

**Re J (Transgender: Puberty Blocker and
Hormone Replacement Therapy) [2024]
EWHC 922 (Fam)**



Nicholas Taylor

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Introduction

1. Elizabeth Isaacs KC, Head of St Ives Chambers, acted for the subject child (J) through his Children’s Guardian in this important case, heard by Sir Andrew McFarlane, President of the Family Division, sitting in the High Court in February 2024.

Background

2. J is 16 ½ years old and was assigned to the female sex at birth but regards himself as male (referring to himself as he/him).
3. J began a course of cross-hormone injections in January 2023 through an international provider named “Gender GP” whereby he received injections of testosterone every three months. The last of these injections occurred in August 2023 with the next round in November being suspended by agreement of the parties whilst the proceedings were ongoing.
4. In April 2023, J’s father applied under section 8 of the Children Act 1989, and under the inherent jurisdiction of the High Court, for the Court to intervene by preventing J from being treated with puberty blockers and testosterone injections without the Court’s consent.
5. Despite extensive efforts to engage the NHS there was no alternative provision open to J except for ‘Gender GP’ prior to the commencement of proceedings.
6. J, with the support of his mother and without opposition from his father, is due to undergo an assessment from a new clinic in London named ‘Gender Plus’, which will determine what treatment they can offer him (if any). J’s father acknowledged that whilst he does not believe the clinic is appropriate for J, he accepted the necessity of the assessment.

7. J's father opposes any further hormone treatment and his mother gave an undertaking that she would not take any step for the time being to consent to, or otherwise support J in obtaining, further prescriptions of testosterone from Gender GP, other than paying a monthly fee to keep the current referral to that clinic open.

Issues:

8. The key issues at the hearing were:
 - a) Whether J had the capacity to consent to the cross-hormone treatment he had received and puberty blocker treatment he wants to receive.
 - b) Notwithstanding if J is found to have capacity, whether the Court should sanction these treatments under its inherent jurisdiction, without a full assessment of J for gender dysphoria which includes a consideration of his physical and mental health needs.
 - c) Whether the child's consent and/or the consent of one parent is sufficient to authorise such treatments (including other treatments such as menstrual suppression) without any approval from the Court.
 - d) Whether the Court should give any wider guidance on how courts should apply the law to deal with similar issues in the future.

Father's position

9. J's father invited the Court to determine whether J was competent to consent to any further treatment from Gender GP. In addition, J's father asked the Court to prevent any further treatment of J by Gender GP using its inherent jurisdiction and declaratory powers.
10. As such, J's father invited the Court to make formal declarations to govern the law around these issues for future cases as follows:
 - a) An application to the Court must be mandatory where a parent with parental responsibility or a medical professional for a teenager like J who is over the age of 16, disputes the Gillick competence, diagnosis of gender dysphoria, or a treatment of cross-hormones.
 - b) No treatment of puberty blockers or hormone injections should be prescribed or administered to J or any other adolescent without the approval of the court. There would be a limited exception where said treatments are delivered in an NHS setting that is regulated by the Care Quality Commission with appropriate rules to ensure that the child gives fully informed consent, parental responsibility is respected,

parental consent is freely given and the said treatment is in the child's best interests.

- c) Any decisions about the administration of such treatments to the child require the consent of all of those with parental responsibility rather than just the consent of one parent.
- d) Even where a child is found to be Gillick competent, if there is a dispute about diagnosis or treatment the Court should determine any diagnosis, determine the appropriateness of any treatment in line with the best interests of the child, and make an order authorising or preventing said treatment.
- e) Where a parent or legal guardian does not consent to a person under 18 undergoing cross-hormone treatment, any medical practitioner who is willing to administer or provide said treatment should not do so without the approval of the Court.

Mother's position

- 11. J's mother invited the court to approve the referral of J to Gender Plus for assessment whilst continuing to give her undertaking in relation to further treatment (as above). If Gender Plus does not lead to any treatment, then the case will have to come back to court.

The Children's Guardian and J's position

- 12. Elizabeth Isaacs KC argued that it was premature for the court to determine any issue of J's capacity to consent to treatment due to the extensive assessment period that J was about to undergo with Gender Plus. She argued that it simply was not necessary for the Court to engage with the father's wider legal case or to offer general guidance at the time of the hearing.

Judgment

- 13. The Court agreed that it was not necessary at this juncture to make any determination in relation to J's capacity or give any wider declaration and guidance about the law.
- 14. The proposed (non-contested) assessment of J by Gender Plus gave the Court a convenient escape route through which it could give a limited and uncontroversial Judgment that does not set any wider guidance in a new and hotly contested area of law and public policy. This is best captured at paragraph 56 of the judgment:

"The court, particularly in a novel and sensitive area such as this, must be particularly cautious not to be drawn into academic discourse and or presume to lay down the law beyond that which is necessary to determine any current dispute."

15. Paragraph 4 of the judgment observes that the hearing itself took place before the publication of the controversial review produced by Dr Hilary Cass, entitled 'Independent Review of gender identity services for children and young people', published in April 2024. His Lordship commented:

"I have, therefore, deliberately not consulted the report before completing this judgment, other than to note headline points from media reporting. The content of this judgment is based on the evidence and submissions that were before the court as at the conclusion of the February hearing."

16. The judgment also, importantly, warns both the parties in the case and any other court dealing with this issue, that any further referrals to (in the case of the former) or treatment from (in the case of the latter) Gender GP as a specific provider must be scrutinised carefully. This is because an expert in this case, Dr Hewitt, raised serious concerns about the amount of testosterone J received from them with possibly fatal consequences (see paragraph 57).

17. It is hard to escape the conclusion that this is a decision deferred rather than denied and its likely this issue, whether in this case or another, will at some point be back before the High Court soon where a more substantive decision will likely have to be made.



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Law is correct as at 6 May 2023

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