



Neutral Citation Number: [2018] EWHC 3939 (Fam)

Case No: FD18P00080

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2018

Before:

MRS JUSTICE THEIS

Between:

Local Authority	<u>Applicant</u>
- and -	
M	<u>1st Respondent</u>
- and -	
F	<u>2nd Respondent</u>
- and -	
G (through her Children's Guardian)	<u>3rd Respondent</u>

Ms Laura Barrie (instructed by **LA**) for the **Applicant**

M - Did not attend and did not have notice

F - Attended in person

Ms Maria Stanley (instructed by **Cafcass Legal**) for the **3rd Respondent**

Hearing date: 19th November 2018

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Theis DBE:

Introduction

1. I am concerned with a young person, G, who is currently in the care of the local authority pursuant to the order of HHJ X at the conclusion of care proceedings. G's parents have separated, she sees them separately each month for supervised contact. At her request G was referred at the end of 2017 to the Tavistock Gender Identity Clinic (GIDS) having experienced gender dysphoria.
2. The local authority have applied to the court under the inherent jurisdiction to seek a declaration that they are not under any duty pursuant to section 22 (4) Children Act 1989 ('CA 1989') to inform G's mother of this or any steps taken as part of that referral, in particular any therapeutic assistance G may have as part of that referral. Additionally, they seek an order that the mother should not be informed of this application.
3. As a result, G's mother, although a respondent to this application, has had no notice of it due to concerns that informing her of the application is likely to be detrimental to G's psychological and physical welfare.
4. G's father was in a similar position until recently, when G agreed he should be informed of the position. He learned of G's position initially via the allocated social worker. As candidly explained in the document statement filed on his behalf for this hearing, he has struggled with coming to terms with this information but has indicated he is supportive of G seeking the assistance she seeks. He attended this hearing in person as a litigant in person and repeated this position in eloquent terms.
5. G is represented in these proceedings by Ms Stanley, through her Guardian Ms Julian. At the court's direction, Ms Julian conducted an assessment of G. She concluded G is Gillick competent in matters relating to these proceedings. No issue has been taken with that assessment. Ms Stanley submits on G's behalf the declaration is not needed, as the Local Authority can make the decision not to inform the mother of the referral and the likely therapeutic assistance under the existing provisions of s 22(4). This is because G is Gillick competent, her wishes have remained consistent that she does not want her mother to be informed and there is evidence to support the conclusion if she was informed G is likely to suffer psychological harm.
6. Both the local authority and the Children's Guardian are agreed that the considerations would be different in the circumstances of any proposed medical intervention.
7. The issues for the court are:

- (1) Should the mother be given notice of these proceedings?
 - (2) If so, what steps should be taken to do that?
 - (3) If not what, if any, order should the court make?
8. The court is extremely grateful for the careful and thoughtful skeleton arguments submitted by Ms Barrie (including the earlier skeleton argument prepared by Judith Charlton) on behalf of the local authority, and Ms Stanley on behalf of the Guardian.
9. G attended this hearing, albeit after it had started. She indicated she did not wish to meet separately with me but wanted to sit in court and listen to the remaining legal argument. She sat in court with her father for the last hour of the hearing, I explained to her what was going to take place. Importantly she was able to hear her father explain to the court in the way that he did his support and understanding for G's position.

Relevant Background

10. G and her sibling, H, were each made the subject of a care order, with care plans for long term foster placement, remaining with their current foster carer. Arrangements were in place for monthly supervised contact with each parent. Since the final care order H moved to alternative carers, G wished to remain where she was and after further assessment that was agreed.
11. The care proceedings were instigated due to allegations of unlawful and unreasonable chastisement of both children by their mother. The precipitating event was when H telephoned the out of hours team to disclose that she was afraid to go home that evening as she feared what her mother would do, alleging that she had been slapped by her mother that morning and that she was regularly chastised with implements, such as a belt and a slipper. The evidence at the final hearing indicated such chastisement started in 2010. There followed a further referral in 2013, following which the case was closed and then the incident that precipitated the care proceedings being instigated took place.
12. The police were involved and initially the children were placed with an older sibling, but she was receiving medical treatment at the time and had unsatisfactory accommodation, G and H were then placed with foster carers, where they remained until the hearing.
13. The parents had separated, G and H remained living with their mother.

14. During the final hearing of the care proceedings the mother's position changed, initially denying the allegations and seeking the return of G and H to her care. As the hearing progressed, she made some limited admissions about chastisement and by the end of the hearing she was no longer seeking either G or H to be returned to her care.
15. Prior to the final hearing the mother was having twice weekly contact with G and H, the plan following the care order was for it to be reduced to monthly contact separately for each parent.
16. The father supported the local authority case in terms of the allegations and sought the care of G and H, if necessary, separating from his current partner and seeking his own accommodation. Whilst the local authority and Guardian accepted the father's good relationship with G and H, they did not support his position to care for them full time due to his failure in the past to protect G and H.
17. In the detailed judgment at the conclusion of the care proceedings HHJ X concluded that the allegations made by both G and H in their ABE interviews as being 'truthful and compelling narratives' of the extent of the physical and emotional harm they had suffered as a result of their mother's behaviour towards them. The schedule of findings made at the conclusion of that hearing set out the detail of the harm the court found and the conclusion that G had an insecure and ambivalent attachment to her mother.
18. About three years ago G informed her then social worker she was in a relationship with another girl and did not want her mother to know, due to her mother's religious beliefs.
19. G self-harmed with a razor and was experiencing difficulties at school that were considered to be linked to her sexuality. She expressed concern to her social worker about her mother knowing about her sexuality.
20. About two years ago G first spoke to her current social worker, about her gender identity. G has remained consistent about not wanting her mother to know about any issues about her sexuality or her gender identity, as she was concerned about her mother's reaction and/or that her mother would disown her. This was based on a discussion G reported she had had with her mother about a friend of G's being gay, her mother's response was to re-state her religious views and her disapproval of such choices.
21. More recently, G enquired about a referral to the Gender Identity and Development Service (GIDS). The referral was made and accepted about a year ago. There is a twelve-month waiting list before she can be seen. GIDS is a multi-disciplinary team which will begin a psycho social assessment over six months to determine if further

intervention is required. This will enable G to work through the internal conflicts she is currently experiencing, including the impact of gender transition on her relationship with her parents.

22. The local authority issued their application on 7 January. Initially they sought a declaration that *'it is lawful to withhold information and not to consult [G's] parents in respect of any aspect of her gender identity'*. In their skeleton argument in April 2018 that was refined to the following:

- (a) The [Local Authority] is absolved from any and all obligation to consult, refer to and or inform G's parents....in relation to any aspect of her progress, development and or wellbeing whilst she is a looked after child the court being satisfied that G's welfare makes such a declaration necessary*
- (b) Further, or in the alternative, the declaration set out in (a) above shall absolve the [Local Authority] of all obligations to comply with any of the duties imposed on them by, or under, the Children Act 1989 in relation to any obligation to consult, refer to and / or inform the parents. The Court being satisfied that in the exceptional circumstances of this case such failure would amount to a reasonable excuse pursuant to Section 84 Children Act 1989."*

And the Court further orders that: -

The local authority shall not, unless G so consents, share with the Respondent Parents: -

- (i) Any information regarding the G's gender identity whether that information comes from the Tavistock Centre, G's General Practitioner, CAMHS or any another source*

23. On the application being referred to me I joined the G as a party, and on 8 March made directions for skeleton arguments to be filed on behalf of the Local Authority and G. I directed that neither parent should be given notice of the application, orders or any evidence filed by the local authority.

24. At the next hearing on 4 May I continued the order that the parents should not be notified and provided for updating evidence from the local authority regarding G's anxiety about her parents being informed of the application and the extent it was known whether the parents were in contact with each other. In addition, I directed a Gillick assessment of G in relation to issues concerning her gender identity and whether her parents should be informed of them, or not. This was undertaken by Ms Julian and is dated 22 May 2018. In that assessment she concludes G is *Gillick* competent *'as far as these proceedings are concerned, and in all areas of them. With regards to her mother, I am very encouraged that [G] has taken a first step in being honest with her about her sexuality. Whilst I support [G] in her wish that her mother is not informed of the GIDS referral and the therapeutic intervention to follow, at this time, I feel it crucial that work continues with [G] to enable her to reach a time when she feels able to tell her about it. I also support [G's] wish that her mother should not be informed of these proceedings. [G's] reasons for this are sensible and understandable and I do not see how going against her wishes at this time could be considered in her best interests.'*
25. The hearing on 22 June was adjourned to 15 October, as there was a growing consensus that G's father should be informed of the application and the issues relating to G's gender identity.
26. Over the summer G discussed with her social worker and others about how the issue would be approached with her father. Following further discussion G agreed that the allocated social worker should discuss it with him first, which she did in September. Following that G has been able to discuss it with him directly. He understands the confidentiality of the issue and has agreed not to discuss it with the mother, with whom he has no ongoing contact. It was agreed prior to the hearing on 15 October G's father should be given notice of the hearing and be served with the documents. The father attended the hearing on 15 October, that hearing was adjourned to 19 November to enable him to secure legal advice and file a position statement prior to the next hearing.
27. The local authority offered to fund legal advice for the father. The position statement filed on his behalf by Ms Hollmann confirms his support for the application, the mother not to be notified and is content for the information flow from the local authority to him about G is guided by G's agreement. His hope is that G would feel increasingly confident to discuss such matters with him directly, now the social worker has already provided him with the core information with G's agreement.
28. The position in relation to G's mother has not changed. In early 2018 G had a discussion with her mother about her sexuality, G self-harmed shortly before this discussion and her foster carer's view was this behaviour was due to G's anxiety about discussing these matters with her mother. As the social worker's statement describes G's mental health has become increasingly fragile with further self-harm attempts, which the social worker considers are caused by her anxiety about her

situation and, in particular, her mother's attitude and behaviour relating to G's sexuality.

29. The most recent statement from the social worker outlines the ongoing complexity and anxiety in G's relationship with her mother, the impact it is having on G and how it can correlate to G's self-harming behaviour. G is still continuing to see her mother monthly, although the more recent visits have finished earlier than scheduled.
30. The Local Authority remain of the view that G's mother should not be served with or given notice of this application; if she was the very situation which this application is designed to avoid would arise, in that G's emotional and physical welfare will be compromised by her mother's likely response. This is considered to be the position even if she is given notice of the application only, as such a step is likely to arouse the mother's curiosity and, in turn, place further pressure on G with the consequent risk to G's emotional and physical welfare.
31. The allocated social worker has filed three statements which set out the detailed discussions she has had with G regarding the difficulties she is experiencing in her relationship with her mother, her mother's negative response when she has tried to raise issues relating to her sexuality with her mother and the adverse impact on G of the mother's attitude and the uncertainty as to whether her mother is going to be informed about the GIDS referral and the prospect of therapeutic assistance for G provided by GIDS against G's wishes.

Legal Framework

32. Pursuant to rule 6.36 Family Procedure Rules 2010 ('FPR 2010') the court retains a residual power to dispense with service of any document which is to be served in proceedings.
33. It is a power that should be exercised with great caution and only where the evidence supports such a course being taken. *M v F [2011] EWCA Civ 273* concerned a father with parental responsibility and an application for him not to be informed of adoption proceedings. Black LJ (as she then was) having undertaken a review of the relevant cases stated at paragraph 37

'The thrust of these cases is, therefore, is that the court will not be persuaded to sanction the withdrawal of information about the existence of a child from that child's parent or to dispense with service on him of proceedings in relation to the child in anything other than exceptional circumstances where there are, as the President has put it in Re H: Re G 'strong countervailing factors'.'

34. Both the local authority and the Guardian submit the evidence supports such an order being made founded on the evidence of G's current concerns regarding her mother's responses towards her, the background of the mother's behaviour towards G as set out in HHJ X's judgment and G's current presentation all of which lead to the conclusion there is a risk of further significant psychological harm to GA if her mother is informed of the application. As a consequence, they submit, there are strong countervailing factors that lead the court to conclude the mother should not be served with the application, or even have notice of it.

35. Section 22 (4) Children Act 1989 provides as follows:

'4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

(a) the child;

(b) his parents;

(c) any person who is not a parent of his but who has parental responsibility for him; and

(d) any other person whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.'

36. *Gillick v West Norfolk and Wisbeach Area Health Authority and Another [1986] AC 112* concerned an application by a mother that it would be unlawful for a doctor to prescribe contraceptives to girls under 16 without the knowledge or consent of the parent. The application was refused. The guidelines that were produced following that decision includes consideration of the following: that the girl (although under 16 years of age) will understand his advice; that the doctor cannot persuade her to inform her parents or to allow him to inform the parents that she is seeking contraceptive advice; that she is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment; that unless she receives contraceptive advice or treatment her physical or mental health or both are likely to suffer; and that her best interests require the doctor to give the contraceptive advice, treatment or both without the parental consent.

37. In *R (on the application of Sue Axon) v Secretary of State for Health and the Family Planning Association [2006] EWHC 37 (Admin) [2006] 2 FLR 206* Silber J highlighted the prevailing and developing trend towards autonomy for young people concerning their own future. The applicant in that case was seeking declarations that (a) a doctor is not obliged to keep confidential any advice or treatment to an underage person concerning contraception, sexually transmitted infections and abortion and must therefore not provide such advice and treatment

without the parents' knowledge; and (b) a document published by the Department of Health entitled "Best Practice Guidance for Doctors and other Health Professionals on the provision of Advice and Treatment to Young People under 16 on Contraception, Sexual and Reproductive Health" ("the 2004 Guidance") is unlawful. Silber J refused the application and concluded that, following Gillick, the medical profession is entitled to provide advice without the parent's consent provided that (in summary) the young person understands all aspects of the advice; the young person refuses to inform her parents and refuses to allow the medical profession to do so; the young person is likely to have sexual intercourse; the young person's physical or mental health is likely to suffer if no advice or treatment is given and it is in the best interests of the young person to receive such advice

38. Silber J stressed the critical importance of the age and maturity of the young person concerned in any determination which involved the parent's right to exert parental authority over a child. He held that any right to family life on behalf of the parent reduces as their child gets older and is able to understand the consequences of the different choices and to make decisions relating to those choices.
39. In *PD v SD and others [2015] EWHC 4103 (Fam)* P was born female, at the age of 15 he told his adoptive parents that he wished to change his identity to be male. He was referred to GIDS. P's adoptive parents struggled to come to come to terms with P's decision and the placement broke down. P moved to live with foster carers and did not want his adoptive parents to be involved in his new life or receive any information about him. Whilst P's adoptive parents accepted his position, they sought quarterly updates in P's life and welfare. P sought an order that prevented such information being shared with them and Keehan J concluded that the balance between P's Article 8 rights fell decisively in favour of P's strongly held wishes and feelings so that the order sought was in P's best interests and made orders that authorised the local authority not to inform P's adoptive parents in the way that they sought. This decision was based on an analysis of the competing Article 8 rights rather than any analysis of the duties under s 22(4).
40. In *Local Authority X v HI and others [2016] EWHC 1123 (Fam)* Roberts J was dealing with an application made by the Guardian for an order restraining the local authority from disclosing to the parents of a child in care a specific piece of information which the 15-year-old had disclosed to professionals. The legal representatives for the parents were made aware of the information sought to be withheld on condition that they did not impart this knowledge to the lay parties. Roberts J concluded at [59] that '*the harm which would be caused by disclosure of information which has very little, if any, relevance to the issues that need to be determined by the court would be wholly disproportionate to any legitimate forensic purpose served. I am entirely satisfied that depriving the respondent of the opportunity to have this information will not deny to any of them a fair trial. Disclosure would, however, be a breach of [the child's] Article 8 rights.*'
41. The situation in this case differs from *Local Authority X (ibid)* as there the child's parents were aware of the child's identity issues and so could, without prejudice to

the child, be served with notice of the application. The Local Authority considers that even notifying G's mother would create an artificial situation as that would arouse the curiosity and is likely to result in pressure being put on G or her sibling, to reveal what the information was. In their view such a situation is likely to put G at risk of psychological harm.

42. The duty under section 22 (4) only arises '*so far as is reasonably practicable*'. A similar provision appears in s 11(4) Mental Health Act 1983 ('MHA 1983') which sets out what consultation the approved social worker should have with the nearest relative of a patient before admission to treatment or a guardianship application '*unless it appears to that social worker that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.*' Bean J (as he then was) considered the meaning of 'not reasonably practicable' in that context in *TW v London Borough of Enfield and Secretary of State for Health* [2013] EWHC 1180 (QB). It was common ground in that case that the requirement of consultation with the nearest relative is in most cases an important prerequisite for the use of the powers to admit a patient for treatment pursuant to s 3 MHA 1983. Bean J referred to *In R (E) v Bristol City Council* [2005] EWHC 74 (Admin) where Bennett J was considering a situation where the patient did not wish her nearest relative (her sister) to be involved with her case and there was evidence that she would be so distressed by the sister being consulted that it could harm her health. The sister likewise did not wish to be involved. Bennett J concluded in that context (namely s 11(4) MHA 1983) at paragraph [20] '*reasonably practicable*' can be interpreted to include taking account of the applicant's wishes and/or health and well-being'.

43. Bean J agreed with this analysis in *TW* (*ibid*) stating at paragraph 47

'I respectfully agree with this decision of Bennet J. I regard its ratio as being that when an adult whose mental health is in issue has clearly expressed the wish that her nearest relative is not to be involved in decisions about her case, and it appears to the AMHP that to contradict that wish may cause the patient distress to the extent of affecting her health, the AMHP is entitled to regard consultation with the nearest relative as not reasonably practicable.'

He continued at paragraph [48]

'...Bennett J's decision does not, as I read it, depend on the sister's attitude. Instead it concentrates on the patient's wishes, her health and her Article 8 rights to a private life.'

As a result, Bean J concluded that the test was ‘*a subjective one, and a matter of professional judgment*’ (per paragraph [50]) and concluded that it was ‘not reasonably practicable’ within the meaning of s 11 (4) MHA 1983 for the social worker to have contacted TW’s father prior to applying for her admission for treatment, therefore he refused to grant leave for the claim to be brought in that case.

44. Following Bean J’s rationale through to the situation this court is dealing with Ms Stanley submits that this local authority can make the assessment in their professional judgment that it is not reasonably practicable for the local authority to seek the views of the mother due to (i) G’s express wishes for her mother not to be informed, bearing in mind her Gillick competency, and (ii) the likelihood of psychological harm to G if those wishes were not followed, bearing in mind the background to the care proceedings and the history of G’s relationship with her mother and G’s own behaviour. Ms Barrie on behalf of the local authority did not seek to take issue with this analysis.

45. Following the hearing Ms Stanley circulated a document provided by the Care Quality Commission regarding the issue of consent dated December 2017. It is entitled *Brief Guide: capacity and competence to consent in under 18s*. This document includes the following under ‘*Information Sharing*’

‘Where a competent child refuses to allow information to be shared with their parent(s), there should be evidence that the risks of not sharing the information have been considered. Where it is thought to be in the child’s best interests to share information, there should be evidence of attempts to seek a compromise. It is sometimes possible to provide parent(s) with general information about the treatment or condition as a compromise, rather than the specific details of the child’s case. Where it is in the clinician’s opinion that it is necessary to share information in the best interests of the competent child, against their wishes, the Caldicott Guardian should be consulted.’ A Caldicott Guardian is a senior person responsible for protecting the confidentiality of people’s health and care information and making sure it is used properly. All NHS organisations and local authorities which provide social services must have a Caldicott Guardian.
Guidance from the British Medical Association (BMA) dated October 2008

46. Ms Barrie sent a document published by the British Medical Association (BMA) in October 2008 concerning Parental Responsibility which refers to ‘*..treatment decisions that are unlikely to have grave consequences, however, a young person under 16 can consent to treatment provided he or she is competent to understand the nature, purpose and possible consequences of the treatment proposed.*’ As Ms Barrie states in the covering email this supports the arguments advanced on behalf of Ms Stanley in relation to therapy.

Submissions

47. Although the local authority did not take issue with many of the submissions made on behalf of Ms Stanley, Ms Barrie's instructions were to still pursue the application for the declaration sought.

48. Ms Stanley's thoughtful and coherent submissions can be summarised as follows:

- (1) This application is not necessary as if she is right in relying on the analysis of Bean J in *TW* above the local authority have sufficient information to be able to make their own decision that it is not reasonably practicable to consult G's mother under s 22(4) about matters relating to her gender identity taking into account (i) G's wishes for her not to be informed, those wishes have been consistent for at least twelve months; (ii) G has been assessed as Gillick competent; (iii) there is evidence that informing G's mother against G's express wishes will cause G psychological harm due to the likely reaction of her mother and the enhanced anxiety that is likely to cause to G.
- (2) If the application was not necessary, then G's mother's Article 6 rights are not engaged.
- (3) If the court does not consider the application was not unnecessary then for the same reasons as in (1) above the court can conclude that there are exceptional circumstances that justify the court exercising its discretion not to serve the mother or give her notice of this application.
- (4) The declaration sought should not be granted for the reasons outlined in (1) above. In addition, as a matter of principle and public policy, a child who is the subject of a care order should not have less rights than a child who is not subject to such an order. If G was not subject to a care order and was living at home, or elsewhere, the referral to GIDS and any consequent therapeutic assistance would be unlikely to involve G's parents, if that was contrary to her express wishes. A child should be afforded the same right to confidentiality as another child who is not subject to a care order, to suggest otherwise is an affront to public policy and in breach of the child's Article 8 right to private and family life.

Discussion and Decision

49. The submissions in this case in relation to s 22 (4) CA 1989 have honed down on the meaning of '*so far as is reasonably practicable*' in that sub-section.

50. Ms Stanley persuasively submits it is not reasonably practicable for the local authority to consult with the mother on the issue of G's therapeutic treatment whilst G does not wish them to do so when she has been assessed as being Gillick competent to make that decision. This involves a matter of professional judgment

by the local authority that they are entitled to make. They have already made that decision regarding G's sexuality and not to inform the mother about that, as well as the decision to refer G to GIDS in October 2017. Although not specifically referred to in submissions, it would logically follow such a decision could then only be subject to challenge by way of judicial review on public law grounds as being unreasonable. Ms Stanley submits that therapeutic as opposed to medical intervention is not lifechanging but part of a process and is akin to any other confidential information disclosed in a therapeutic setting such as CAMHS. In that situation information about a Gillick competent child should not be disclosed outside of the therapeutic setting subject to the safeguarding limitations of confidentiality, which do not apply here.

51. I agree with Ms Stanley's submissions. They are supported by the analysis in *TW* and make logical sense in supporting the inclusion of '*so far as is reasonably practicable*' in s 22 (4). In the context of this case where the local authority have already taken steps without consulting the parents in relation to, for example, making the referral to GIDS it does not make sense that a duty should arise under s 22 (4) to consult in circumstances that relate to therapeutic treatment which is expressly not supported by a Gillick competent child, and there is evidence to support the conclusion that she is likely to be positively harmed by her wishes being overridden.
52. The other cases set out above that have touched on the duty of the local authority under s 22 (4) have all been in the context of a positive application to prevent the local authority exercising the duty to consult sought by, or on behalf of a Gillick competent child. The declarations granted in those cases have to be considered in the context of the applications actually being made and the underlying circumstances, for example in *PD and JD (ibid)* the case involved the adoptive parents not being informed about medical treatment. In *Local Authority X (ibid)* the duties under s 22 (4) were not the focus of the court's scrutiny but rather the competing rights of the parties under Article 8 and 6 in light of the proposal that information was withheld in the course of care proceedings, the court considered it right to make the declaration in light of both rights being engaged and the information not being pertinent to the court's substantive determination in the case.
53. If G was not subject to a care order Ms Stanley submits G as a Gillick competent young person is able to decide whether her parents are informed of therapeutic provision by the GIDS clinic. Ms Stanley recognises that GIDS requires an adult to attend appointments with G, which she considers can be facilitated by the local authority as a joint holder of parental responsibility. She approaches it on the basis that this is for clinical reasons, including the requirement to consider social support for a young person and for any individual wishing to transition to live in their acquired gender in the later stages of the process.
54. Ms Stanley submits this understanding is supported by paragraphs 11 and 12 of the local authority skeleton argument which provides as follows:

11. In the event that [G] were to decide, during this process, that she wished to access the medical pathway then GIDS have advised that they would assess her capacity to consent to whichever specific treatment she decides she would like to embark upon. Part of the consent process is to consider the views of her support network as well as the capacity of her support network to understand and consent to treatment for her. GIDS indicate that if the young person is in care then a professionals meeting would be advised and the decisions would be taken by the professional network. The Local Authority would need to consent in writing to such treatment. GIDS have indicated that any person under the age of 16 years is expected to be accompanied to GIDS appointments by an appropriate adult.

12. GIDS have further advised children's services that they will be led by [G], and the local authority, as to what information can be shared with her parents. They would wish to explore the information that may or may not be provided through the therapeutic process. They consider that ultimately the mother will find out and so consideration will need to be given as to how this can best be managed. Thought will also need to be given to appropriate safety plans which need to be put in place having regard to the assessed risks. It should be said that the local authority agrees with the GIDS opinion that it is likely that [G's] parents may, in due course, find out the information through their contact sessions, or because [G] has an ongoing relationship with her [sibling H]. It is the local authority's hope that during the therapeutic stage of her work with GIDS [G] can be supported in feeling able to tell her parent's in a planned way but this is something which is only likely to evolve over time and with support.'

55. Ms Stanley submits the Guardian considers that it is vital that G receives appropriate therapeutic intervention at this time without being fearful or anxious about her parents, and in particular her mother's potential reaction. G needs to be assisted to recognise the likely need for her mother to know at some point about her gender identity given that it is likely that her mother will continue to play an important and regular role in her life. It is important that any steps taken before her mother learns about any matters concerning G's gender identity do not make it more challenging for G to share this information with her mother in the longer term.

56. In considering the issues in this case I have reached the following conclusions.
57. I am satisfied that in the absence of any previous case having considered this issue it was not unreasonable for the local authority to issue this application, although in my judgment, for the reasons set out below, I am not going to make the declarations sought.
58. The interim orders that the mother should not be served or given notice of these proceedings should continue until further order. The court can and should exercise the discretion given to it under r 6.36 FPR 2010 for the following reasons:
- (1) G has remained consistent that her mother should not be informed about matters relating to her gender identity. She has been assessed as Gillick competent to make that decision.
 - (2) There is every likelihood that if she was not subject to a care order her wishes would be respected and her mother not informed about issues relating to her gender identity, the referral to GIDs and any therapeutic treatment.
 - (3) The evidence available to the court regarding the history of the relationship between the mother and G, the mother's attitude and behaviour to matters relating to issues of sexuality and G's anxiety and behaviour relating to her mother's reaction and behaviour all lead to the conclusion that if her mother was informed or given notice that G would suffer psychological harm.
59. In the light of that conclusion the court then needs to consider whether it should make the declaration sought, in effect absolving the local authority of their duty to consult the mother pursuant to s 22 (4) in relation to matters concerning G's gender identity, in particular her access to therapeutic treatment.
60. G remains clear she does not wish her mother to know and has remained consistent in that position. The local authority agree that is her position, and that she is *Gillick* competent to make that decision. They also have not sought to argue against the analysis put forward by Ms Stanley that '*in so far as reasonably practicable*' can include a situation where a competent child does not agree to a person being informed and the evidence establishes that to do so would cause that child harm.
61. I decline to make the declaration sought for the following reasons:
- (1) I agree with the analysis of Ms Stanley that the provision in s 22 (4) of '*so far as is reasonably practicable*' can involve a professional judgment by the local authority, in accordance with the ratio of Bean J in *TW (ibid)*.
 - (2) In the circumstances of this case that can include an assessment of the child's wishes as to sharing confidential information about them, the fact that the child is Gillick competent to express those wishes and the evidence of the harm that

could be caused to the child if those wishes were overridden. It is of note the local authority did not seek to take issue with this analysis and in relation to earlier decisions (such as the referral to GIDs) did not consider they had a duty under s 22 (4) to consult the parents about that.

- (3) Ms Stanley accepts that this analysis of the extent of the duty under s 22 (4) would not apply to medical intervention and that an analysis of what is reasonably practicable within the meaning of s 22(4) in relation to medical intervention would be a separate analysis turning on the facts of that separate issue at that time and involving a higher threshold to that of therapeutic intervention.
- (4) As a matter of public policy G should not be in a different position regarding her right to confidentiality by virtue only of the fact that she is subject to a care order.
- (5) The decision of Keehan J in *PD v SD (ibid)* supports this analysis as confirming that the Article 8 balance fell decisively in favour of the child where the child is of an age to make their own decisions. In that case he made a declaration which would prevent the parents being given any information, including relating to medical intervention for the reasons he gave. In this case the declaration sought is limited to the therapeutic intervention, which is a matter, in my view, for the professional judgment of the local authority in considering whether '*it is reasonably practicable*' to ascertain the wishes and feelings of the mother in this case.