

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/10/2016

Before :

MR JUSTICE HAYDEN

Between :

Re J (a minor)

In house solicitor on behalf of a Local Authority
Mr Baker (instructed by **Stephenson Solicitors**) for **M**
Mr Maddison (instructed by **King St Solicitors**) for **F**
Ms Kilvington (instructed by **CAFCASS**) for the **Child J**

Hearing dates: 25th, 26th, 27th, 28th & 29th July 2016

Judgment Approved

MR JUSTICE HAYDEN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the 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.

Mr Justice Hayden :

Background

1. I am concerned with J, a 7 year old boy. His parents F (Father) aged 40 years and M (Mother) aged 34 years, were in a relationship together which began in 2007. The parties separated, as best I have been able to establish, within 12 months of J's birth. Following the parties separation, which was acrimonious, the parents were nonetheless able to make some arrangements for J to have contact with F. He lived with M.
2. The contact arrangements broke down in 2013. F made an application for a Child Arrangement Order, with the objective of restoring his contact to his son. This has been consistently opposed by M on three fronts: firstly, she contends F abuses alcohol

and cannot be entrusted with the care of their child; secondly, she asserts that F had been violent towards her; thirdly, she claims F is temperamentally and in principle averse to allowing his son 'to present as a girl' and resistant to recognising his 'gender variance' as she has described it.

The Private Law proceedings

3. During the course of the private law proceedings, Her Honour Judge Penna authorised a wide ranging investigation. The Local Authority prepared a section 7 report and later conducted a section 37 investigation. J was made a party to the proceedings pursuant to rule 16.2 & 16.4 Family Proceedings Rules and thus represented by his Guardian. A very experienced clinical psychologist was instructed to undertake an assessment of the child and of his relationship with both parents. As I have read through the papers it is striking that as the litigation progressed J came to be referred to predominantly by the feminine pronoun 'she'. I pause here to emphasise that J was, at this stage, between four and six years of age.
4. Judge Penna had also conducted a 'fact finding hearing' to determine the mother's allegations of domestic violence. In a succinct judgment, dated 16 April 2014, the judge was only able to identify one coherent allegation. Characteristically, for these proceedings, it had not been possible to identify the date of the actual incident. Both parents agreed that it occurred in February. F contended it was February 2013, M asserted it was February 2012. The judge found F's recollection of the date to be accurate and supported by independent police evidence. Ultimately, the judge concluded that there had been an altercation which involved F leaning into M's car through an open driver's window. She found that M repelled him. J was in the car and it was agreed the car 'wobbled' during the course of the incident. Importantly, the judge went on to find *'I do not interpret the incident as one-sided. It is my view that the father behaved badly. It is my view that the mother also behaved badly'*. She went on to find that J *'must have felt frightened and upset'*. There were no other findings.
5. It requires to be emphasised that the evidence failed to establish that the father presented a risk of violence to the mother, J or indeed any other person. The findings were not appealed. I would add that during the course of the investigations before me the Judge's findings have been reinforced by my own assessment of the dynamic of the parent's relationship as I have observed them in the witness box; the respective psychological assessments; the F's present stable and secure relationship; F's lack of any history of violence at 40 years age.
6. In that same judgment, Judge Penna also considered the recommendation of the Cafcass officer that was before her. The report had concluded that there should be no contact between J and F and that the proceedings should be brought to a close. In respect of this recommendation the Judge observed: *'I am unable to agree that this recommendation addresses J's welfare needs which include a need to have a rounded sense of his identity as he grows older'*. (my emphasis).
7. The views of the CAF/CASS officer, Ms Andrea Erving, at this stage in the history of the case, require to be recorded:

“At present both parents share Parental Responsibility and this does provide a sense of identity for [J] and acknowledges [F] as his birth father. However, [M] states that J has never been known under the surname of [F] including his education provision ”

8. With respect to the CAFCASS Officer, this reveals no coherent logic. She continues:

“I have discussed J being ‘gender variant’ with [F], and he states this will not be an issue for him. [F] has asked for proof that this is the case, and this could be provided by the support group... ”

9. Concluding that the animosity between the parents was likely to lead to ‘potential emotional harm not only to [J] but to [M] too’ Ms Erving went on to conclude that there should be only indirect contact via a third party or service, to take place on special occasions such as birthdays and Christmas. She concluded thus:

“Protracted litigation has an adverse impact on children and adults for this reason I believe it is in the best interest of all involved for these proceedings to end as soon as possible”

10. Judge Penna was clearly unimpressed with that purported analysis. As subsequent events have established, the Judge’s instincts were entirely correct. Moreover, in my judgement, she was astute to focus the investigation on what she termed J’s need for ‘a rounded sense of his identity’.

The Social Services investigations

11. The section 37 report prepared by Lisa Jenkins is dated 20 March 2015. Again I find it necessary to set out extracts from this report in some detail. It makes very disturbing reading:

“6.5. On 01/03/13 an anonymous referral was received. The referrer advised that they were aware that [M] uses “skunk” in front of [J] and [J] may be able to access the drug. The referrer alleged that [J] shows challenging behaviour and has head butted other children. The referrer also raised concerns in relation to [J] wearing a pink headband and nail varnish as it makes [M] happy. The referrer also raised concerns in regards to [M]’s mental health, her acting irrationally and the impact of this upon [J]’s emotional welfare”

“6.8 Between October 2013 and November 2013 the Local Authority received two referrals in relation [M]’s mental health, [J]’s presentation and [M] informing school that [J] was gender non conforming. The referrals are as follows:”

“6.9. On 22/10/13 the Department received a referral from the NSPCC who had received an anonymous call; the referrer was concerned that [M] had stated twice in a week that [J] is transgender and that [M] had also alluded that she was going to disappear with [J] and ‘they will never find them’. The referrer also advised that [M] suspects that [J]’s older half brother [K] is too. The referrer was

concerned about [M]’s mental health at that time. The referrer also advised that [M] was due in court in November regarding residency and contact due to parents separating.

12. In addition to the above, what is perhaps most striking about the information that was being drawn to this Local Authority’s attention is that it came from such a wide variety of sources. It seems to me, in particular, that concerns from a school i.e. the professionals who see the child most, should always be afforded very significant weight. The following passages reveal that the staff at school A were reading the situation carefully and, for the reasons which I will address later in this judgment, were plainly alert both to J’s presentation and to the Mother’s confrontational and inappropriate behaviour. I am bound to say that had their concerns been given the weight that they plainly should have, it is difficult to resist the conclusion that J could have been spared a great deal of emotional harm:

*“6.11. On the 14/11/13 a referral was received from [School A]. [School A] reported concerns regarding emotional abuse of [J] and [M]’s mental health. [M] had claimed that [J] is gender variant and should be allowed to go to school dressed as a girl. [M] had made accusations that [J] was being bullied at school because of gender variance. [M] was unable to provide names of the bullies and staff at school had not observed any bullying. **Staff advised that at school [J] behaved no differently than the other children but they felt that [M] was unwilling to accept this and on occasions she reduced a teacher to tears due to her ‘forceful and confrontational’ manner.****

**my emphasis*

13. In order that the significance of some of this information is not lost I extract and highlight this particular passage:

“6.12...[M] was also asking about sending [J] to a gender re-assignment clinic. School explained that in class, [J] doesn’t display any differences to the other boys.”

14. The following paragraph, which is expressed as a summary, illustrates the range and extent of the concerns which were being highlighted. The Guardian, now Ms Claire Quinn, had her own separate concerns:

“6.14. Following this the Local Authority received a number of referrals between March 2014 and October 2014 which reported concerns in relation to [J]’s presentation; [J] being allowed to dress as a girl; [M] requesting that [J] is referred to the Tavistock Centre and refusing input from CAMHS; [M] informing Health that [J] had been diagnosed with a medical condition although there had been no professional diagnosis and [M]’s mental health. During August and October 2014 the Department also received information from the police in relation to incidents that had occurred in the community where [M] felt that [J] was a victim of hate crime. A referral was also received from the appointed guardian Claire Quinn in November 2014, who raised concerns around the number of professionals raising concerns in relation to [J]’s presentation and that there had been a multi agency meeting held where Claire was

not represented and the guardian was not invited. Details of the referrals are as follows:”

15. In May 2014 information was communicated to social services from their own Housing Department which was entirely in conflict with the information they had previously received. In particular it contained the alarming assertion, which as it transpired was entirely untrue, that J had been ‘diagnosed as transgender’. It perhaps requires to be re-emphasised that J was at this stage 4 years of age.

“6.16. On 30/05/2014 a referral was received from Housing who reported that they had concerns for [J] due to [M] claiming [J] had been diagnosed as transgender. They also advised that [M] had removed [J] from school due to them having issues with [J] dressing as a girl [M] was collected by housing staff for a meeting; staff reported that [J] looked dirty, had pen marks to the legs and was dressed as a girl. They also reported concerns for [M]’s mental health. No further action was taken from the Department due to there being no safeguarding concerns.

“6.19. On 16/07/2014 a referral was received from the GP requesting that a social worker visit the family due to concerns around [J] possible having gender identity disorder. The GP advised that they had spoken to the Tavistock Centre and that they advised to contact Children’s Services. No further action was taken.

16. In addition to concerns presented by the Housing Department, Schools, NSPCC, the Police were also providing information. It is plain that there was widespread unease.

“6.20. On 21/08/14 there was a contact from the police who were requesting agency checks in relation to [J] as it had been reported that [J] was possibly transgender and a victim of hate crime from neighbours. Information was provided and no further action was taken by the Department.

17. In August 2014 the medical profession added their voice to what was by now becoming a clamour of concern:

“6.22. On 24/09/14 a referral was received from The Health Centre requesting agency checks. Health advised that [M] had informed professionals” that [J] had been diagnosed with a health condition, yet the referrer is aware that there has not yet been a professional diagnosis. The caller was advised that there is no current social work involvement with the family, and no further action taken.

“6.23. On 27/09/14 a referral was received from the Police. Officers have attended the home address where [M] advised that [J] was born as a male but identifies as female and dresses as such. [M] advised that this has affected her relationship with [J]’s father and family and that this has resulted in them being served with a harassment order. [M] advised that a few days ago [J] was playing out in the garden when she has seen the other children pulling at [J]’s clothes to see if [J] had a penis. [M] intervened and took [J] inside informing the children they are no longer allowed to play with [J].

[M] did not report the incident to the police, there was another incident on the street which the police attended. [M] was concerned and reported the matter for fear of any escalation; this matter is recorded as a hate incident as there are no criminal offences. [M] is in contact with [a local charity] and a [Housing Association] whom are providing her with support, and no further action was taken.”

18. There were yet further concerns about J’s increasing isolation and also about M’s behaviour. They came from a school and, it must be stressed, a different school to that which had expressed concern earlier:

“6.25. On 22/10/14 a referral was received from [Learning Centre] enquiring as to whether [J] is subject to a Child Protection Plan. [J] moved to the setting from another setting, [J] has been finding it hard to settle in and [M] has now taken [J] out of school. [M] states she has taken [J] out of school due to [J] being bullied and the school have not resolved the issue. [J] has been attending 5 days a week and [M] is not reliable in the times that she drops [J] at school. Since summer [J] has been going into school upset which is out of character. Today [M] has become annoyed after waiting outside for 15 minutes, she then informed staff that she had no money and could not afford to send [J] anymore. Caller informed that they are concerned that [M] may not be coping. Child and Family assessment to be completed by the Department.”

19. In the light of the material which I have highlighted above the following conclusions appear irrational and unsustainable. Again they require to be set out in full:

“6.26. A Child and Family Assessment was completed in January 2015. The assessment concluded that there were no evident concerns suggesting that [J] was at immediate risk of harm. [M] is very clear that she is supporting [J] with whatever choices [J] makes and she presents with a good understanding of [J]'s needs. There were no concerns from the social worker regarding [M]'s approach to [J]'s gender presentation, and had appropriately taken on board support from the charity Mermaids. Upon completion of the assessment, no further action was taken by Children’s Services.”

“6.27. It is the view of the Local Authority that despite there being a high number of referrals upon further assessment the concerns have not been substantiated and did not meet threshold for further intervention. It is also noted that despite several referrals from school and health informing of concerns they did not put any early intervention strategies in place such as a MCAF in order to further explore their concerns with [M] and to identify potential information/support services. On a number of occasions the professionals involved have not met [J] and/or [M] and were encouraged to discuss concerns with [M] directly and set up lower level meetings with her in attendance in the first instance. In the event, a meeting was arranged by services which [M] was not invited

to. During the last assessment period the Local Authority were ordered by the court to file a Section 37 report in respect of [J].”

20. When all this is properly analysed it is clear that flares of concern were being sent from a whole raft of multi disciplinary agencies. Each was signalling real anxiety in respect of this child’s welfare. Whilst it is, I suppose, conceivable that these referrals were considered individually, it is impossible to draw any inference other than that they were never evaluated collectively. When they were drawn to the attention of Lucy Davidson, the senior social worker, who now has conduct of this case, she said in her evidence *‘is it is difficult to justify some of the decision-making that took place’*. That was a measured and careful response. She was not pressed further. However it does not, in my judgement, go far enough. This local authority has consistently failed to take appropriate intervention where there were strong grounds for believing that a child was at risk of serious emotional harm. I propose to invite the Director of Children’s Services to undertake a thorough review of the social work response to this case. Professional deficiencies to this extent cannot go unchecked, if confidence in this Local Authority’s safeguarding structures is to be maintained.
21. I am afraid to say that I can only describe the conclusions of the section 37 report as entirely lacking in any logical, coherent analysis. I have found it quite impossible to understand why so many concerns were disregarded so summarily. Neither the senior social worker in this case nor the lawyer who acts on the Authority’s behalf have sought to advance any explanation.
22. Not only are the conclusions of the report irreconcilable with the core information within it but it is striking that the Local Authority had moved into wholesale acceptance that J should be regarded as a girl. Once again, I make no apology for repeating the fact that J was still only 4 years of age. The conclusions of the report speak of J by use of the feminine pronoun. There was no independent or supportive evidence that J identified as a girl at all, indeed there was a body of material that suggested the contrary. The cry for investigation went unheeded:
- “23.5. The Local Authority have received a large number of referrals where concerns have been raised in relation to [J] presenting as a girl rather than concerns in relation [J]’s welfare and the care that is provided to [J]. It is evident that some agencies do not have a full understanding of gender non conforming children and have therefore contacted Children’s Service, sometimes when they have not met [J]. This clearly frustrates [M] and leaves her feeling that she is unsupported, and has caused her to feel stressed and anxious. Therefore [M] mistrusts professionals which is often interpreted as that she is unwilling to engage with services. ”*
23. The two remaining passages of the conclusion make very disheartening reading indeed. They combine both naivety and professional arrogance. Concerns were dismissed on the basis that it was the other agencies who *‘did not have a full understanding of gender non-conforming children’*. In fact it was Ms Jenkins and her senior managers whose understanding was lacking.

“23.7. In all my dealings with the family there has been no evidence of risk of harm to [J]. However the impact of ongoing disputes between parents is likely to cause a risk of emotional harm to [J] and

it is hoped this will be resolved as a result of these court proceedings.”

“23.8. In addition, the manner in which [J]’s gender identity is responded to by professionals could also cause emotional difficulties, as had been evidenced in research around gender non conforming children cited earlier. It appears that [M] is genuinely attempting to protect [J] from the impact of this. While there is clear evidence that [M] has on occasion declined support and challenged professionals, she is able to explain these decisions and as a parent does have a right to select the services she feels are best for her child. She has accessed support from services such as Housing Support, [Local Charity] and the Tavistock Centre, and advises that she is seeking out education provision for [J] at the present time.”

24. As the proceedings before Judge Penna progressed there developed a prevailing orthodoxy that J identified as a girl. Though I suspect the father continued to have his doubts, he had been unable to secure contact with his son and, driven to rely on others, I think began to assume that so many professionals having accepted that J was presenting as a girl, they must be correct.
25. Ms Jean Sambrooks, Consultant Clinical Psychologist, had been appointed to assess J. Ms Sambrooks accepted the professional consensus and also refers to J as ‘she’ in her report. There seems to me to be much learning and common sense in her analysis, concerning the difficulties faced by children who are uncomfortable with the gender into which they have been born. It is entirely counterintuitive to suspect that a boy who is consistently presenting as a girl may not truly wish to do so and may have been forced or induced into performing such a role by his mother. I am not surprised that Ms Sambrooks was not immediately alert to such a situation. She was appointed to undertake a discrete piece of work, she did not have the full opportunity, whilst the case remained in the County Court, to survey the wider canvas of concern. It is however significant that, for the first time in the sorry history of this case, she identified F’s positives and the important contribution he had to make to J’s life.
26. Notwithstanding my observations above, it was clear that Ms Sambrooks found the mother’s own presentation to be ‘odd’ and her narratives to be illogical. Thus, though M complained that she felt under constant assessment Ms Sambrooks plainly felt that M had rather ‘avoided assessment’. It was also noted that M, though initially positive to the psychological assessment, was entirely unprepared to engage in the second interview that had been contemplated. Ms Sambrooks also postulated that M either had difficulties recalling the reality of a situation or **‘that she was prone to exaggerate and distort information’**. It was further recorded that Ms Sambrooks had concerns about the way M ‘offers information’... ‘particularly on transgender issues’. It has to be said that, at this stage, Ms Sambrooks considered that the impact of these concerns was most likely to have alienated professionals to the mother’s genuine concerns. In my judgement the impact was far more insidious. Ms Sambrooks also notes:

“I do have concerns that M has chosen not to engage with CAMHS. Whilst CAMHS may not have any specific experience of dealing with a child who may have gender dysphoria, they have considerable

expertise in dealing with children who present with difficulties or present in a way is different. Importantly they can offer support locally to [J] and [M] and other professionals if resourced. They will always take advice from a more specialist clinic and I am concerned that [M] did not follow the advice of the Tavistock Centre in this respect and indeed disengaged from Health Visiting and that J does not currently have a GP. I am confused by her comment that she did not wish for [J] to be labelled (Sect 37 par 6.18) as [J] is very clearly labelled by her to those that she comes into contact with.”

27. As I have heard this case I have noted that these illogicalities often characterise M’s evidence. Nobody has doubted that M is both articulate and intelligent and so the reasonable inference is that she must recognise some of the illogicality of her own statements. I consider that she has learnt that by creating ‘confusion’, to use Ms Sambrooks’ word, amongst the professionals, she generates a situation in which her own distorted beliefs gain greater traction and are able to prevail with less effective challenge.
28. Though still assuming the core reliability of M’s concerns, Ms Sambrooks was also clearly alert to what I have come to realise is M’s highly manipulative behaviour. She states:

“It is clear that [M] has strong opinions. Her response to Court intervention and requested assessments has been highly oppositional. This is not only in respect of any assessment of [J] but also of herself. She would appear to need to be in control and indeed choose those professional with whom she interacts.”

I found this assessment to be entirely confirmed when evaluating M’s evidence in the witness box.

29. Significantly, when reviewing M’s claims that J had been victimised by other children and parents, Ms Sambrooks suggested:

“unfortunately they are not uncommon responses from some members of the general public which is why [specialists] may advise ‘stealth’ as a way forward.”

30. Though she has identified M’s propensity to exaggerate and distort, Ms Sambrooks appears to assume that these particular allegations are reliable. I do not see how she could have made such an assumption. For my part, in the absence of clear supportive material, I would have not been prepared to do so. As the case progressed I was left with a very uncomfortable feeling that this concept of ‘stealth’, to which I will return, made a very significant impression on M. By the time the case was transferred to the High Court, J was living life entirely as a girl.

J’s increasing isolation

31. By October 2015 the situation, as I identify it, was as follows:
- i) In its inept section 37 investigation the Local Authority had failed to respond to the raft of professional concern;

- ii) The mother had consistently manipulated the Court's investigation, cooperating only on her terms. I note that in addition to Ms Sambrooks' observations (above) that between the 10th June 2015 and the 28th October the Guardian had telephoned M on four occasions, sent four emails to her, two text messages and one letter. M responded by sending two text messages to the previous Guardian and three emails to the present Guardian complaining that she could not open the emails. The matter could so obviously have been resolved by e.g. a telephone call or response to the Guardian's text. The consequence was that the newly appointed Guardian had no constructive liaison with M or J at all;
 - iii) Between 22nd June and 28th October the children's solicitor sent a confidential address form to M both by email and by post to M's last known address. M had advised, by email, that her mail was being redirected. Attempts were made on no fewer than five separate occasions with no response;
 - iv) M's conduct within the litigation had also become increasingly bizarre. She sought the re-appointment of the previous Guardian and a direction that F's counsel recuse himself, having allegedly 'breached confidence'. There was a request that the child's solicitor be replaced due to her 'knowledge deficits', the fact that she 'does not understand J's condition' and generic criticisms of her general competence.
32. Thus, by October 2015, though the private law proceedings had been before the County Court for nearly 18 months and notwithstanding the input from various professionals nothing had been achieved. Even more alarmingly J himself had entirely disappeared from view. He had not been permitted proper access to his Guardian, he was not attending school, his home address and living arrangements were unknown. In addition, as I have highlighted above, Ms Sambrooks' report raised concerns that M might "be prone to exaggerate and to distort information". There was certainly ample evidence of that. Ms Sambrooks' had also commented upon "*M's need to be in control and indeed choose the professionals with whom she interacts*". Again, the history of M's non-compliance or partial compliance with professionals provides compelling support for this view.
33. In her report Ms Sambrooks also ventilated a concern that M had reported J as having been diagnosed as gender dysphoric. As I have said, there is no evidence of any such diagnosis. The mother denies having made such an assertion. However, the important point is that the concern was there and required proper exploration. More generally as to M's capacity to meet J's needs, Ms Sambrooks' also drew attention to the fact that there had in the past been reports of J "looking dirty" in her mother's care. This signalled to Ms. Sambrooks that the mother might have been experiencing mental health difficulties at various stages. Indeed, the mother is recorded as having told Ms Sambrooks that she had in the past suffered mental health problems.
34. By contrast Ms Sambrooks' assessment of F was entirely positive and wholly irreconcilable with the picture of him presented by M. M has traduced F and belittled him throughout the course of this litigation, at times, quite literally, snorting with derision. In particular M has presented F as insensitive to the whole issue of gender dysphoria. In fact Ms Sambrooks found him to be '*very comfortable with diversity*'. F's elder son, who I have been told is zany and funny was noted '*to have clearly been*

allowed to develop his own interests, beliefs and presentation'. Ms Sambrooks leaves the point thus:

'I am therefore confused as to why M feels that F would not be able to accept J's presentation'

35. At this time, of course, it must be remembered that Ms Sambrooks was still accepting the prevailing orthodoxy within the case that J strongly identified as a girl. The exclusion of F is less 'confusing' when considered alongside the exclusion of the professionals generally.

Transfer to the High Court

36. On the 28th October 2015 HHJ Penna decided to transfer the case to the High Court. In doing so she prefaced her Orders with the following recordings:

"b. The Court confirmed that there had been no indication from the mother as to the whereabouts of the child. The Court is not aware of the current schooling arrangements of the child or whether there has been any school registration."

d. Combined with the issues raised in Jean Sambrooks' report, the lack of information about the whereabouts of the child, the schooling arrangement for the child and the Mother's lack of engagement with the Guardian... the Court expressed its increasing concerns for the welfare of the child.

e. The Court has provided within this Order direction for disclosure of the Mother's address from the DWP and Inland Revenue. The /court permitted the solicitor for the child not to disclose this order to the Mother as it found that there is a significant risk of the Mother choosing to move again if her location is made known to those involved within these proceedings.

f. The Mothers superficial engagement in the Court Process, the concerns for the welfare of the child... the lack of information as to the whereabouts of the child has lead the Court to consider that it may be appropriate for the Court to use its inherent jurisdiction to protect his welfare."

37. The case first came before me on the 25th November 2015. I made a variety of highly prescriptive orders, reinforced by a Penal Notice. It is unnecessary further to burden this judgment with that detail. I also ordered that M should send F three recent good quality photographs of J to him at his home address. I expressed myself in plain and unambiguous terms, making it very clear that my objective was to place J at the centre of this litigation and not to permit him to be marginalised as had happened.
38. On the 11th December 2015 I received an application from J's solicitor to amend my Order. M regularly makes complaints against a variety of professionals. This time she had complained that Ms Sambrooks' interviewing arrangements were 'inappropriate'. The complaint was entirely vexatious. However, I made the

pragmatic decision to vary the Order so that further interviews of J would take place in private at the offices of J's solicitors. This arrangement was far from ideal but I considered Ms Sambrooks was entitled to professional protection from the type of allegation M had been making.

J 'living in stealth'

39. At the hearing on the 25th November 2015, M told me that J 'was living in stealth' by which was meant, she explained, that he was living life entirely as a girl. He dressed, at all times, like a girl and, it transpired, had been registered at a new General Practitioner's as a girl. M told me that she had been advised to take this course by the Tavistock Centre, which is recognised as a specialist service for advice concerning gender dysphoria. Though I was by no means certain, I very much doubted that the Tavistock would have given this advice in respect of such a very young child. On a merely practical level it struck me as an arrangement that was fraught with potential for real harm to J if his true gender was inadvertently discovered. I was concerned not only that J might be profoundly upset by his exposure but I was also troubled as to how this would impact upon his friendships and key relationships. It was for these reasons that I added to the Draft Order of the 25th November my own requirement that the Tavistock Records be filed and served upon the parties. That particular Order is recorded as having been 'of the Court's own motion'.
40. M sought to defeat the Order. She refused to give her consent for the release of the records. Once again the professionals bent to her will and the Order was not complied with. Shortly before a Directions Hearing on the 8th February J's solicitor drew the non-compliance to my attention. I pause to note that F has Parental Responsibility for the child and his authority would have been sufficient. On the 8th February the records were still not available and so I was driven to take the unusual step of ordering that the case would remain listed until the records were produced. It was also plain that J's welfare required an Interim Care Order, both because he was at risk of significant emotional harm and, given M's manipulative behaviour, parental responsibility required to be shared with the Local Authority.
41. Rather to my surprise the Tavistock records were produced within 2 hours. They did not support M's contention that they had advised the 'stealth' arrangements. Indeed, the records were sparse and only served further to confirm that M's cooperation was partial and on her own terms. Following a contested hearing, I found myself in agreement with J's Guardian that the risk of leaving J in M's care was unacceptable. I was also satisfied, both from my own assessment of F in the witness box and from the assessment of Ms Sambrooks, that he could provide a safe haven for J so that his needs could properly be evaluated. F had not seen his son for two years, nor had he, contrary to the Court's orders, been provided with any good quality photographs. He was entirely unsure of what J's true feelings were about his gender. There was no sustained independent observation of J interacting with others. F faced a very considerable parenting challenge. What was perfectly clear however and requires emphasis is that M was determined that J should live entirely as a girl. At only five years of age that did not strike me as offering J choice or even the opportunity to express any ambivalence or confusion. I was also entirely satisfied that whatever choices J made and however he presented, he would be loved and cared for and his choices respected in F's care.

42. The February hearing was very stressful for M. However what struck me forcibly, both then and indeed at this final hearing, was that M spoke of J only in the somewhat opaque and convoluted argot of social work and psychology. She offered an impressive, intense and highly articulate evaluation of the problems faced by children with gender dysphoria but she conveyed no sense of J's personality, temperament or enthusiasms, notwithstanding frequently being encouraged to do so. Repeatedly she struck me as a professional witness giving evidence about somebody else's child.
43. I was also left in no doubt that M was absolutely convinced that J perceived himself as a girl. M's case on this point has not always been either consistent or coherent, but my overwhelming impression is that she believes herself to be fighting for J's right to express himself as a girl. She has told me how J 'expressed disdain for his penis'. I think it accurately summarises her position to say that she perceived it to be her responsibility in the face of widespread public, professional and indeed judicial ignorance to promote J's choice of gender.

J's life with his Father

44. J was removed from M's care. Inevitably he was distressed and frightened. I have been told that F and his partner were shocked when they first saw J by the extent to which he appeared to be a girl, both in appearance and in mannerism. However, what is striking is how well J has settled down. A further report was solicited from Ms Sambrooks. I think it is important to incorporate its key passages into this judgment. Describing his arrival it is noted:

"When [J] first arrived he was a bit subdued but settled down the next day. He has not been upset particularly about anything since he has arrived. He was upset initially when he first saw his mother [M]; I understand that she sent him home with female things, lots of sweets and chocolate and a box of vitamins." ...

"Initially [J] simply wanted to go home but then he changed and did not want to go and see his mother because he did not like saying goodbye again. He was encouraged to go to contact and since then has not displayed any reluctance to go."

45. Concerning J's evolving presentation, Ms Sambrooks highlights the following:

"[J] came with or has gathered seven pairs of boots or shoes during the three months he has been at his father's. They go with his feminine clothes. When they went shopping [F] took [J] to the girls section for underwear but he eventually chose boys shorts with a picture on them. [J] constantly rearranges his private parts and seems uncomfortable. He does not try to wear several pairs of knickers however as reported in the past. When he started wearing underpants [J] liked fancy underpants with Power Rangers or similar on them. Initially every two minutes he would say he did not like his floppy bits flopping around. He has also said 'my mother does not like her floppy bits flopping around' and that 'she has got a big fat sandwich'. This somewhat took [F] and [P] aback. [J] will talk about his mother but does not get upset."

46. J's behaviour at school has also been interesting to read about:

"From day one [J] would put his hand up. He was mistaken for a girl once by a visiting teacher and asserted in front of everyone 'no, I am a boy'. [J]'s teacher has said that [J] is very articulate. [F] expressed concern about his writing and his teacher said he did not push him too much initially. [J] initially sat at the teacher's desk then at a table of his choosing and then has been move to a table that is more appropriate. He is beginning to conform to rules and his writing has shown a major change over two weeks. Initially his hand was shaking when he was writing as he did not seem used to writing. He has no phonics and very basic maths. However his reading is good. [P] is working on phonics with him, I saw evidence of this in the flat and they have now been asked to help with basic maths. There have been no reported references from school about any problems in the playground. There have been no gender issues reported and he has settled in quickly. He enjoys playing superheroes with the other children."

47. I have noted from reports that J has become interested in Power Rangers, SpongeBob, Superheroes and is constantly finding new interests. F, significantly to my mind, does not always share J's enthusiasms, though he goes along with them. It is striking that most of J's interests are male oriented. I am entirely satisfied, both on the basis of the reports and F's evidence at this hearing, that he has brought no pressure on J to pursue masculine interests. J's interests and energy are entirely self motivated:

"[J] also asked for football stickers recently but [F] is not 'into' football so had to locate these. [J] is enjoying sticking them in his book. [J] often goes to the park after school and in hot weather there are a couple of boys there with their tops off. [J] pulled a face at this, expressed displeasure at that and asked why they were doing it. At gymnastics there were similarly a lot of people with their tops off which may have been an issue but [J] did seem to adjust to this."

48. I have been disturbed to read that J has touched a number of women in a way which is very concerning, as Ms Sambrooks has pointed out:

"However I do feel that [J]'s inappropriate touching of others is of considerable concern. When considered alongside his comments and his behaviour towards his mother in contact (eg. April 22/4) then it would seem that [J] is very used to touching [M]'s breasts and that she has afforded him considerable knowledge or discussion of genital anatomy. Whilst this may reflect [M]'s view of [J]'s gender issues it is not in my view appropriate knowledge nor would a child of [J]'s age, transgendered or not, generally have such discussions. At most they are likely to have a rudimentary awareness of male/female differences especially if brought up with a different sex sibling."

49. Ms Sambrooks proffers a view as to M's motivation for permitting this kind of intimacy. I am bound to say it makes discomfoting reading:

"I can not offer a view as to why [M] would encourage such behaviour except that potentially it may feed into her perception of

[J] as a transgendered child in some way and the attributes he might hope to acquire.”

50. It is also clear that J has gained some awareness of what has been referred to in this case as ‘the availability of surgical intervention for the transgendered male’. This emerged in J’s discussions with F’s partner. The context also reinforces the reliability of it:

[J] can be very closed about things but has recently begun to open up a little. He may simply say he does not want to talk about things if they try to explore issues. On the bus recently he observed a man talking to himself who clearly had problems and [J] asked what was wrong with him. [P] tried to explain and subsequently over lunch he talked about his mother telling him that [K] had been born with an ‘upside down flower’ and this has been made into a ‘right way round flower’ whereas other people are born sometimes with a ‘right way round flower’ like his which can be made into an ‘upside down flower’. He was clearly aware of the surgery that would take place for the transgendered male. [P] explained that his mother’s account on [K]’s problem was inaccurate, this was not the case and [K] had been born with hypospadias which had been corrected by a small operation. She explained what this was and said it had been corrected when [K] was four which [K] may not even recall.

51. Mainstream education would seem to suit J better than the home education that M was providing. Though J was significantly behind when he started school he is catching up fast. Both his parents are intelligent and articulate people and J appears to have inherited those strengths:

“[J] is doing really well in school and his maths and his handwriting have improved dramatically. He has asked to go into school early so he can run around the playground with his friends. When it is time to go into class he then runs up to [F] to give him a cuddle and goes off into class. He is delighted that he now has friends in school. I was told there had been a multi-agency meeting recently. [J] has not displayed any inappropriate touching in school. The Tavistock worker did come to the meeting and apparently indicated that [J] no longer came under their criterion.”

52. Ms Sambrooks has concluded that M has influenced J in believing he was a girl. Provided with space and choice she concludes J ‘**very clearly identifies himself as a boy**’. She reasons her conclusions thus:

“[J] has been offered a choice since he has been with his father and would appear in the main to choose boyish things and very clearly identifies himself as a boy. He makes this clear whether or not his father is around and would not seem to be influenced by him. [J] chooses to present as a boy within school and in terms of his dress and would seem to be more comfortable with his male genitalia as time goes on. I remain of the view that it is very unusual for a parent to be able to influence a child to the extent [M] would appear to have been able to do but that would seem to be

the case given [J]’s very rapid change of presentation once offered a choice. I cannot guess at [M]’s motivation or belief system in this respect but she is clearly a powerful figure. During the preparation of my report and the Court proceedings [M] clearly demonstrated her need to be in control and the extent to which she would thwart or misinterpret directions to serve her own ends.

She also successfully manipulated people and systems and would therefore be a powerful influence on a child who is attached to her. Whatever her reasons then the conclusion that [M] manipulated or influenced [J]’s gender orientation, for whatever reason, seems inescapable.”

53. I would add that F has shown himself to be a natural and instinctive father, intuitive to the needs of his son as well as now being able to be an effective advocate on his behalf. I found F’s instincts in the following passage from Ms Sambrooks report to have been entirely correct.

“In respect of school the then social worker had said that [J] should use the disabled toilet. [F] was uncomfortable with this advice feeling that [J] should be able to choose. I supported [F]’s suggestion that [J] should have the choice of using the disabled toilet or the boys’ toilet. [F] felt that [J] would pick the boys toilet as when he is out he will pick the male toilet and choose to go with [F] and not with [P].”

54. All this presents a very compelling picture. In February M, through her solicitor, filed a response to the Local Authority’s Threshold Criteria document. This response was crafted by a seasoned and respected lawyer. In her evidence M did not disavow it, nor did she seek to claim that ‘words had been put in her mouth’. This response was put on instructions, as I would have anticipated. M agreed the document expressed her views at the time they were written. They require highlighting:

“[M] finds herself in a dilemma. She accepts the wisdom of the court in reintroducing [J] to his father and the paternal family. She accepts and understands why the Judge has formed a negative view of her refusal to allow contact firstly and secondly her dogmatic stance in respect of gender identity. Her dilemma is that whilst she hopes she has been doing the right thing she accepts that her approach may have been wrong.”

55. Though the following passage is somewhat tortured in its logic it nonetheless signals an apparent willingness on behalf of M to re-examine her own actions and beliefs:

“[M] accepts that as a result of her experience of her relationship with [F] and the fraught relationship post-separation she developed an almost entirely negative view of him. She accepts that she viewed the prospect of contact between [J] and his father as exposing [J] to a risk of harm. This is a view which she now accepts is wrong. Following the decision made by Hayden J ... she has had time to reflect. She has also had the opportunity to reflect on the evidence in the case with the assistance of objective legal advice. Furthermore she has been able to reflect on the contents of the reports and in particular the reports of Mrs Sambrooks and Ms Van Empel. [M] has

been shocked to the core by the decision of Hayden J to transfer residence of [J] to his father. She accepts that her initial reactions were disbelief, anger and a sense of injustice and unfairness; but above all a deep fear and anxiety of the impact upon [J] of moving in such circumstances. The decision has however made her re-examine her own actions and the positions she has taken in recent years. Bearing in mind that she has developed her views and beliefs over a number of years and that she admits to having become deeply entrenched in her position this has been a difficult and at times painful process. This process of re-examining her position has been made more difficult at times because for a lengthy period [M]'s position has been supported, shaped and reinforced by a series of experienced professionals. Prior to the appointment of Ms Van Empel the consistent recommendations of Cafcass were that there should be no direct contact. Ms Van Empel and Mrs Sambrooks have recommended with cogent reasoning a contrary direction. [M] has considered the views of both Mrs Sambrooks and Ms Van Empel on the issue of contact. Accepting, as she does, the descriptions of [F]'s home and family circumstances as they are now and the relationships he has with his ex partner [T], his son [K] and his partner [P], [M] readily acknowledges that [J] will benefit enormously from frequent generous contact with his father enabling him to become a full member of the paternal family.

56. Sadly this stated position did not hold. It maybe that in quiet reflection, in her solicitor's offices, this intelligent women had the wherewithal to identify that her thinking may have become distorted, but in the weeks that followed I am satisfied that she reverted to her profound conviction that J wants to be a girl. Though M may from time to time declare that she wants J to have his own space to choose I am satisfied that she is being disingenuous on this point. The preponderance of both her behaviour and her oral evidence reveals her true belief structure.

Psychological Assessment

57. Dr Kate Hellin, a Consultant Clinical Psychologist, undertook an assessment of both parents. In her report dated 15th May 2016 she analysed M in these terms:

“6.31 I think [M] is in an enmeshed relationship with [J].

"Enmeshment refers to an extreme form of proximity and intensity in family interactions...In a highly enmeshed, over-involved family, changes within one family member or in the relationship between two family members reverberate throughout the system...On an individual level, interpersonal differentiation in an enmeshed system is poor...In enmeshed families the individual gets lost in the system. The boundaries that define individual autonomy are so weak that functioning in individually differentiated ways is radically handicapped"18 (page 30). Minuchin (1978)16 described how enmeshment varies in degree, with corresponding degrees of negative impact on child development.

6.32 The enmeshed or fused nature of the relationship between [M] and [J] is shown in the way that she does not clearly perceive [J] as a separate person with his/her own identity, wishes and volition. She

sometimes confuses her own feelings with [J]'s. For example, she believes [J] to have been bullied at school, though the school did not agree. [M] herself was bullied at school and she was also in a conflictual relationship with the school, one in which she may have been both bully and felt bullied. Similarly, she said that [J] was afraid of going to the GP practice and would scream there but surgery staff had never seen this. Again, this was at a time that [M] was in conflict with the surgery. She believes [J] preferred "just mummy and me" and she apparently ended a relationship in order to focus on [J] though it was not clear to me why the relationship was in conflict with her role as mother.

58. I found Dr Hellin to be a measured and impressive witness. With considerable professional self effacement, she prefaced her evidence by telling me that psychology was ‘a soft science’ and though the views she expressed were based on established and respected techniques and approach they required to be set alongside the other available evidence. She was fully prepared to accept that she might be wrong. She offers advice about the consequences to J of this ‘fused’ and ‘enmeshed relationship’ which is, in my judgement, both insightful and extremely important in guiding the scope and ambit of the Mother/Son relationship for the future. I emphasise it to draw it to the attention of those who may work with M and J.

“If I am correct about the fused nature of the relationship, the danger is that [J] will not be easily able to establish an identity which is at odds with [M]'s own values, beliefs and preferences. It will be harder for him/her to separate and individuate with age and especially in his or her teens. This will apply to [J]'s gender identity. The fused nature of the relationship and [M]'s belief that [J] wants to be a girl is likely to push [J] in the direction of a female gender identity. [M] cannot see that [J] may be consciously or unconsciously trying to please her by assuming a female gender identity now that [M] has formed the view that this is [J]'s preference.”

59. This also provides an interesting perspective on why it was that J became so withdrawn from view. Dr Hellin notes:

“Her wish for emotional exclusivity means that [M] has removed [J] from a range of ordinary socialising experiences though she refutes this and believes that she has acted to protect [J] from bullying.”

60. In her evidence Dr Hellin clarified that M did not suffer from any disorder of personality or psychiatric condition. M was, Dr Hellin said, locked into a rigid and unshakeable belief structure. It was not likely to change nor was it receptive to therapy. In a way that I have noticed before, M only took the positives from this opinion in order to harness them for her own arguments. Of course Dr Hellin’s prognosis is extremely bleak. I am convinced that on an intellectual level M understands this but emotionally she appears to reject it.

61. I have already alluded to the fact that M can be excoriating in her criticisms of people. I was particularly shocked by the language she used in a text message to F describing his sister, who has learning difficulties. The word she used, which I will not repeat, would not be tolerated these days on the football terraces. From a nurse who has

specialised in mental health issues it is particularly alarming. It was selected to hurt and goad F. I noticed that when the point was raised in cross examination F found it particularly upsetting. F, in the past, worked as a disc jockey in various night clubs. He obviously had an interest in music. I have read that M refused to return his decks to him following the separation, though they were quite obviously F's most prized possession. I consider this to be illustrative of M's very controlling behaviour when she perceives herself to be under pressure.

62. M has been particularly disdainful of other mothers who attend the Contact Centre. She plainly considers herself to be socially and intellectually their superior. She expressed similar views about her neighbours when she lived on a council estate. Notwithstanding this however I note that she has abused Ms Davidson, at the Contact Centre, in language that I expect many of those mothers would draw back from. Indeed very few, myself included, have escaped the sting of her wrath. I have however come to realise, with the benefit of Dr Hellin's report, that when M is behaving in this abusive and bombastic manner she is in fact at her most frightened and distressed. That is not to say that such behaviour should be tolerated, merely that it is helpful to understand it in this way. My chief concern is that, when witnessed by J, this behaviour provides a very negative model for him and may have damaging impact on his own behaviour.

63. Dr Hellin analyses M's antagonistic behaviour in this way, which I again emphasise:

“When stressed and distressed, [M] becomes controlling, forceful and antagonistic. This reflects her underlying anxiety. She is actually very frightened and upset. She tries to sooth herself by taking control of situations but her interpersonal style is counter-productive. She does not negotiate well. She finds it difficult to compromise and situations become inflamed rather than de-escalated. In situations of interpersonal conflict, she protects herself from loss of confidence or face by unambiguously perceiving herself as correct which means that from her perspective, the other party is wrong. To acknowledge her flaws, even to herself, feels crushing and devastates her self-esteem so she avoids this possibility by locating responsibility and blame elsewhere. When she is unable to achieve the outcome that she wants, she resorts to formal processes and/or higher authorities: complaint procedures, The Protection of Human Rights in Public Law, the European Court of Human Rights, Stonewall and so on.”

64. By the final hearing it became clear that M's apparent insight in the earlier response to the Local Authority's Threshold Criteria document had been at best transitory or, at worst, illusory. M now contended that the criteria at s31(2) the Children Act 1989 were not met at all.

65. Mr Baker, counsel on behalf of M, has shown great fidelity to his instructions. He has not been able to challenge the evidence as to J's current presentation directly, at least not to any great extent. The reality, of course, is that M is not in a position to challenge or gainsay how J is presently behaving. It has not been suggested that any of the accounts given by F, his partner (P) or the school are factually inaccurate. M addresses this evidence, which in my judgment is compelling, by suggesting that J has adopted a male persona because he believes that to do so will help secure his return to

his mother. When explaining to J why he was going to live with his father, M told him ‘the Judge does not like little boys being little girls’. From this it is extrapolated that to go home J believes he must behave as a boy.

66. For this theory to have any credibility it would require evidence that J wishes to go home. In fact the preponderant evidence is that he is happy, settled and increasingly secure where he is. Indeed, as F told me in his evidence, it is contact with M that seems to distress J most. I will consider the contact separately below but I record here that I accept F’s evidence that it can cause J distress. On one occasion, where contact was particularly damaging to J he wet the bed for two nights afterwards. As it happened F had arranged a camping trip following contact. Mr Baker suggested that it might have been the unfamiliarity of life under canvass that had caused the bedwetting. With typical diffidence, F agreed that might be a plausible explanation. For reasons that I will turn to shortly, I reject that alternative explanation as unlikely.
67. With respect to Mr Baker it is not always easy to pin M’s case down. In her evidence it was clear that she plainly believes that F tries to condition J into behaving like a boy. J now lives in the bedroom, sometimes also occupied by his half sibling who visits at weekend. As I understand M’s thinking, she believes the presence of ‘boys toys’ in the bedroom subtly insinuates to J the need to behave like a boy. All this, which has at best tenuous coherence, requires the detailed and cogent evidence of J’s behaviour to be entirely discounted. J is a ‘curious’ child, eager for new experiences. He more than stands his own ground with his new brother. He is frequently boisterous. I have the strong impression that all of this has rather taken F by surprise. F himself is of a far more gentle disposition not instinctively attracted to football or Power Rangers. It is impossible not to conclude that there is in J something of his mother’s forceful personality. F, though the Guardian has told me that he has grown in confidence, is an essentially passive personality. Dr Hellin’s assessment of him entirely accords with my own impression of him having now seen him regularly at Court and having heard him give evidence on two occasions:

“On the PAI, [F] described himself as a very meek and unassertive person with difficulty in standing up for himself even when assertiveness is warranted. His scores suggested that he might have difficulty in the appropriate expression of anger and he is likely to be uncomfortable with interpersonal conflict. This too was my impression of him at interview....”

[M] is a much more forceful and assertive character than is [F]. In their relationship, he found it very difficult to express his views and maintain his position with her. Because he does not manage conflict or negotiate angry feelings well, it is likely that there were times that he lashed out verbally in the context of that relationship. He says he has not been verbally abusive in other, less quarrelsome relationships. Judge Penna found that he had been aggressive in February 2013 when he leaned into the car and in the context of aggression by [M] too. Other than this, there is no sign that he is inherently prone to aggression or violence, physical or oral except under exceptional duress, when he has felt abused and controlled for long periods of time and has eventually lashed out verbally. It has

been in the relationship with [M] that this has happened; [F] says he has never resorted to such behaviour in other more straightforward relationships.

68. I have formed the impression that F approaches his responsibilities to J by simply taking each day at a time and keeping his life full, fun and structured. I am also clear that he is happy for J to be whatever he wants to be. My view is supported by Dr Hellin:

“[F] has a less strong investment in [J]’s gender identity. [M] believes that he is uncomfortable with [J] as a girl but this was not the impression that he gave me. He did seem a bit puzzled by it and it had been surprising to see [J] after three years with such a strong female gender identity. However, he had looked into it and found ways to understand it. He is a more reticent, moderate person than [M] and can countenance much more uncertainty. If [J] is, as [M] suggests, assuming a male gender identity with [F] because she believes that this is what he wants, I think [J]’s belief about this is more likely to come from [M] than from [F].”

69. Mr Baker asked F whether he thought J might be behaving as a boy because he had been told that this would please the Judge and therefore facilitate his return home. F was prepared to engage in the hypothesis. I formed the impression that he had not reached an absolute conclusion that J will continue to identify as a boy, though he thought this the more likely outcome. This struck me as neatly illustrating Dr Hellin’s view that F is a ‘moderate’ person able to ‘countenance...uncertainty’. F’s simple and instinctive position is that he loves his son unconditionally and will continue to do so however he turns out. F has, in his quiet, self-effacing manner shown remarkable resilience in extremely trying circumstances. He works with increasing confidence with the agencies who have let him and his son down so badly and he does so without bitterness or rancour. Throughout the entirety of the private law proceedings F’s character was traduced, he was excised from his child’s life, his concerns were not listened to by the professionals involved in the case. Many fathers in such circumstances would have walked away. He did not, he stood by his son throughout the seemingly endless proceedings and was ultimately able to rescue him. He has now earned the respect of all the professionals involved in this case to whose voices I add my own.
70. The picture of J’s life now emerging from his home with his father also lends context to the concerns expressed by school A. The Mother dismisses those concerns high handedly... ‘they were Roman Catholics’. By this she meant that the staff were religiously or culturally opposed to gender dysphoria or unreceptive to it in some way. Surprisingly, as I have set out above, this rather crass cultural and religious stereotyping appears to have been accepted as a satisfactory explanation by the social worker undertaking the s.37 inquiry. Not only is the Local Authority’s response unsatisfactory it is also discriminatory. The School’s concerns, referred to the Social Services, were well reasoned, thought through and an impressive example of appropriate safeguarding.

71. It is also necessary for me to address the extent to which M has exposed J to discussion about surgical gender reassignment. Again, I have not found it easy fully to absorb her position on this point. As best as I can understand it M says that she took J to be advised on reassignment only to reassure him. It follows from my analysis above, particularly in the light of Dr Hellin's evidence that M believed J needed reassurance though he in fact did not. It seems obvious that this has made an impression on J and I have noted at para 50 above that he felt confident enough to approach the subject with F's partner.
72. It follows that I am satisfied that the Threshold Criteria, pursuant to s31(2) Children Act 1989, are met in this case. I agree with Ms Kilvington, counsel on behalf of J, that the Local Authority's Threshold document is rather unsatisfactory. In her closing submissions Ms Kilvington addresses the criteria thus:
- “The key elements of threshold are: the Mother's rigid approach to gender identity; the Mother's resistance to engagement with professional advice and the Mother's failure to acknowledge [J]'s right and need to have a relationship with his Father; and the significant harm that has flown and was at risk of flowing from those deficiencies.”*
73. I agree with that approach. I consider that M has caused significant emotional harm to J in her active determination that he should be a girl. I find that she has overborne his will and deprived him of his fundamental right to exercise his autonomy in its most basic way. Whether J chooses to present as a girl or not, ought to be his choice. This is not a case about gender dysphoria, rather it is about a mother who has developed a belief structure which she has imposed upon her child. I accept the evidence of Dr Hellin that M has become 'enmeshed' with J, in that she is unable to distinguish his feelings from her own. As such she is ill-equipped to meet J's emotional needs. M told me in her evidence that if J were not returned to her care, as she correctly anticipated might happen, he ought to be removed from his father and placed with an independent foster carer where, she reasoned, he would be free from any pressure to be a boy. This proposal, which was genuinely advanced, illustrates the chasm that has developed between J's needs and M's capacity to meet them.
74. My experience in the Family Division leaves me with little doubt that some children, as young as 4, 5, 6 years of age may identify strongly with their opposite gender. Such children can experience rejection and abuse arising from ignorance both on a personal and institutional level. Though none of the parties referred me to it, I have read the House of Commons Select Committee report '**Transgender Equality**', dated 14th January 2016, which investigates the challenges in securing sensitive NHS care and accessing affirming educational environments for transgender adults and children. It is important that such children are listened to and their views afforded respect but, to my mind, they are ill served by premature labelling. What they require, as F has so capably demonstrated, is the opportunity to develop their identity in which ever way it evolves. J was not only deprived of that space and opportunity by his mother, he was pressed into a gender identification that had far more to do with his mother's needs and little, if anything, to do with his own.
75. Transgender equality has received a great deal of attention in recent times. I believe that in this case the profile and sensitivity of the matters raised by the mother blinded

a number of professionals from applying their training, skills and, it has to be said, common sense. They failed properly to investigate M's assertions, in part I suspect, because they did not wish to appear to be challenging an emerging orthodoxy in such a high profile issue.

Contact

76. It was inevitable that contact would be difficult to negotiate. At home with his father, J now lives life as a boy. He asserts his own masculine gender. In contact he meets his mother who believes him to be a girl whose true gender identity is being repressed by F and the professionals. There have been many difficulties: M has brought toys more suitable for a girl; there has been much whispering; M has encouraged J to speak to her in Spanish; M has questioned J about coming home; J has been encouraged to make a necklace and play hairdressers. Finally, the contact notes, which are detailed, for the 15th July 2016 contain the following:

"Is it difficult not being home?" Mum asks [J]. [J] states "No" to Mum. Mum states "I think it would be better if you were home" to [J]. [J] did not respond.

Mum states to [J] "have you told [P] what you feel like?" [J] states "kind of" to Mum

"Are you allowed to do girlie stuff?" Mum states to [J]. [J] quiet at first but then states "I can if I want" when asked again by Mum.

Mum asked [J] "Do you want to be a girl?" [J] tries to distract Mum and told her to look behind for a golden fish. Mum continues to talk.

Mum said "[P] said you wanted to be a boy and said it at school?" [J] did not respond.

Mum promptly states "I know you are a girl and you feel like a girl and want to be a girl" to [J]. "I know you do, grown ups don't understand you need to tell them". Mum said this all at once."

77. It is impossible to construe this contact as anything other than harmful to J, it is corrosive of his emerging identity and it pressurises him to be something that he does not, at least at the moment, want to be. It was following this contact that J wet the bed twice. I find that this was most likely as a result of the real distress caused by the pressure put on him to be a girl at this session. Ms Sambrooks considered that contact workers should intervene directly if this happened again and consideration given to terminating direct contact. I agree.

78. Ms Kilvington has identified some of the significant features that inform future decisions in relation to contact. They require to be recorded here:

- i) *Dr Hellin's evidence that the Mother cannot be assisted through any therapeutic intervention to alter her view about [J] wanting to be a girl;*
- ii) *The risk of this rigidity extending to other misconceptions – eg the recent emergence of the obsession with [J]'s weight and him being starved, earlier concerning notions about hearing tests and immunisations.*

- iii) *The need for a period of “decompression” or respite for [J], following him being told of the plan to remain with the Father.*
- iv) *The need to minimize the ill-effects of some of the contact; the most recent leading to defiance, lashing out and being argumentative and even wetting himself twice.*
- v) *Ms Sambrooks noted that the most concerning aspect of the Mother’s intervention was “grown ups don’t understand you need to tell them” (G209) (in fact this is a far from isolated event – cf G158) and that if this happened again, it should be challenged by the contact worker and direct contact might well need to be brought to an end.*
- vi) *The emphasis on [J] being assisted to “self-protect” in relation to the Mother through life-story work and therapy, and the need for this to not become too burdensome for [J].*
- vii) *The professionals’ but also the Father’s views in that regard.*
- viii) *The pleasure that [J] can derive from activities with the Mother.*
- ix) *The Guardian would invite the Local Authority to attempt to clarify that [J]’s Maternal Grandfather does not want to see him currently, not feeling able to repose trust in the Mother’s account in that regard.*

The Legal Framework

79. I have taken some care to review the evidence in both the private and public law proceedings, as an understanding of this case requires an evaluation across what is now a broad canvas. The establishment of s.31(2) criteria must of course be based on evidence, which gives rise to the Court’s conclusions as to facts. See: **Re A (Application for Care and Placement Orders: Local Authority Failings); sub nom Darlington Borough Council v M, F, GM and GF [2015] EWFC 11; [2016] 1 FLR 1**. Though the Local Authority submit that it is clear that the threshold for intervention is met, they consider that on their evaluation of the s1(2) criteria, ‘the welfare checklist’, J’s needs can be best be met by a Child Arrangement Order in favour of the father, supported by a twelve month Supervision Order to the Local Authority. The reasoning underpinning this is that F has made such significant progress and his judgement has been so instinctively reliable that the parenting support that the Local Authority can offer is no longer necessary. Ms Davidson, who has made a powerful and effective contribution to this case, analyses the welfare imperatives in the context of the available legal framework:

“For [J] to be secured in his father’s care, there are a variety of orders which could be considered realistic. A Full Care Order could be requested. This would enable the Local Authority to continue to share Parental Responsibility for [J] and thus to stipulate where [J] would live. This would allow the Local Authority to remain significantly involved in the care that [J] receives and take any necessary steps to ensure [J]’s needs were met. For a Care Order to be proportionate, it would need to be demonstrated that it was necessary for the Local Authority to share Parental Responsibility to safeguard [J] from significant harm. In these circumstances the social work assessment has not demonstrated any areas where [F] cannot make decisions in [J]’s best interests; he is insightful of [J]’s

needs and is willing to take the advice of specialist services and the Local Authority in doing so. A Care Order would therefore not provide [J] with any additional safeguard. The 'No Order' principle has been considered through the formulation of this care plan and it appears that a Care Order would provide unnecessary intervention into [J]'s life."

If Parental Responsibility is not to be held by the Local Authority, it appears clear that [F] needs to be afforded enhanced parental responsibility to enable ongoing residence and to be able to continue to safeguard [J] from risk presented by [M]. A Child Arrangement Order, specifying residence with [F] would achieve this. This would allow [J] to be cared for by his father without the stigma of being a Looked After Child with ongoing statutory intervention. The area in which potential harm to [J] has been identified relates to [M]'s parenting and emotional enmeshment with [J]. By being cared for by [F], some elements of risk are alleviated however, the impact of the emotional harm and risk are likely to be ongoing to some degree. The Local Authority therefore proposes a Supervision Order be made for one year to allow the Local Authority to continue to 'advise and befriend' [J] and his family.

80. Whilst I have been greatly impressed by Ms Davidson's social work skills in this case, I reject her analysis as to the appropriate legal framework to be applied. It is, in my view, self evident that the challenges that lie ahead for J are significant. It seems to me that he faces two serious risks. Firstly, he may lose direct contact with his mother altogether. She has been the centre of his world for most of his life. He worries about her. Were she to break free from her rigid and ultimately false belief structure she would have a huge amount to offer as a parent. I believe J would grieve the loss of his mother bitterly. Secondly, if contact is not monitored very carefully, with reference to this judgment and to the history of this case, it has the potential to corrode J's core identity. Furthermore, experience shows us that adolescence can often be a time when earlier psychological harm begins to take its toll. I consider that this father should be given the maximum support available, buttressed by imposing upon the Local Authority, the statutory duties of a Care Order. In addition the permissive flexibility of an order pursuant to s.34 (4) Children Act 1989 strikes me as particularly suited to the circumstance of this case.

81. To some extent Ms Davidson foreshadows this in her final statement:

The Local Authority care plan regarding [J]'s contact with his mother has been the most difficult part of this care plan to formulate. The Local Authority is mindful that there are many positives within the contact between [M] and [J], that [J] appears to enjoy contact sessions and that [J]'s verbally expressed wish is to live with his mother. [J] clearly closely identifies with his mother, worries about her and that she forms a big part of [J]'s understanding of his identity. However, as set out in Section 5, there are several concerns regarding the impact of contact on [J]. These primarily relate to the amount of influence that [M] holds over [J] and the amount to which, her views regarding [J] and [F], limit [J]'s ability to develop his own identity and relationship with [F].

Whilst I share those concerns I consider them to be of such significance that they require continuing and proactive Local Authority intervention. More generally I reject the easy assumption that a public law order is, of necessity, significantly intrusive to a child's life. It need not be, it can be understated, sensitive and light touch where the child is concerned. I am very pleased that the Local Authority has agreed that Ms Davidson may continue to be assigned to this case. I am confident that she can implement the Care Order as I intend it should be.

82. There is no formula by which frequency of contact may be calculated. F considers that J needs a period of decompression whilst he starts a new school year and that contact should otherwise be structured around his needs. I am prepared to be guided by a parental instinct which has proved steady in challenging circumstances. I propose that contact be suspended until the October half term and thereafter continue on a monthly basis subject to the caveats I have identified from the evidence.
83. J has two very intelligent parents. F's empathy and sensitivity enable him to offer his son a great deal. M's lively and creative mind, her sense of fun and her powerful capacity to express herself are also gifts from which her son may derive very great benefit. Whilst Dr Hellin maybe right in her bleak prognosis about M's capacity to change, human nature can be remarkably resourceful and resilient. The Family Courts sometimes sees changes in human behaviour which confound expert expectation. I hope for J's sake that this is such a case.