the law. *“They will find a way around it.”*
112. Other witnesses regarding community attitudes: Statements have been made by number of individuals not called to give evidence at the hearing. These include:

Rabbi C, A’s head teacher (religious studies): *“I feel strongly that a meeting between father and son would cause unimaginable and irreparable damage to A both emotionally and educationally and I’m also fearful that A’s religious commitment could be compromised too.”*

And more generally:

“I have been asked to submit a letter detailing the difficulties a School like ours would have with a child that was being exposed to outside influences.

We would not be in a position to accept a child who was at risk of being party to what our culture would view as inappropriate material or experience. So for instance if a child had a Parent who was taking them to the cinema or reading newspapers around them, that child would not be offered a place at the School. If a child had one Parent that was not following the strict guidelines that we as a community school follow, that would give great cause for concern.

If a child was already in the School, the School would face tremendous pressure from the Parent body, private donors and the governors, to suggest that the child find a more suitable educational environment. This is due to the very real risk that some of this inappropriate information or exposure would be shared

with other children, whose parents have chosen to raise within strict parameters of religion and lifestyle. It would be unfair to keep a child in a School like ours as inevitably they would be socially excluded due to concerns from other Parents."

Mr R (A's counsellor): *"Seeing his father could stir up a lot within him and cause him a lot of pain/harm." Speaking to the Guardian: "... ideally A would benefit from a relationship with his father, however he struggled to comprehend how this could be managed given the complexities of the family's faith and culture."*

Mr P (B and D's head teacher): *" It has been a huge shock and hurdle for the children to contend with only having one parent at home. In the school they attend there are only a small handful of other pupils in this situation out of 281 families. The new lifestyle that [the father] has chosen is a foreign choice to them, something which they would have no concept or understanding of, as it is basically unheard of in the circles their parents decided to bring them up in. Just hearing about it would be terribly confusing and unsettling, let alone for them to see it in person... This may appear as a socially insular set up but it does not negate the fact that the children have been brought up like this and it would be a major culture shock. Religiously too this would be at odds with their own lifestyle."*

Mrs E (a teacher at C's school): *"When a child is from a home that experiences negative change within the frameworks of the religion we keep or the way in which we choose to observe it, problems arise with the child's school place.*

Whilst the School will make every effort to support the family in question, where there is risk of negative influences from the outside world to other children in the School, the School will experience tremendous pressure from the Parent body and the governors not to allocate a place to any child who will bring these potential risks. It would therefore be very difficult for the School to process an application for a child who fits the above description."

Mrs S2 (a mother within the community, testimony produced by the mother): *"My Ex-Husband left the folds of observant Judaism and our community approximately 30 months ago. He is no longer observant and does not conform to the religious standards and parameters within which we were raising our children. Despite the fact that as a single mother I am still of the same religious standards, as is my home, living in an ultraorthodox community, his new lifestyle has caused us untold difficulties.*

My youngest child was not accepted into the school that my other children had attended, as the school would not risk the influences their Father's contact with the child might have on the rest of the student body.

I had no choice but to apply to another school for my youngest child. It is and will remain a challenge as this is not the lifestyle my child is used to and is not the social or communal circle I mix in. [For my youngest] to feel the rejection

and not have the ability to follow the path older siblings took is a painful experience.

This is the unfortunate price a child within an ultraorthodox community pays for the actions of their Parent(s)."

Mr S2 (the ex-husband of Mrs S2, testimony produced by the father): *"I left the community over a year-and-a-half ago. It was tumultuous and very challenging. Despite the pain, upheaval and learning curve that both I and my former wife went through, we both agreed that the children and their well-being were our ultimate priority...."*

The results nearly two years down the line is that our children are happy, doing well at school and feel supported and loved by both parents. It has been give and take and having to walk a careful tightrope. No less because we were aware of the way some people in the community might react to our children.

Of course people in the community have their opinion and unfortunately not always kind ones....

My youngest daughter did not get into the first school of her choice. We were told that this was due to the school being fully subscribed and not having any current siblings she was not a priority. It is possible there was some discrimination going on but as a state school they certainly didn't say so...

Unfortunately my ex was approached by people in the community telling her that she should fight for her children and that she should let them take the case up. I am ever grateful to her that she told them the children's well-being was paramount and that she was not prepared to traumatise them by forcing them through a very public and damaging legal battle.

It is unfortunate that there are people willing to fight, even to the detriment of the children's well-being in order to keep children with what they perceive to be the only way of life. My children's experiences are that most people are friendly and encouraging. They have friends and socially achieve their goals. People in the community generally feel that being kind to my children is the only avenue to ensuring their continued connection to the community."

Mr B (neighbour, testimony produced by the mother): *"[The] children are regular visitors to my house. They enjoy a positive social relationship with my children and I assist with School rotas and general neighbourly duties.*

I can confirm that were the children in contact with their Father, I would not be able to continue this relationship as I would have serious concerns about the influences and information the children may pass on to my own children.

I feel very sorry that things have come to this, but ultimately, I have to make my children and the culture within which they thrive, my priority."

Mr X (father in the case of Re X, testimony produced by the father): *"I separated from my wife six months ago mainly due to my leaving the religion. At the time my wife was concerned that if the children were to spend time with me this may cause them to become isolated from the community. Nevertheless my wife respected my right as a father to have joint access to the children.*

I have always respected my ex-wife's decision to remain orthodox and do not do anything with the children that would give cause for concern with regards to the religion. The children have all maintained their friendships both with school friends and with members of my ex-wife's family. It is my experience that the community often act out of fear and would put tremendous pressure to keep the status quo. However once changes have been made and especially if the religious parent has a legal requirement to give joint access to the children the children do not become isolated as a result."

E, mother's older sister: From the report of the Anna Freud Centre: *"[E], who is a huge source of support to the family and with whom the mother has a close relationship, was clear that if her nieces and nephews have contact with their transgender father, she will be concerned about how this will impact on her own children and she will need to be present and supervise when they see their cousins."*

113. The Anna Freud Centre In November, Ms Judy Henry (family therapist) and Dr Emma Morris (consultant clinical psychologist) produced a substantial report for the court after an inquiry spanning seven weeks. Having reviewed the papers, they carried out assessment sessions with the father, the mother and the children (individually and as a group) at the Centre. They visited the children at home, where they met the mother's sister E. They spoke by telephone to the children's teachers and to A's counsellor. It is unnecessary to repeat the volume of information, reflecting the evidence above, that they gathered from these interviews.
114. Their recommendation is that the younger children are provided with a narrative in age-appropriate stages to help them to understand their father's departure and transgender identity. They recommend that children have an exchange of letterbox contact with their father three times a year. They do not recommend any direct contact.
115. Dr Morris and Ms Henry accepted that their experience of working with the ultra-Orthodox community was limited, as was their specific experience in transgender cases. Although they bring their own professional perspectives, they very much spoke with one voice. They explained that they had tried as far as possible to look at things through the eyes of the children, who appear to be thriving despite the significant changes since their father left home.
116. In their report, Dr Morris and Ms Henry write: *"In our opinion, it is essential that the cultural context in which they live is taken into account when thinking about children's emotional, development, social and educational needs. If the*

children run the risk of being denied places at good schools and Yeshivas and are being shunned and ostracised by their peers and other members of the community, this will have a negative impact on how they function in the widest possible sense both now and in the future.”

117. They emphasised that they had found this a very difficult recommendation to make, and that they had reached it on a very narrow balance. In this binary (contact/no contact) situation, there is no good solution, and they have chosen the outcome that brings least harm to the children. This conclusion is substantially based on the premise that the children would be ostracised by the community if they had direct contact. If the premise is found to be incorrect, their recommendation would probably be different.
118. Dr Morris and Ms Henry accepted that the father’s relationship with the children had been a good one and that the children, including A, would want to see their father if they could. Both parents clearly love the children very much and are committed to them. The children will suffer harm from deprivation of contact, and will feel sad and unsettled.
119. Normally they would support a child’s right to contact with the absent parent, unless it was demonstrated that this would not be in the child’s interests, for example in a case where there had been abuse. Here, the worst outcome for the children would be to be victimised and excluded for having contact. At present, they are dependent and their identity is completely bound up with their place in the community. It is not possible to think of their needs as being separate from their identity. If they left the community, it would have a huge negative impact, particularly as the mother, who is their main carer, would not have the support she has now.
120. Although the deciding factor in their analysis is the likely community response, they also expressed some concern about the father’s ability to keep her emotions in check and prioritise the emotional needs of the children. During their meetings with the father, she was understandably very upset and angry with the community, and feels rejected and judged. In some discussions, her own needs were so great that she was unable to see things from A’s point of view. At some times, she was insightful; at other times, her own needs and concerns overwhelmed her.
121. They described the current situation as one in which the mother does not speak against the father, but rather does not speak of him at all. This vacuum contains the potential for anxiety and depression in the children if it is not dealt with.
122. As to providing the children with a narrative, they described the stages by which information would be given. It would be a complex process requiring cooperation from both parents and there could be difficulties in controlling the narrative, which needed to be true, but judiciously so. The first stage would involve the children learning that their father felt different and unhappy and

that he could only feel better by leaving, but that he misses them and thinks about them all the time. The second stage would introduce the idea of gender change: *“The place where we live doesn’t allow daddies to live like mummies, or to stay, or to see you”*. When the children were older, ideas of physical change (hormone therapy or surgery) could be introduced at an appropriate third stage.

123. Dr Morris and Ms Henry recommend that the father writes to each child on his/her birthday and to all the children on two other occasions each year, perhaps associated with religious festivals. They accept that indirect contact only might in some ways be seen as the worst of all worlds, providing the children with a *“virtual father”* and not a real relationship. However, it can be said that this is what A, for one, is willing to accept. He has autonomously accepted the community beliefs. The longer the status quo has gone on, the more he wants it to remain that way.
124. Dr Morris and Ms Henry indicated that if direct contact was to take place, intense planning would be required, leading to contact within six months. There would need to be supervision, both professional and by a mutually acceptable member of the community.
125. The Children’s Guardian Ms Emma Gauden has prepared two reports, in May and November.
126. In her first report, she expressed concern at the way in which A had been used as a confidant by his father, and by the father’s apparent lack of insight into the difficulties that this caused. She expressed concerns that the father’s understandable fight for justice for herself was causing her to lose insight into the children’s stability and emotional welfare. The father had at that point accepted that the community would discriminate against the children if they spend time with her, just as the community had discriminated against her directly, saying that it had minimal tolerance towards those who do not share its core values.
127. When the Guardian met the four younger children in April, they were curious that she was not Jewish and were keen and proud to tell her about their faith and customs. They asked her whether she knew their father and said that they missed him and would like him to return home. C said that he had been kind and funny.
128. The Guardian met A and his counsellor later that evening. A appeared confident and articulate. He described a close relationship with his father and had fond memories of their times together. He avoided any discussion about the father’s changes, saying that it made him feel under pressure. He said that he likes to hold onto his positive memories and that if he had a choice, his father would return to the family as it was before he left. He said that he would like to spend time with his father as long as he wasn’t any different to

how he recalled him. If he saw his father outside the family, he would need to keep it a secret.

129. The Guardian writes: *“Children are resilient to change, and I would expect without the cultural facet of this situation they could be supported to understand and accept their father’s new identity. For the older children especially this may require therapeutic intervention. What is absent [sic] in this situation is the lack of support available to the children within their family and wider community. Any acceptance of such change would in my view require the children to have a solid structure of support enveloping them. This does not exist as a result of the conflict between the father’s transition and the Orthodox Jewish way of life.”*
130. The Guardian identifies the risks to the children’s well-being arising from the loss of such a significant person, but considers that the greater risk arises from their potential exclusion from their way of life. *“These children had no choice [about] what community they were born into, and what faith they should follow. These were choices made by their parents. They are enveloped into the Orthodox Jewish way of life, and the loss of such could cause such instability that I am unable to identify any interventions that could be offered to promote resilience.”*
131. In her second report, noting the conclusions of the Anna Freud Centre, the Guardian maintained the same position. She recommended a Family Assistance Order to accompany the delivery of the narrative to the younger children, which should be communicated within 12 months, and the commencement of indirect contact.
132. In her oral evidence, the Guardian said that her recommendation had never felt satisfactory for children of this age. She had desperately searched for a different solution and had continued to question herself about it up to the moment of giving evidence. Her two reasons for maintaining her view were (1) the risk that the children would be ostracised and placed in conflict with their identity as members of the community; and (2) some continuing concerns about the father’s insight and ability to prioritise the emotional needs of the children and engage in the advice that would be offered. Both of these are significant factors for her.
133. Looking at life through the children’s eyes, exclusion from the community would change everything beyond recognition. This would not be compensated for by the benefits of contact, and they may instead feel resentment towards their father. Denial of contact is not, the Guardian said, a good outcome, but it is the least harmful option in an extreme and very finely balanced situation.
134. The Guardian noted that the father was aggrieved that the professionals were not fighting the system that operates in the community, but she argued that it was not the court’s role to exercise social engineering. Nor should she judge the community, although its views conflicted with hers. In any event, the court

could not change the views of the community, even if it is being emotionally neglectful towards the children.

135. The Guardian considers that the effect on the mother of losing community support would be severe. She is the only practical parent available to the children and also has to work.
136. The Guardian acknowledged the serious disadvantages of separating the children from their father until they had reached a level of maturity to better deal with these issues. She also accepted that if the children are within the community, they are not free to make their own decisions.
137. A's visit to court I offered to meet A because of his age and because he had found himself at the heart of the family breakdown. The Guardian conveyed the offer and A accepted. The purpose of the meeting, which took place in the presence of the Guardian and my clerk, was not to obtain evidence, but to allow A to better understand the court process; inevitably, a meeting with a child can also provide an additional perspective for the judge, and so it proved.
138. It was a pleasure to meet A, who is a credit to his parents. After some general conversation and a tour of the courtroom, I asked him whether he would like to tell me anything. He said that if he saw his father, it would affect him in a bad way. He would get bullied and lose his friends. His brothers and sisters didn't know what their father had done and would not know what to do or think – it would affect their lives. If their mother remarried, they could have a father. As to the future, he wanted to have a good life. He might or might not make a different decision about seeing his father when he had married and settled down.
139. A used a parable of his own to explain his point of view. He described a British Navy boat being bombarded by a pirate ship that shot a big hole into the middle of it. While the British were fixing it up, another ship came along and smashed it again, this time fatally. He said that his father had already done him damage and that he had tried to fix it up and get his confidence back. Seeing him again will cause more damage and bring down his confidence: *"It just won't work... If he cares, he will leave me alone... Jewish law says that we can't deal with this kind of thing. People think things."*
140. He said that his mother was anxious for all the children's futures. He did not feel proud of his father. He had told him confusing things. He (the father) had made his decision and had to go through with it, it wouldn't affect his life as much as the children's.
141. I raised the possibility that in life we may all really be in the same boat, but that is not how A sees it at the moment.
142. A approached the meeting with earnest good humour. The only sign of stress was that he was exceptionally anxious to avoid a chance meeting with his

father, even though he had been reassured that arrangements had been made to prevent this.

The welfare checklist

143. I will briefly identify the main features as they appear from the evidence.

The ascertainable wishes and feelings of the children (in the light of their age and understanding)

144. E has been least affected by her father's departure because of her young age when he left.
145. D has confused memories of his father and may wish to be cared for by him again.
146. C remembers her father with affection and would like to see him again.
147. B has good memories of his father, misses him, and would like to see again.
148. A worries that his siblings will be affected. He is nervous about classmates at school drawing attention to his father. His feelings are conflicted, remembering the good times but feeling angry that his father left the family and involved A in this. His expressed wishes are that he does not want to see his father until he is much older.
149. On the face of it, these children would all want to continue to have a full relationship with their father. However, the views of the younger children are formed in ignorance of the fact that the father they knew can never return, and of the possible consequences of contact for the family as a whole. For A, his father is extremely important to him. His decision not to have contact does not reflect his true wishes and feelings. It is not a rejection, but a calculation based on his understanding of the family's circumstances. In addition, A's position is now complicated by feelings of responsibility for his mother and siblings.

Physical, emotional and educational needs

150. The children's normal need for stability is increased by the disruption they have experienced with their father's departure. It is not in issue between the parents that the children should live and be brought up in the community of their birth. Now, being in an undoubtedly exposed position, they need to feel safe and secure there.
151. As a group, they have many unanswered questions about what lies behind the father's absence. They need an appropriate explanation. The younger children need to be armed with a reasonable understanding of their father's transgender status so that they are equipped to manage the topic as and

when it comes up. A needs to learn the intense distress associated with gender dysphoria as a way of better understanding his father's situation.

152. The children have the same educational needs as any other child, to be delivered by their faith schools in a way that should comply with the law of the land.

The likely effect of any change in circumstances

153. There has already been a significant change in circumstances, with the father's departure, in the widest sense, from the children's lives. The question is whether her reintroduction could be achieved without causing greater harm.

Age, sex, background

154. The children are at a dependent age. They identify unconditionally with the cultural and religious ways of their community.

Any harm which the children have suffered or are at risk of suffering

155. The children have suffered harm with the sudden disappearance of their father. A suffered harm by being inappropriately involved in the marriage breakdown by one parent to the exclusion of the other.
156. The children will suffer serious harm if they are deprived of a relationship with their father.
157. The children would suffer serious harm if they were excluded from the normal life of the community.

How capable each parent is of meeting the children's needs

158. The mother is the children's main carer. She is the only parent who can sustain the children's lives within the community. She has shown that she has the ability to do this, physically, emotionally and educationally, provided she has family and community support.
159. In the circumstances that have arisen, the father is unable to live in the community. She has the ability to meet the children's emotional needs as a second parent living elsewhere, provided she is not overwhelmed by her own emotional needs.

The range of powers available to the court

160. Orders can be made for direct and/or indirect contact; for ensuring that information is given to the children; and for ongoing support to be provided by Cafcass for a limited period by way of a Family Assistance Order.

161. If direct contact is to be ordered, the children would in my view need to be made Wards of Court so that the court assumed direct responsibility for ensuring that its order was carried out.

Assessment and conclusion

162. 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.
163. A great deal of time has been spent at this hearing on consideration of the laws and customs of the ultra-Orthodox community. This is natural, given that it is the community within which the children live. However, Ms Ball QC and Ms Mann for the father argue that one must not look only through an ultra-Orthodox lens. I agree. Despite its antiquity, Jewish law is no more than 3,500 years old, while gender dysphoria will doubtless have existed throughout the 120,000 years that *Homo sapiens* has been on earth. Both sides of the question must therefore receive careful attention.
164. Faced with this intractable problem, it is not for the court to judge the way of life of the ultra-Orthodox Jew or of the transgender person. The court applies the law, and in this case its task is to identify the outcome that best upholds the children's welfare while minimising so far as possible the degree of interference with the rights of all family members.
165. Here, the best possible outcome would be for the children to live with their mother, grow up in the community, and enjoy a full relationship with their father by regular contact. The worst outcome, I find, would be for the mother and children to be excluded from the community. The question is whether, in striving for the best outcome, the court would instead bring about the worst.
166. The arguments in favour of direct contact are formidable:
- (1) Face-to-face meetings give the children and their father the lifelong benefits of a unique and irreplaceable relationship.
 - (2) Contact upholds the rights of the children and the father to respect for their family life.
 - (3) It is in accordance with the children's underlying wishes and prevents them from developing a deep sense of loss.
 - (4) It is strongly desired by the father. The effect on her of being deprived of contact cannot be predicted, but any further distress to her cannot be in the children's interests.

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- (5) It upholds the right of the father not to be discriminated against as a transgender person.
- (6) It removes the harm to the children of finding that they were separated from a loving parent by the rules of their community, with the possibility that their sense of justice will be offended, causing them to resent their mother and their religion.
- (7) It removes the risk that the children's sense of identity and self-worth will be affected if their father is treated as if he was a sinner who is not worthy to act as their parent.
- (8) It provides the children with reassurance about their father's welfare.
- (9) It confronts the issue now, when some professional resources are to hand, rather than leaving it to the children cope unsupported in whatever way they can at some future time.
- (10) Without contact, the children will have an incomplete, controlled and possibly misleading experience of their father. Face-to-face contact is the only way in which they will truly be able to understand her transition and the reality of life as a transgender person.
- (11) It prevents a situation in which one or more of the children will be locked in by community and family pressure (including perhaps pressure from their siblings), leaving them unable to choose to make contact with their father later in their childhoods, and possibly even into adulthood.
- (12) It would give the children some small experience of the wider world and might even open the door to them being able to make life choices for themselves as they grow older.
- (13) It removes the risk that one or more of the children may ask to see their father, but be refused and have no recourse.
- (14) It removes the risk that indirect contact will not be satisfactorily achieved as time passes due to a lack of clarity about its objectives, and because the lack of trust between the parents may lead to less than wholehearted co-operation on both sides.
- (15) A possibly unprecedented decision by the court not to order direct contact in circumstances of this kind would not be an abstention but a positive act with Draconian consequences, stretching far into the children's future and producing an outcome almost amounting to adoption.

167. None of the arguments that are said to favour contact depend on any disputed facts.
168. The factors that speak against face-to-face contact are far fewer in number and they are contested:
- (1) The father's dependability.
 - (2) The community's reaction to direct contact.
169. Evidently, a view must be taken of the validity of these factors, and the weight that should be given to them. I take them in turn.
170. As to the father's dependability, I accept that she has approached matters responsibly in a number of ways. She has accepted for the purposes of these proceedings that the children should remain in the community and that they should maintain their fully religious lifestyle. She has not taken any direct action to undermine the children's situation during the course of the last 18 months, despite being prevented from seeing them. She has offered to fall in with any reasonable requirements surrounding contact arrangements, including by agreeing to supervision.
171. These commitments are commendable, particularly while the father faces such enormous personal challenges. Those challenges will continue, and may increase with the ongoing process of transition. It is no surprise that the father is, in my view, weighed down emotionally. Although she looks to the future in a positive spirit, I cannot share her view that she is now emotionally strong and confident. In my view, the professional witnesses are correct to assess her level of insight as uneven in consequence of other pressures. Her decision to co-opt A into her struggles was a serious misjudgement. The emails to the teachers and others were unwise, seen from the children's point of view, whether or not they were in any way justified. The road to direct contact, even approaching matters with maximum optimism, would be a hard one, requiring a very high level of collaboration. It is predictable that there will be anxiety on the part of the mother and flare-ups on the part of the father when difficulties arise. The consequences would depend on the circumstances, but could mean additional problems for the children, either directly or indirectly with other family members or third parties weighing in.
172. I therefore consider that the father's approach to contact would not be a reliable, static factor. It would be a variable amongst other variables. I share the view of the Anna Freud Centre and the Guardian that this must be taken into account when considering children's welfare. It speaks for caution, but no more than that, and if it were the only obstacle to direct contact, it could probably be overcome.
173. I turn to the central question of the reaction of the community if the children were to have direct contact with their father.

174. Ms Ball and Ms Mann submit that the balance to be struck is between harm that the children *will* suffer (through loss of contact) and harm that they *may* suffer (through ostracism). As to the latter, they rely on the evidence of Rabbi Abel and Mr Bernard. They suggest that the mother's witnesses are over-egging the pudding, and that the court should not assume the worst. They point to the outcomes in *Re X* and the case of Mr and Mrs S2. The cases of Child A and Child B revolved around issues of sex, not of gender. It is not clear why indirect contact is said to be acceptable, while direct contact is not. If the children in this family were to suffer from teasing, this could be managed with the support of individuals within the community and outside.
175. More broadly, they invite the court to take the view that it is high time for the children's schools to put their houses in order: if the schools taught tolerance and respect in accordance with the law, attitudes would begin to change:
- "If the children's schools had complied with the law in the present case, or were to do so now, then any potential difficulty for the children of this family would be significantly reduced or removed. It is not acceptable for the community or schools to raise the spectre of ostracisation or teasing when it is their failure to comply with their responsibilities under Government standards which would or might lead to this. Nor is it acceptable for the spectre of the children having to leave their schools to be raised when this could only be achieved by discriminatory behaviour under the Equality Act 2010."*
176. On the mother's behalf, Mr Buckley relies on the evidence from all the other community witnesses on this issue. He says that it is inflammatory to speak of discrimination or victimisation in a case where people are following their faith, and that the court should not be drawn into issuing "*clarion calls*". He argues that it would be asking too much of the children for them to see their father.
177. Having considered all the evidence, I am driven to the conclusion that there is a real risk, amounting to a probability, that these children and their mother would be rejected by their community if the children were to have face-to-face contact with their father. I say "driven" because I began the hearing with a strong disposition to find that a community described by Rabbi Oppenheimer as "*warm, close and supportive*" and living under a religious law that "*highlights integrity, respect for others, justice and peace*" could tolerate (albeit without approval) these children's right to and need for a relationship with their father. The evidence that was available before the hearing contained dire predictions, but no actual examples of ostracism. I pointed this out, and this led to a number of new statements being gathered, including significant evidence from the foster carer, Mrs S.
178. To explain my conclusion on this issue:
- (1) It does not depend upon any view of what Jewish law is in relation to transgender, but upon what the community is likely to think it is and

act upon. It may be that the humane and progressive views of Rabbi Abel and Mr Bernard will one day gain acceptance in the ultra-Orthodox communities, but I consider that in the present day the community in which the children live and go to school will, rightly or wrongly, defer to the stance described by Rabbi Oppenheimer and the authorities he cites.

- (2) The examples in the cases of *Re X* and the children of Mr and Mrs S2 show the difficulties that arise when a parent simply leaves the ultra-Orthodox community, without the compounding features found in this case.
- (3) The cases of Child A and Child B, described by their foster carer Mrs S, show the lengths to which the community is prepared to go, regardless of the justice of the matter or the welfare of the young people.
- (4) I cannot distinguish these cases in the way suggested by Ms Ball. They are clear examples of discrimination and victimisation (there is no other apt description) in cases that did not raise anything like as problematic a challenge to community attitudes as the present case.
- (5) There is a consistent account from all those within the community of how it will behave: the mother, the mother's sister E, the neighbour Mr B, the community officer Mrs K, the single parent Mrs S2, Rabbi Oppenheimer, and not least A himself.
- (6) The father, Mr X, Mr S2, Rabbi Abel and Mr Bernard all accept to a substantial degree that this is what the community is like. Their thesis is that it can be managed or made to change.
- (7) There is, to say the least, evidence that the practices within the community, and in particular its schools, amount to unlawful discrimination against and victimisation of the father and the children because of the father's transgender status. However, the fact that the practices may be unlawful does not mean that they do not exist.
- (8) I was particularly impressed by the evidence of Mrs S, an informed outsider, who compellingly described the reaction of the community to situations of which it disapproves.
- (9) I was also struck by Rabbi Oppenheimer's unyielding defence of the religious and social position as illustrating the stance that can be taken by educated persons.
- (10) I also note the existence of others (described by Rabbi Oppenheimer as "*hotheads*") who are ready to exacerbate the situation by sending out messages on social media.

- (11) There is no evidence that any person in a position of authority or influence within the community wishes to challenge the behaviour of its members, still less that significant change could be expected within these children's timescale.
- (12) In these circumstances, I do not consider that there is any real prospect of a court order bringing about a beneficial alteration in the attitude of the community towards this family, even to the extent of some relatively limited normalisation of approach. This must be a subject for regret, not only for this family, but also for others facing these issues in fundamentalist communities, for whom this will be a bleak conclusion. However, these considerations cannot deflect the court's focus from the welfare of these five children.
179. In balancing the advantages and disadvantages of the children being allowed to see their father, I apply the law of the land. Some witnesses in these proceedings assert that gay or transgender persons have made a lifestyle choice and must take the consequences. The law, however, recognises the reality that one's true sexuality and gender are no more matters of choice than the colour of one's eyes or skin.
180. It has also been said that transgenderism is a sin. Sin is not valid legal currency. The currency of the law is the recognition, protection and balancing out of legal rights and obligations. In this case, to be recognised and respected as a transgender person is a right, as is the right to follow one's religion. Likewise, each individual is under an obligation to respect the rights of others, and above all the rights of the children.
181. I also reject the bald proposition that seeing the father would be too much for the children. Children are goodhearted and adaptable and, given sensitive support, I am sure that these children could adapt considerably to the changes in their father. The truth is that for the children to see their father would be too much for the adults.
182. And here we come to the sad reality. 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. The mother, a religiously observant person, would be required to sustain something that she has been taught is religiously wrong. A, aged only 12, is already extremely anxious about contact and now feels protective towards his mother and younger siblings. Embarking on contact would place him under extreme pressure, which would inevitably have a detrimental effect on his development.

183. The children, and the mother on whom they depend, would have no effective support to deal with any of this: on the contrary, they would face suspicion or outright opposition from every quarter. The likely result is that their individual and collective well-being would be undermined to the point where their ability to remain in the community would be put at risk, or at the very least placed under permanent and severe strain, with (as Ms Henry and Dr Morris put it) *“a negative impact on how they function in the widest possible sense both now and in the future”*.
184. It is central to my thinking that this is not a case about whether children should or should not be brought up according to ultra-Orthodox principles. This was the issue in *Re G*, and it was that which led Munby LJ at paragraph 82 to describe the task of the judge as being to recognise equality, foster aspiration and maximise the children’s opportunities in every sphere of life as they enter adulthood, taking care not to foreclose on their ability to make future choices for themselves.
185. This case is quite different. These parents decided to bring up their children according to the narrow ways of the community, and they continue to agree about this. That being the case, the priority must be to sustain the children in the chosen way of life, preserving their existing family and social networks and their education. It is not to be forgotten that children have the right to preserve their identity (UNCRC Art.8), something that is a matter of particular pride to these children. Contact carries the clear risk that the children and their mother will become the next casualties in a collision between two unconnecting worlds. The father has already experienced the consequences of that collision, and no one knows better than she does how very painful they can be.
186. The advice of the professional witnesses, which is unanimous, was subjected to the most rigorous scrutiny, entirely justifiably given its momentous nature. By my assessment, the opinions of Dr Morris, Ms Henry and the Guardian withstood that scrutiny. For obvious reasons, they had little previous experience of the circumstances that arise in this case, but they applied coherent principles and kept a steadfast eye on the children’s welfare. I found that the Guardian has a sound appreciation of the overall situation, and I rely upon her professional judgement, underpinned by the Anna Freud investigation. Alongside these witnesses, I have (as required by *Re C*) grappled with all the available alternatives, viewing deprivation of contact as a last resort that can only be contemplated when it is clear that the children will not benefit from it.
187. 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.

188. I therefore conclude with real regret, knowing the pain that it must cause, that the father's application for direct contact must be refused. I will instead make an order for indirect contact. I see no reason why this should not take place four times a year for each child, perhaps coinciding with their birthdays, and with Pesach, Sukkot and Hanukkah: I invite submissions on the detail. I will make a Family Assistance Order for 12 months, addressed to Cafcass so that Ms Gauden can support the introduction of indirect contact and oversee the process of creating the narrative. The Anna Freud Centre has offered to advise on the terms of the narrative and I will if necessary postpone the making of the final order to ensure that all these matters are securely in place.
189. 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.
190. I decline to intervene in the matter of the get.
191. In the light of the response of the schools to this family's situation, I shall send a copy of this judgment to the Minister of State for School Standards at the Department for Education. If change is required (and that is for others to say), responsibility must fall on the shoulders of the schools, the community and the state, and not on the heads of young children.