COURT INFORMATION FOR TRANS PARENTS [1]

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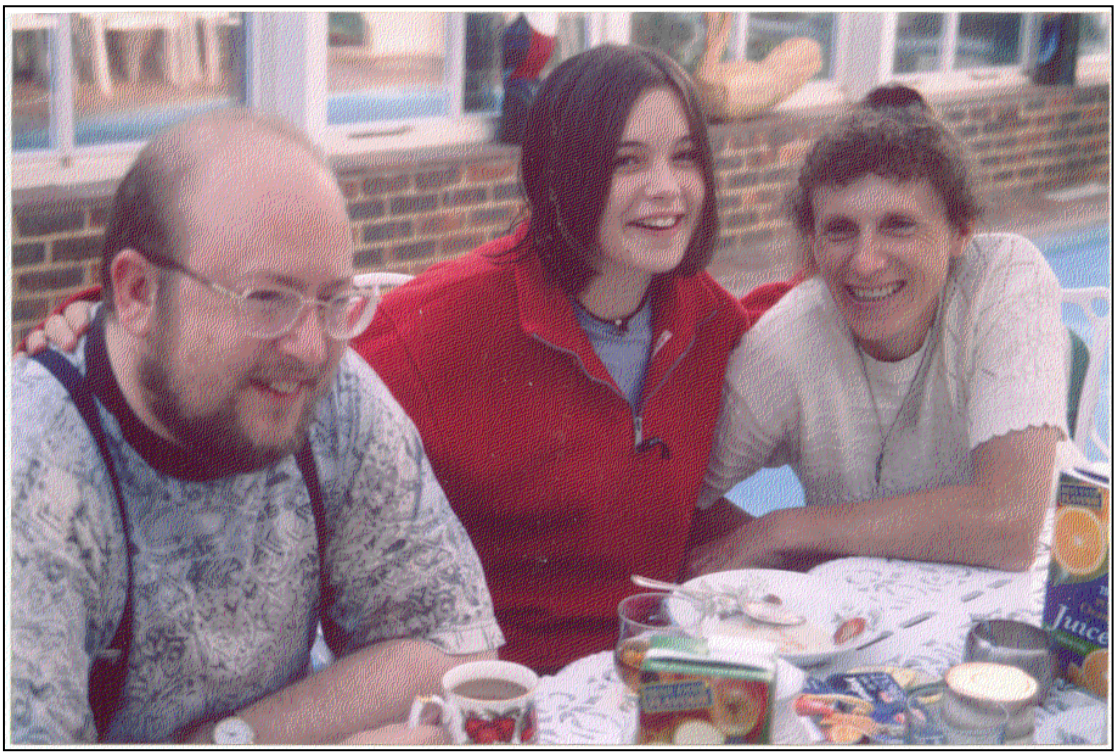
[1] **Terminology in the transgender field is constantly shifting. Trans man, in this document, is taken to mean a person assigned female at birth who identifies as a man, or towards the masculine end of the gender spectrum; trans woman refers to a person assigned male at birth who identifies as a woman or towards the feminine end of the spectrum. Legal and medical literature may still use the outdated terminology of transsexualism. Although reference to the wider trans group which includes non-binary/genderqueer individuals, as well as non-gender people, is not explicit in this document, their rights as parents, family members, carers etc., must be regarded on an equal basis in law, with the rest of the trans and cisgender (non-trans) populations.**



It is important that non-trans parents be given positive and encouraging images of trans parenthood. The parents in this picture are a married trans couple; the father, on the left, is also the natural mother of their daughter.

1 Introduction

This document provides information that is mainly designed to help trans parents who are experiencing difficulties in maintaining relationships with their children and who are, therefore, seeking a Child Arrangements Order or other Order through the Family Court.

The first principle of the Children Act 1989 is that the child's welfare is paramount.

It is usually regarded as in the child's best interests to have a relationship with both parents.

All family cases are issued and heard in the Family Court for England and Wales (except for those cases which have to appear before the High Court, or international cases, both of which remain under the jurisdiction of the High Court). Those who preside in the Family Court are Circuit Judges, District Judges and Magistrates.

Divorce proceedings to end a marriage, or proceedings to dissolve a Civil Partnership, are heard by a District Judge of the Family Court. Orders relating to the children of a marriage or Civil Partnership are usually dealt with at the same time. The Judge will usually keep jurisdiction in any case involving children, in respect of whom an Order has already been made. However, if no such Orders are made at that time, and disputes arise at a later date in relation to the children, these matters, as well as matters relating to the children of parents who are not in a legally recognised relationship, may be dealt with by any Judge of the Family Court but usually District Judges or Magistrates. The relevant legislation is contained in The Children Act 1989 (CA 1989).

The principle that the child's welfare is paramount has to be balanced against Article 8 of the Human Rights Act (HRA, 1998) which gives greater rights to parents against disproportionate State intervention in family life. This was enacted on October 2nd 2000 and reflects European Human Rights legislation. The implementation of Brexit will not change this since the UK Human Rights Act already enshrines the ECHR articles in UK law. Article 8 of the Act states:

> *"Everyone has the right to respect for his private and family life, his[2] home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".*

[2] 'his' is not gender-specific. It is used throughout the Human Rights Act to indicate any individual.

Although this enhances the rights of trans parents, Article 8 is a "Qualified Right", not an "Absolute Right", therefore, it would be possible, for instance, for the legal representative of a hostile and uncomprehending mother, to use the argument that it was necessary "for the protection of health or morals" (of the child) to refuse contact with the natural father (trans woman) – or vice versa. This would not be right or just, but you need aware that such arguments might be made, and be ready to counter them when they arise, possibly by bringing expert opinion to bear. This might be in order to outline the innate biological nature of the condition, on which basis the World Health Organisation has re classified 'gender incongruence' in the International Classification of Diseases (ICD11).so that it is no longer regarded as a mental disorder. A helpful synopsis of the science in this field "Biological Correlations in the Development of Gender Dysphoria", is published in The Lancet 2016.[3]

2 The most frequently sought Orders in relation to children

These are:

- **PARENTAL RESPONSIBILITY ORDER** (PR) (section 4, CA 1989)
- **CHILD ARRANGEMENTS ORDER** (contact) (section 8, CA 1989) (old-style access)
- **CHILD ARRANGEMENTS ORDER** (living arrangements) (section 8, CA 89) (old-style custody)

Other orders under section 8 of the Children Act, which are less frequently sought, are: Specific Issues, and Prohibited Steps Orders. These apply only when Child Arrangement Orders cannot achieve the desired outcome, or old-style Residence or Contact orders have not done so. Special Guardianship Orders (s 14a Children Act 2002, as amended by section 115, Adoption and Children Act, 2006) were introduced in 2005 to provide legal status for non-parents who are, or wish to care for children in a secure, long-term placement.

3 Standard of proof

The 'standard of proof' in the Family Court is 'the balance of probabilities'. This means that decisions have to be made on the basis that something is more likely than not, to have happened (unlike criminal courts where matters have to be proved 'beyond reasonable doubt').

4 Confidentiality: Human Rights Act 1998 (HRA) & the Gender Recognition Act 2004 (GRA)

Traditionally, family proceedings have not been open to the public. However, members of the Press have the right to attend but not to report in such a way that a child could be publicly identified.[4] It is the court's responsibility to protect the identity of any child in the proceedings, which effectively bars the Press from publishing the names of the parents.

The Human Rights Act (HRA), Article 6 reads:

> *"Judgement shall be pronounced publicly, but the press and the public may be excluded from all or part of the trial in the interest of morals, public order or national security, in a democratic society where the interests of juveniles or the protection of the private life of the parties so require……..."*

[3] Reed T., and Diamond, M, Biological Correlations in the Development of Gender Dysphoria, The Lancet (2016) Volume 388, p12-13.

[4] Accredited Members of the Press have the right to attend hearings in family proceedings but at any stage the court may direct that the media may not attend all or any part of the hearing if satisfied either that exclusion is necessary in the interests of a child connected with the proceedings; or for the safety or protection of a party or witness or for the orderly conduct of proceedings or because justice would otherwise be prejudiced.

The privacy protection under Article 8 of the Human Rights Act 1998 applies whether or not a parent or other relevant person is protected by application for, or possession of, a GRC.

However, the court will also have regard to the fact that anyone with a Gender Recognition Certificate under the Gender Recognition Act (GRA, 2004) is covered by stringent privacy protections; these must not be overruled by the court without good reason. The GRA exceptions may not be used to override the privacy protections of the HRA.

Courts may not refer to the trans history or background of a person who is party to the proceedings, or who appears in documentation before the court for other reasons. For instance, a grandmother who had provided temporary care for children whilst investigations were ongoing, was described in court papers as transgender. Even though this was a part of her history, it was not relevant to the case, but when asked to remove this reference, the legal representative for the local authority, refused on the grounds that the GRA specifically permitted this. This was a misuse of the GRA exception.

In view of the misuse of the exceptions under the GRA, by some courts, Sir James Munby (President of the Family Division) issued this statement in 2014:

> *"In specified circumstances, section 22(4) of the Gender Recognition Act 2004 permits the disclosure of what would otherwise be "protected information" about an individual who has applied for a Gender Recognition Certificate (GRC).*
>
> *The effect of section 22(4)(e) is that 'protected information' may be disclosed 'for the purposes of proceedings before a court or tribunal.' The facts of the individual cases in which the disclosure question will arise are likely to vary widely. In some instances it will be relevant to the issues to know that an individual has a trans gender history.*
>
> *In others it will be entirely irrelevant. Disclosure should not permitted in those cases where it is unnecessary and irrelevant to the issues. There is a need for judges to be aware of and astute to the issues."*

5 Who may be a party to a case?

The 'parties' to the case are those who either have the automatic right to take an active part in the hearing, or those whom the court 'joins' as parties, because their presence is necessary and relevant to the case. Those with an automatic right to take part are all those with Parental Responsibility (see paragraph 9); this will include mothers certainly, and possibly fathers (see paragraph 10). In private law cases, a natural father does not need to have PR in order to be a party to the case, but in Public Law cases (those involving Social Services) he will need to be joined as a party at the discretion of the court. Others, e.g. grandparents, may also be joined as parties if they are directly involved in the issues, such as, seeking contact with a grandchild, or providing a safe venue for another person to have a contact visit with a child.

If you are applying for an Order, you are the Applicant, your ex-partner (usually) is the Respondent.

6 Delay

As a general principle the court will wish to avoid any unnecessary delay as this is regarded as not being in the child's best interests. However, delay may occur where it is 'planned and purposeful', that is, something specific will be happening in the meantime which should lead to a better outcome.

7 No Order principle

The court will also take into account what is known as the 'no order' principle. This means that if matters can be agreed in the best interests of the child, without making an Order, then the court should not make one, but if an Order is deemed to be unavoidable, it should not be any more heavy-handed than is absolutely necessary to achieve a solution.

8 CAFCASS – Children and family court advisory and support services

The roles of the Official Solicitors, Children's Guardians, Parental Order Reporters (Human Fertilisation cases) and Children and Family Reporters all fall under the CAFCASS umbrella. This is intended to ensure:

- National provision and funding for mediation and child contact centres;
- National standards of training;
- National standards of report writing;
- Legal representation for the child.

You will often hear CAFCASS officers mentioned in court. This may be a Children and Family Reporting Officer (still usually referred to as a CAFCASS officer) who is likely to be involved in private proceedings where there are, for instance, disputed issues of contact with a child; or, in public law cases, the appointed CAFCASS officer is known as the Children's Guardian. The Guardian represents the interests of the child in court (see paragraph 13).

CAFCASS officers may have a variety of roles. They are regarded as 'the ears and eyes of the court'; they may write reports for the court, observe contact and monitor the progress of contact. They are independent of the parties. Where a report is ordered, it is their function to interview both parents and, if possible, the child, to ascertain the child's view of the situation. If relevant, they may also speak to other family members, e.g. grandparents, aunts and uncles. The CAFCASS officer may need to observe you with your child so that an assessment of the relationship can be made. Unfortunately, this sometimes has to be done under rather artificial circumstances, e.g. in the CAFCASS office or at a Contact Centre. It is vital that you are punctilious about keeping any appointments made. Always let the CAFCASS officer know if, for any reason, you cannot keep an appointment. Co-operate to the best of your ability with any requirements laid down by the court or the CAFCASS (see 'warning notices' and Enforcement Orders at paragraph 18). You will see the CAFCASS officer's report and, usually, where the issue of contact is disputed, the officer will give oral evidence to the court. The officer's report and evidence will refer to the Welfare Check List (see paragraph 14). The officer may not be present at every hearing, however.

9 What does having Parental Responsibility (PR) mean?

Having Parental Responsibility for a child means that you have a legal connection with that child and you have the right to be consulted on all matters relating to, for instance, schooling and important medical decisions. However, if you are not the parent with continuous care of the child because you are not part of the family unit, you do not have the right to interfere with the day-to-day running of the child's life. In practice, this is usually the mother (see paragraph 10). If you are, the father and you do not have Parental Responsibility for your child, you may ask the court to make such an Order in your favour.

You will need to show evidence of:

- commitment to the child;
- attachment between you and the child; and
- that your reasons for seeking the order are not spurious.

10 Parental Responsibility (PR) Orders

A person with Parental Responsibility (PR) will include:

- the natural mother automatically; the natural father, if married to the mother at the time of child's birth, or having subsequently married her; or having a section 4(1)(b) Agreement or a section 4(1)(c) Order (Children Act 1989); or
- anyone with a Residence Order or with whom the child lives under a Child Arrangements Order, s8 and s12, (Children Act 1989) or a Care Order, s31, s33(3) (Children Act 1989); or
- anyone with a Special Guardianship Order, s14A, CA 89, an Adoption Order; or a Placement Order (s22 Adoption and Children Act 2002).

Under a Placement Order the Local Authority and prospective adopters share PR alongside any parents who have PR. The local authority determines the extent to which the PR of parents and prospective adopters is to be restricted (s25 Adoption and Children Act 2002).

An Adoption Order will extinguish all PR held by anyone other than the adopters.

In relation to births registered from 1 December 2003, a natural father who is not married to the mother of the child but whose name was entered on the relevant child's birth certificate will automatically have Parental Responsibility. In respect of children born before 1 December 2003, a natural father may now obtain PR by being entered on the relevant child's birth certificate at a later date, with the agreement of the mother.

Step parents and 'civil partners' (Civil Partnership Act, 2004) may acquire PR under s4A (CA 89). Where step-parents and civil partners adopt their partners' children, the partner who is the natural parent retains PR (s46 3b, Adoption and Children Act 2002).

If you are a trans man who was the birth mother of your child, or you are a trans woman who is the natural father of the child and you are, or were, married to the mother and/or your name is on the birth certificate, or you have obtained PR through any of the other means outlined above, you retain PR after transition unless an Adoption Order is made in favour of someone else.

11 Effect of Gender Recognition Act on Parental Responsibility

Some married couples, where one partner to the marriage has transitioned, choose to remain in a legal marriage. The trans partner in these circumstances is not able to obtain a Gender Recognition Certificate (GRC, under the Gender Recognition Act, 2004, operational from May 2005) and,

therefore, remains legally identified according to the original birth certificate, and the trans person's status in relation to any children remains unchanged.

Since the introduction of the Marriage (same-sex couples) Act, 2013, (operational from 2014) a couple in an existing marriage, must convert their marriage to a 'same-sex' marriage, with the written consent of the non-trans spouse, in order that the trans partner, may obtain a GRC and a new birth certificate (where the birth certificate was registered in the UK).

Alternatively, the couple may enter a Civil Partnership (the Civil Partnership Act, 2005). Changing a marriage into a Civil Partnership is not straightforward and it will impact on matters such as property ownership, pensions, inheritance, etc., but it will not change your parental responsibility in respect of your child. In these circumstances, if you are the birth mother and you are legally a man under the GRA, as above, you retain PR. If you then enter into a Civil Partnership with your ex-husband, both of you retain PR in respect of your child. If you enter into a Civil Partnership with a man who is not the child's parent, or you marry a woman, either of these partners may obtain PR as a step-parent, without extinguishing your PR in accordance with the mechanisms outlined above (s46 3b, Adoption and Children Act 2002).

If you are the trans partner who is the natural father of the child and you are now legally a woman under the GRA, having annulled your marriage to the child's mother, you retain PR if you already have it, ~~whether~~ even if you enter into a civil partnership or same-sex marriage, with your ex-wife, or another woman, or you marry or enter a civil partnership with a man.

If you are a trans woman who is the father of the child and you have PR, you will retain this even if your ex-wife has a new partner who has PR – it is possible for more than one 'father' to have PR at the same time – unless the new partner obtains PR through an Adoption Order in respect of your child; this will automatically extinguish your PR.

N.B. Currently, the child's birth certificate cannot be altered to reflect the changed gender status of a parent, even if they have a GRC.

12 Parents' rights regarding the treatment of a gender diverse child

Any individuals with parental responsibility, whether or not they are still part of the family unit, have the right to voice an opinion about, but not prevent, transition (change of gender role) and hormone blocking treatment for the relevant child. Technically, this would be up to the age of 18, however, in medical terms, a young person is deemed competent to consent to treatment, from the age of 16, unless shown to be otherwise. Prior to 16, the young person would have to be 'Gillick' competent.[5] The court would take account of the medical opinion regarding readiness for treatment, the competence of the young person to consent, the views of the young person, and the level of support from the primary carer.

GIRES strongly recommends that all parents (primary carers or guardians) as well as courts, support this valuable treatment rather than oppose it. A young person who has entered puberty and who is desperate to stop the pubertal changes that are occurring, experiences 'psychological torture'.[6] The medication to prevent this is safe and reversible. This provides a 'diagnostic phase' during which time the young person is more able to make decisions about their future, without the daily pain of the

[5] http://www.nspcc.org.uk/preventing-abuse/child-protection-system/legal-definition-child-rights-law/gillick-competency-fraser-guidelines/

[6] Kreukels, BPC and Cohen-Kettenis, PT (2011) Puberty suppression in gender identity disorder: the Amsterdam experience, National Review Endocrinology 7, 466-472. doi:10.1038/nrendo.2011.78

developing body. Not providing this treatment is not a 'neutral option', and increases the risk of self-harm and suicidality in the young person. [7,8]

If, for instance, the father is absent but is deemed likely to raise objections to this treatment, the mother may obtain a Specific Issue Order (SIO) as a precautionary measure to avoid any such problems. Where the father's whereabouts are not known, an application may be made in form C2 together with statements about the efforts to find him. This should be done at the first directions hearing, at the same time as the SIO application. If the father cannot be traced, and the Judge agrees that 'all reasonable steps' have been taken to trace him, including through family, friends and social media, then permission may be granted not to serve notice on him, and the case can go forward without him. If the Judge is not satisfied that sufficient steps have been taken, then directions will be given about further efforts to be made.

13 Special Guardianship Order (SGO)

An SGO may be made where children cannot be cared for by their parents, and someone who is not the parent is going to look after the child throughout childhood. The SGO gives the special guardian legal Parental Responsibility for the child which is expected to last until the child is 18. But, unlike Adoption Orders, these orders do not remove PR from the child's birth parents, although their ability to exercise it is extremely limited.

In practice, this means that the special guardian will have more clear responsibility for all day-to day decisions about caring for the child or young person, and for taking important decisions about the upbringing, education and health. Although birth parents retain their legal parental responsibility, the special guardian only has to consult with them about these decisions in exceptional circumstances, for example, if a child became seriously ill and needed special treatment.

14 Welfare Check List (WCL)

In private family cases, **where there is a dispute** between the parties regarding, for instance, whom the child should have contact, or with whom the child should live, the Children Act 1989 requires the court to have regard to the WCL. (The WCL is *always* taken into account in public law cases, that is, those involving the Social Services/Local Authority).

The following principles must be taken into account where relevant:

1. the ascertainable wishes and feelings of the child, having regard to age and understanding;

2. the child's physical, emotional and educational needs;

3. the effect of any change in circumstances;

4. the child's age, gender and any other characteristics that the court thinks relevant;

5. any harm the child has suffered or is at risk of suffering;

6. how capable the parents (or any other relevant carer) are of meeting the child's needs; and

7. the range of powers available to the court.

[7] World Professional Association for Transgender Health, Standards of Care (2011) p21
[8] Temple Newhook, J. et al 'A critical commentary on follow-up studies and 'desistance' theories about transgender and gender non-conforming children', International Journal transgenderism Vol 19 (2018)

In practice, where the issue is about contact with a parent, some of the items on this list may not be deemed relevant.

However:

1. the child's view, where ascertainable, is relevant. Sadly, as with all cases of relationship breakdown, this is open to manipulation where transphobia exists in other family members, social workers and/or court officials;

2. the child's emotional need to continue a relationship with a loving parent will be regarded as crucial;

3. the effect of any change in circumstances is relevant in cases where there are issues about where and with whom a child lives. As little disruption as possible is usually regarded as desirable;

4. it will be regarded as important that the issue of the trans parent's gender reassignment, including a change of gender role, is dealt with in an age-appropriate manner. Young children are often more accepting, and less concerned about peer group pressure than are adolescents;

5. the harm, or risk of harm, will need to be addressed as it is very likely to be raised by a hostile parent. Family members may even see gender dysphoria as representing a danger to children. Information should be provided to the court to allay such fears (see paragraph 12).

6. assuming that the primary carer is providing adequate physical care, and the child is attending school, the principle issue may be the carer's ability to acknowledge the child's emotional need for contact with the trans parent?

7. the powers used by the court should be as light as is consistent with achieving the goal of supporting positive relations with both parents, and protecting the physical, emotional and educational needs of the child.

15 Presumption of involvement of both parents

The court is required to presume that the involvement of each parent in the life of the child is beneficial for the child unless the contrary is shown. So, the court has to consider this when considering an application to make, vary or discharge a Child Arrangements Order, a Prohibited Steps Order, or a Specific Issue Order, where one of the parents opposes that application. To override this presumption it would have to be shown that involvement of the parent concerned would put the child at risk of suffering harm in some way. 'Involvement' can mean direct contact with the child, or indirect - for instance letters, emails, texts and via social media. The law doesn't say how much time should be allocated to each parent.

In line with this presumption, and the 'parental responsibility' of the parents, they are expected to try to resolve disputes between them through discussion and agreement to ensure that the relationship between the child and both parents can be managed safely and appropriately. A Parenting Plan is a tool that has been designed to assist separated parents, to identify, agree and record in writing all of the practical aspects of their child's care. It can be a useful basis for discussions and a draft is available from:
https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/parenting-plan/

16 Mediation Information Assessment Meetings

Before making an application for a private law order (e.g., Child Arrangements Order, Parental Responsibility, Special Guardianship Order, Order for Change of Surname or Removal from the UK), applicants must provide confirmation that they have attended a Mediation Information Assessment Meeting (MIAM), or confirmation from a mediator that an exemption applies. This is not a requirement to attend mediation but a short meeting to provide information about how mediation can be used as a way of resolving disputes. This initial meeting is conducted by a trained mediator who will assess whether mediation is an appropriate means of resolving the issues and, even if it is not, the mediator can discuss alternative forms of dispute resolution which could prevent the matter going to court. A list of authorised mediators can be found at www.familymediationcouncil.org.uk. The person who would be the respondent to the application is also expected to attend a MIAM although it need not be on the same occasion.

Exemptions from attending a MIAM include unspent convictions for domestic violence offences, the existence of a relevant protective injunction granted within the last 2 years, where the respondent is not resident in England and Wales, bankruptcy and existence of child protection concerns. However, the majority of applicants will be expected to have attended a MIAM with a view to diverting the dispute from the court process if possible. If the claim that a MIAM exemption exists, is shown not to be valid, the court may direct that the parties attend a MIAM before the first hearing, or the court may adjourn the proceedings so that a MIAM meeting can take place.

17 Child Arrangements Order (see and spend time with the child)

A Child Arrangements Order may establish, sometimes in clearly 'defined' terms, how often and under what circumstances a child shall have contact with the parent who no longer lives within the family unit. Courts accept the principle that a child is entitled to have a relationship with both natural parents and that this is in the child's best interests. Research and statute reinforce this principle. The HRA enhances the right of the parent who does not live in the family unit, to have contact with the relevant child. Contact is a separate issue from 'maintenance' payments, although they may be dealt with on the same occasion.

The process of seeking a Child Arrangements Order is initiated by making a formal Application to the court. Applications, whether for one or more Order – say PR and an order to arrange contact with the child – cost £215. The court will send a copy of the application to CAFCASS so that safeguarding enquiries can be carried out in readiness for the First Hearing Dispute Resolution Appointment (FHDRA). The enquiries include whether the family is known to local authority social services and police checks and in addition CAFCASS will contact both parties to conduct a telephone interview. The outcome of these enquiries will be recorded in a short report which will be provided to the court and usually to the parties before the FHDRA. A date will be set for you and your ex-partner to attend the FHDRA. This is a hearing before a Judge, or before two or three magistrates, or before a justices' legal adviser. The purpose of this hearing is to identify and to narrow any issues between the parties, to timetable future hearings if agreement cannot be reached at the first hearing and, if necessary, to appoint a CAFCASS officer (see paragraph 8).

Courts vary: some may offer the opportunity to speak to a mediator or a CAFCASS officer at court before the hearing commences. It is in your interests to endeavour to reach agreement through this procedure if possible. If agreement is reached, but you still feel sure that the other party will not comply with the agreement, you may choose to continue with the court process in the hope of achieving a favourable Order. This will have the effect of making the agreement enforceable by law. In some cases, during the Hearing, a Judge will, in effect, mediate, achieve agreement and immediately make a Child Arrangements Order.

Child Arrangements Orders may be made, not only in respect of a parent, but also in respect of anyone with whom the child has a relationship: step-parents, grandparents, siblings, cousins, aunt and uncles, etc. (see paragraph 5).

If you are, for instance, the child's father and you are being treated at a Gender Identity Clinic which insists that you live full-time as a woman, this may cause difficulties if the child's mother insists that you revert to dressing as a man in order to have contact with your child. Although it is now possible, under the Good Practice Guidelines (2013), to be prescribed hormones without changing your gender role, it is still a requirement to meet the criteria for genital surgery, so reverting to your previous role may cause difficulties for you. How you decide to handle this will depend on your individual circumstances. If you have only recently transitioned you may regard it as reasonable to make this compromise for a while. It would not be reasonable, however, for the mother to insist that you continue to do this over a prolonged period. Courts do not always understand these issues and you may need to ask for permission to call 'expert' help in these circumstances.

18 Continuing dispute between parties regarding contact with a relevant child (warning notices)

Where agreement has not been reached, you may wish to seek legal advice if you have not already done so. Legal Aid is generally no longer available in private law proceedings. You are not obliged to be legally represented in court. Many parents represent themselves.

You may be told to provide the court with a written statement (see paragraph 22), setting out your view of the situation and what you hope to achieve. The court may ask the CAFCASS officer to write a report which will be available to both parties and to the court prior to the next hearing.

The court must attach a 'warning notice' which details the consequences of failing to abide by the details of any Child Arrangements Order. A court may make an interim Order, with closely defined details of dates, times and duration of contact, the venue – this could be a 'contact centre' – and any requirement for supervision or the presence of a specified person, such as a grandparent. Contact could include some 'indirect' contact by phone, for instance.

The 'warning notice' spells out what the consequences will be if the specifications in the Order are breached. If you or the parent with the full-time care of the relevant child is found to have failed to comply with the Order without reasonable excuse, an Enforcement Order may be made by the court, upon application by the aggrieved party, requiring the person who was responsible for the breach, to do unpaid work (for between 40 hours to a maximum of 200 hours) to be performed within the next 12 months. The Enforcement Order may be 'suspended' by the court. This means that if the person

against whom the Order is made, complies with the Child Arrangements Order, the unpaid work need not be undertaken. If the person continues to breach the Child Arrangements Order, then the Enforcement Order may be activated and the unpaid work will have to be done. If this Order is not complied with, more hours of work may be added.

In addition, if you are seeking contact with a child, you may be required to undertake a 'contact activity'. A report by a CAFCASS officer will be necessary to establish the appropriateness of the activity and your ability to carry it out. This could mean you would have to attend for instance, a 'parenting programme' or, if you are found to have been violent towards your partner, then a 'domestic violence perpetrator programme' may be ordered. These programmes will be organised, or perhaps run by, the CAFASS organisation, sometimes in partnership with the Probation Service. Where an outside organisation rather than CAFCASS provides the programme, you will have to fund this. These courses can be expensive. CAFCASS will take account of your ability to travel to where the programme is being run, and your ability to pay.

If there is financial loss as a result of a breach of the Order, for instance, then this may be ordered to be repaid by the other party.

Scenario 1
You are the father (Shirley) of a child (Susan) who is living with her mother (Mary). You have a Child Arrangements Order that allows you to take Susan on holiday to France for a specified, agreed, two week period in the summer. You purchase tickets for you and Susan to travel by Eurostar. Mary is required to bring Susan with her suitcase to St Pancras station at 10.am. She fails to do this without any warning and you are unable to take the train for which the tickets were issued. You call her cell-phone but there is no response. The tickets are not valid for any other time, and they cannot be exchanged nor can you be refunded.

Unless Mary has a reasonable excuse, she could be liable for the price of the tickets.

Scenario 2
You are the mother (David) and primary carer for your son, Michael. Your ex husband, Harry, is due to collect Michael at 5:30 pm and keep him overnight, returning him the next evening. You have tickets to go with your partner Janet to the theatre that evening. Harry does not arrive to collect Michael and does not make any attempt to contact you to let you know that he can't make it. Your own mother is not available to look after Michael, so you and your partner both miss the show. The tickets cannot be exchanged or refunded.

Unless Harry has a reasonable excuse, he may be liable for one or both tickets. Harry may argue that he is only responsible for one ticket, as either you or Janet could have gone alone to the theatre. The court may or may not deem that to be reasonable.

19 Maintenance

The issue of maintenance is frequently raised in court, by either:

a) the parent with care of the child, who complains that maintenance is not being paid and, therefore, the other parent does not have the right to have contact with the child; or

b) parents who are paying maintenance and argue that this gives them the right to have contact with the child.

Both these positions are wrong. A parent who is not paying maintenance may not be denied a Child

Arrangements Order merely because of that non-payment. However, if you are the 'absent' parent and you are paying maintenance, although this is a helpful indicator to the court that you are committed to your child, it does not automatically entitle you to a Child Arrangements Order.

The most important factor considered with regard to contact is the welfare of the child. Your obligation to provide maintenance for your child arises because you are the natural parent of the child, whether or not you have Parental Responsibility in law.

20 Proof of paternity

If you are (or believe yourself to be) the father of a child in respect of whom you are seeking any Order of the court, and your status as a father is denied by the child's mother, you may seek to 'prove' your paternity. This may be more difficult if, by virtue of having a GRC, you are now a woman 'for all purposes'. The GRC makes no mention of the previous name and gender status by which you may have been identified on the child's birth certificate, so it does not provide a link between your present status, and the name on your child's birth certificate.

In these circumstances it may be helpful to provide the court with copies of either a Deed Poll document or a Statutory Declaration. This will make the link between your previous name and status, and your present name and status.

If this evidence is not sufficient to convince the court, and/or your ex-partner still argues that you are not the father, the usual practice is to obtain DNA tests; you will have to fund these tests.

You may fear that disclosing your trans history in court will lead to unwanted publicity but, as outline in paragraph 4, the ban on reporting any identities outside the court, will protect you against this.

21 Calling an 'expert witness'

Expert witnesses are often psychologists who are asked to provide written reports on specific issues, for example, your relationship with your child and your ability to care for the child during contact visits. Very few courts have expertise or understanding regarding gender variant conditions, so you may wish to have your position supported by an expert witness who can help the magistrates, judges, and lawyers to understand more about the condition of gender variance and the impact this has on your ability to meet requirements of the court.

Specific questions may be raised about the effect on a child of having a trans parent. It is particularly important to provide evidence from research to show that having a trans parent is not detrimental to the child, whereas losing a parent is. [9,10,11] Expert evidence may only be put before the court with the court's permission. Any party wishing to instruct an expert or produce expert evidence must make a formal application to the court as soon as possible setting out why the expert is required, the expert's CV, what questions will be asked of the expert, how long the expert would need to produce the report, how much the report and a court appearance would cost and any dates when the expert would not be available to attend court.

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9 Green, R (1998) Transsexuals' [sic] children. *International Journal of Transgenderism* 2(4)1–6. Available at www.symposion.com/ijt/ijtc0601.htm

10 Freedman, D, Tasker, F, Di Ceglie, D (2002) Children and adolescents with transsexual [sic] parents referred to a specialist gender identity development service: a brief report of key development features. *Clinical Child Psychology and Psychiatry* 7(3):423–432. SAGE Publications. Abstract available at http://ccp.sagepub.com/cgi/content/abstract/7/3/423

11 Golombok, S (2000) *Parenting: what really counts?* Routledge, London.

If you intend to ask an expert witness who is well-versed in gender identity matters to write a report and possibly to give evidence, you should say so at the First Hearing Dispute Resolution Appointment so that the court can consider whether such expert evidence is necessary to enable the court to reach its decision and, if granted, a date for the submission of the expert's report can be scheduled.

22 Your Statement

When writing your statement for the court, focus on the benefit to the child of continuing to have a close relationship with you. Try not to indulge in criticisms of your ex-partner. Explain, in straightforward terms, those elements of your relationship with the child that demonstrate your closeness. If you have been in sole charge of the child regularly, over a period of time, and if you have shared activities with the child, these matters will help your application. Show that you are sensitive to your child's and to your ex-partner's need for time to adjust to your altered gender presentation. If possible, show a willingness to comply, in the short term, with contact arrangements which you may, in fact, find irksome (see paragraph 17 above). Sometimes, for instance, a particular venue is stipulated. If expert opinion has been allowed, you may refer to the report to allay any fears, expressed by your ex-partner, about the risk to children, posed by gender incongruence and transition of gender role. Sometimes, if unexpected evidence or allegations arise after you have made a statement, you may ask to have a further Directions Hearing at which you may be given permission to file a further statement, so long as this would not cause unnecessary delay. However, try not to have a written slanging match; it won't help your cause.

23 The court hearing

The Court Usher will tell you where to wait and when the hearing of your case is likely to begin. Ushers know a good deal about the court process. If you have any queries, ask them. You will be asked for your name. Make clear to the usher how you wish to be addressed, in terms of name, pronouns and title: Miss, Ms, Mrs, Mr or Mx. You should be allowed to use toilets that accord with your dress and presentation at court. If you are misgendered in court, you may object. If you are represented by a solicitor or barrister, make sure they know how to address you, and ask them to challenge any lapses by other court users, including the Judge or magistrate.

Family Courts are less formal than criminal courts. Often the seating is all at one level; Judges do not wear their wigs and gowns; Magistrates wear reasonably formal day clothes. It is advisable for all court users to dress discreetly. You should dress in accordance with your present gender status, but don't be flamboyant; office wear is appropriate. If you are legally represented, ask the advice of your solicitor.

If you and your ex-partner are both legally represented, it is common for your representatives to do some 'horse-trading' before coming into court. Again, if agreement can be reached, this is an advantage. The court may then follow the 'No Order' principle and decline to make an Order. If you and your ex-partner have reached agreement but only through mediation at court and you think the arrangements may break down despite that agreement, you can still indicate that you feel an Order is necessary to ensure that your ex-partner complies with the agreed arrangements. Your representatives may write out these arrangements, which can be incorporated into a court order. Under these circumstances you may not need to give evidence under oath.

The Judge or the Magistrates will have read the statements and the reports before coming into court. As the Applicant, if you are to give evidence, you will go first. You may be asked to take the oath in the witness box, but the court may then allow you to resume your seat, (unlike criminal court where witnesses remain standing in the witness box). You will be asked to confirm the contents of your statement and to add any relevant updates. The Respondent, your ex-partner (or legal representative) will then have the opportunity to cross-examine you. If you are supported by evidence from an expert witness, your ex-partner (or legal representative) may challenge this and may cross-examine the expert. Your ex-partner will then take the oath and go through the same process. If you are not represented, you will have to cross-examine your ex-partner yourself.

Remember to confine yourself to asking questions and not 'tell your story'. Later on in the hearing, you will be given the opportunity to do this, and to explain the matters that are important to you.

CAFCASS officers may assess the progress of any contact which has taken place, and give evidence and be cross-examined. You may challenge the view, but again, only by asking questions. The CAFCASS officer's view is crucial and is usually accepted by the court. Unless there are serious safeguarding concerns, the report will favour contact between parent and child. However, it may be frustrating to you to find that what is suggested by this officer and ordered by the Court is a continuing programme of defined arrangements, which initially allow meetings to take place at a particular Contact Centre, at specified times and for limited duration (say, 2 hours). Alternatively, visits may be organised in your own home, your ex-partner's home or at the home of, and in the presence of, a named grandparent or other family member. Occasionally, this grandparent (family member) may also be assessed and may give evidence to the court.

Children seldom appear at these hearings, but if they wish to be heard and are deemed old enough (possibly 12 upwards, but there is no absolute lower age limit) the court may permit their attendance.

The court will issue the 'warning' as outlined in paragraph 18 about what will happen if the order of the court is not adhered to by either you or your ex-partner. If contact has settled down, and there are no problems, no further order may be deemed necessary. However, where arrangements under the court order are not working, then further court hearings and court orders may follow. An update report from the CAFCASS officer may include suggestions about how contact arrangements can be made to work.

24 Final Child Arrangements Order

The final Child Arrangements Order will usually include an on-going regime of increasing contact between you and your children. It is always hoped that the initial position regarding contact will develop, through increased communication and co-operation between the parties themselves, to a more flexible regime of contact, progressing eventually to overnight staying contact and holiday periods of at least a week. Sometimes, the final Order will encompass such details over a prolonged period, say, two years. Tiresome though this is, it may be in your favour to have all the details regarding dates, times, method of collection and delivery of the child, specified carefully in the Order then, if these commitments are not met by the Respondent (the primary carer), then Enforcement Orders (see paragraph 18) may be made. If a defined Order comes to an end and contact problems continue, you should try to resolve disputes with your ex partner through mediation if possible before renewing your application to the court.

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25 Justices' reasons

Magistrates (Justices of the Peace) are required to write "reasons" for their decision. When a final order is to be made, this process of writing the "Justices' reasons" can take some time in cases where it has been necessary for evidence to be heard. Until these reasons are completed, the announcement of the decision cannot take place. Copies of this document, including the details of the contact/living arrangements, are provided to the parties, sometimes immediately, sometimes a few days later. Judges will also explain their reasons, but they are not required to give a detailed written account before making their judgement. The "Justices' Reasons" document is an important one because it provides you with a record, so keep it in a safe place. Older children may benefit from reading the document and understanding how and why the court has made certain decisions. Younger children may wish to read the document when they are older as it may also help them to understand and come to terms with the changes in their lives. It will help them to understand that you did not wish to be separated from them and that you were prepared to work hard to maintain contact.

Such situations are fraught with difficulties for all families. Parents who are Applicants almost invariably have to show extreme patience and understanding at a time when they may feel that the respondent parent seems to show none. **Applicant parents need to appreciate that children eventually make their own decisions and will often, of their own volition, seek out an absent or estranged parent to continue a disrupted relationship or build a new one. Trans parents' court experiences are not different from others in this respect** but, of course, they do have many more obstacles to overcome owing to the courts and the court officers having less experience in dealing with families where gender reassignment and transition are the central issues and, also, owing to the possible hostility of family members.

26 Family Assistance Orders (FAO, Children Act 1989)

A CAFCASS or Local Authority officer may be appointed to advise, assist and befriend named members of a family, all of whom (except the child) must consent to the Order being made. This Order may be made at the same time as a Child Arrangements Order and may last for up to 12 months during which time the officer will help to ensure that contact is maintained between the child and the parent (or other relative) who is not living with that child. The Order is made at the instigation of the court, but there is nothing to stop anyone else asking the court to consider it. However, such Orders are rare and almost never recommended, partly because consent from both parties may not be achievable, and also owing to the scarcity of resources.

27 Child Arrangements Orders (Living Arrangements)

A Child Arrangements Order may also establish with whom a child shall live. If such an order is made in your favour, you will also have Parental Responsibility because the two go together. Trans parents rarely seek these Orders although they are sometimes the primary carers. A natural mother, in theory, shouldn't need one; even after the change of the gender role to live as a man, the right to be the primary carer of the children remains intact. If you are a trans woman who is the child's natural father, and you are, or you become, the primary carer of the child, you may feel the need of the protection of a Child Arrangements Order confirming with whom your child is to live, especially in circumstances where you do not share Parental Responsibility. Such an Order would automatically confer PR on you and would put you in a stronger position if action was taken by any other party to remove the child from your full-time care. The court processes will be much the same as for a Child Arrangements Order regarding contact with the child (paragraph 17). A CAFCASS officer's report is likely to be ordered to assess your parenting capacity, particularly if there is a dispute as to where and with whom the child should live. The child's wishes will also be a prime consideration.

28 Public Family Law

Where there are serious child care issues which come to the attention of Social Services and cannot be resolved by co-operation between the family and the Social Services (Local Authority), 'Public' Family Law powers may be invoked. Supervision or Care Orders may be sought from the court, by the Local Authority. A Care Order confers Parental Responsibility on the Local Authority. In principle, this gives the Authority *shared* PR with the mother (and any other parent with PR) but, in fact, it confers considerable power on the Authority to determine the management of the children of a family. If Social Services are involved in your case then, although much of the procedure will be similar, the court will appoint a Children's Guardian to represent the child's best interests in court. This means that the Guardian will be likely to share the view of the child on the preferred outcome. Where there is agreement between the child and the Guardian, a single lawyer (solicitor or barrister) will represent both child and Guardian in court. If there is disagreement, then the Guardian may be represented by a different lawyer. There is a statutory maximum period within which care proceedings should be concluded of 26 weeks and the court will timetable the case to ensure that there is no unnecessary delay.

In public law cases, where perhaps social services have taken the view that the issue of gender incongruence poses some kind of threat to your child, it may be even more important than in private law cases that appropriate evidence from an expert who is familiar with gender variant people and their treatment, is available to the court.

"Other family members sometimes believe that trans people are a danger to children, or that the condition may be 'catching'. This fear of damage to the child is misplaced and, if a health professional has the opportunity to prevent such ideas taking root, it is vital to do so" (GIRES et al, 2008).[12]

This guidance draws on research by Professor Richard Green: –

"transsexual [sic] parents can remain effective parents and … children understand and empathise with their transsexual parent. Gender identity confusion does not occur." [13]

And by Dr David Freedman and colleagues: –

"children of transsexual [sic] parents are not themselves likely to develop features of gender dysphoria, nor do they experience mental health problems associated with gender identity disorder" [14]

"*Young children are inclined to be matter-of-fact in their attitudes, and they cope very well as long as the adults around them do*" (GIRES et al. 2008).[15]

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[12] GIRES: Curtis, R, Levy, A, Martin, J, Playdon, Z-J, Reed, B, Reed, T, Wylie, K. (2008) *Guidance for GPs, other clinicians and health professionals on the care of gender variant people,* Section C, NHS, available at https://www.gires.org.uk/wp-content/uploads/2017/03/doh-guidelines-for-clinicians.pdf

[13] Green, R (1998) Transsexuals' Children, 1998, *International Journal of Transgenderism,* 2(4).

[14] Freedman, D, Tasker, F, Di Ceglie, D (2002) Children and adolescents with transsexual parents referred to a specialist gender identity development service: a brief report of key developmental features *Clinical Child Psychology and Psychiatry* 7(3):423-432. SAGE Publications.

It is beneficial, in these circumstances, for the Guardian and social services to help the parents to put their child's needs first.

"This may be especially hard for the non-trans parent who is struggling with his or her own grief and anger…Children need a great deal of reassurance that the trans parent still loves them and will always be their parent" (GIRES et al, 2008).[16]

Professionals such as lawyers, CAFCASS officers, social workers and others may benefit from the elearning resource at bit.ly/GIRESelearn

For employers and service providers: https://www.gires.org.uk/e-learning/transgender-awareness-for-employers-service-providers/

[15] GIRES: Curtis, R, Levy, A, Martin, J, Playdon, Z-J, Reed, B, Reed, T, Wylie, K. (2008) *Guidance for GPs, other clinicians and health professionals on the care of gender variant people,* Section C, NHS, available at https://www.gires.org.uk/wp-content/uploads/2017/03/doh-guidelines-for-clinicians.pdf

[16] GIRES: Curtis, R, Levy, A, Martin, J, Playdon, Z-J, Reed, B, Reed, T, Wylie, K. (2008) *Guidance for GPs, other clinicians and health professionals on the care of gender variant people,* Section C, NHS, available at https://www.gires.org.uk/wp-content/uploads/2017/03/doh-guidelines-for-clinicians.pdf