

2. In Guernsey, as elsewhere, there is a well established principle that whenever possible the Courts should administer justice in public. There are however exceptional cases when the Courts do sit in private. The exceptions were considered by Day LB in the case of *IFS Investments Ltd v Manor Park (Guernsey) Ltd and Others* in the Royal Court on 22 April 2004. He followed the leading English case of *Scott (otherwise Morgan) v Scott [1913] AC 417*, in which Viscount Haldane LC held that there is a yet more fundamental principle, namely:

“that the chief objects of the Courts of justice must be to secure that justice is done.”

3. Consequently, Mr Day recognised:

“there are a number of matters where the Royal Court in the exercise of its inherent jurisdiction conducts hearings in private; for example, cases concerning children or incapables, matrimonial or trust matters and ex parte injunction applications.” (Paragraph 21)

4. You will be aware that court hearings involving children or sensitive family matters are invariably heard in private.
5. The application before you this morning is supported by an affidavit containing some personal details which, I was persuaded, do not need to be made public. I was satisfied that in our small community the interests of justice are better served by allowing the person to whom the Application relates to maintain her privacy. (I refer to her in the female gender as a matter of convenience without in anyway wishing to prejudge the Court’s decision. I also refer to her as “the Petitioner” even though the person bringing the Application is in law H M Greffier.)
6. Although I have made an Order permitting this hearing to be held in private I directed that the decision of the Court and its reasons for its decision shall be made public without disclosing the identity of the Petitioner. This is the first occasion on which the Royal Court has had to consider an application in respect of a person who has undergone gender reassignment. Justice demands that the public are entitled to know and understand how such applications are dealt with by the Royal Court. I therefore intend that my directions to you this morning will be published without disclosing the identity of the Petitioner.
7. I turn now to the application before you. The Petitioner submitted an affidavit with supporting documents that you have all had the opportunity to read and I do not propose to repeat all of her personal details.
8. I will limit my summary of the evidence to what I regard as the most significant facts in this case namely:-
 - (a) The Petitioner is an adult;
 - (b) The Petitioner was born in Guernsey and is entered in the General Register of Births as a child of the male gender; and

- (c) A full Gender Recognition Certificate has been issued to the Petitioner under the provisions of the Gender Recognition Act 2004, about which I will say more in a moment.

9. I will now turn to my Directions to you on the law. As I have already said, this is the first occasion on which the Royal Court has had to consider an application of this nature. I circulated to you, along with the Application and supporting affidavit, a copy of the leading decision of the English Courts in this area, that of the House of Lords in Bellinger v Bellinger [2003] 2 AC 467. I respectfully accept and adopt what was said by their Lordships, in particular by Lord Nicholls of Birkenhead in his speech. Lord Nicholls' explanation of "The indicia of sex and transsexual people" at paragraphs 5 – 10 on pages 472B – 473D is very helpful in understanding the indicia of human gender; the recognised condition known as gender dysphoria or gender identity disorder; and the medical treatments available for that condition.
10. Their Lordships stated that the then present state of the English Law regarding the sex of transsexual people was represented by the decision in Corbett v Corbett (orse Ashley) [1971] P83. That case decided that the law should adopt the chromosomal, gonadal and genital tests. If all three are congruent, they determined a person's gender for the purpose of marriage. Any operative intervention was to be ignored.
11. Lord Nicholls said Corbett had not been universally followed in other common law jurisdictions. The Courts of South Africa and Canada had followed the case, but those of New Zealand and Australia had not. He said:

"Thus, for instance, in New Zealand and Australia post-operative transsexuals' assigned sex has been recognised for the purpose of validating their marriages. In New Zealand in Attorney General v Otahuhu Family Court [1995] 1 NZLR 603, 630, Ellis J noted that once a transsexual person has undergone surgery, he or she is no longer able to operate in his or her original sex. He held there is no social advantage in the law not recognising the validity of the marriage of a transsexual in the sex of reassignment. An adequate test is whether the person in question has undergone surgical and medical procedures that have effectively given the person the physical conformation of a person of a specified sex". (Page 474B of Bellinger)

12. In Australia Chisholm J reached a similar conclusion in In re Kevin (Validity of Marriage of Transsexual) [2001] Fam CA 1074. Lord Nicholls summarises the decision in these words:

"there is no "formulaic solution" to determining the sex of an individual for the purpose of the law of marriage. All relevant matters need to be considered, including the person's life experiences and self-perception. Post-operative transsexual people will normally be members of their reassigned sex." (Page 474D of Bellinger)

13. The decisions of courts of other common law jurisdictions can offer us helpful guidance. As I have said, the leading case in this area is the House of Lords' decision in Bellinger.

14. We must take account of their Lordships' findings in relation to human rights. Lord Nicholls summarised the development of the law by the European Court as follows (at page 475D):

“This issue has been before the European Court of Human Rights on several occasions in the last 20 years. During this period the development of human rights law on this issue has been remarkably rapid. Until very recently the court consistently held that application of the Corbett criteria, and consequent non-recognition of change of gender by post-operative transsexual persons, did not constitute a violation of article 8 (right to respect for private life) or article 12 (right to marry):.....

In its most recent decision the court has taken the view that the sands of time have run out. The United Kingdom's margin of appreciation no longer extends to declining to give legal recognition to all cases of gender reassignment. This was the decision of the court, sitting as a grand chamber in the case of Goodwin v United Kingdom (2002) 35 EHRR 447. Judgment was given in July 2002, that is, after the Court of Appeal gave its judgment in the present case. Christine Goodwin was a post-operative male to female transsexual. The court held unanimously that the United Kingdom was in breach of articles 8 and 12.”

15. Their Lordships went on to declare English law to be incompatible with the petitioner's rights under articles 8 and 12. That is to say section 11(c) of the Matrimonial Causes Act 1973 which declared to be void a marriage between parties who are not respectively male and female was incompatible.
16. Convention rights have now been incorporated into our domestic law by the Human Rights (Bailiwick of Guernsey) Law 2000. When determining a question which has arisen in connection with a Convention right, the Law of 2000 directs us to take into account any judgment of the European Court of Human Rights. Hence we must take account of the decision in Goodwin.
17. In Bellinger, the House of Lords held they were unable to come to a decision recognising that a person born male could be regarded as female as a result of gender reassignment treatment. Their Lordships considered that the complex and sensitive issues involved needed to be carefully examined by Parliament in order to prescribe definitive criteria to establish when any particular individual should be considered to be of the opposite gender to that assigned at birth.
18. Matters have moved on since Bellinger was decided. The Westminster Parliament has considered and resolved the issues which concerned their Lordships by enacting the Gender Recognition Act 2004. Section 1(1) of the Act allows a person who has changed gender to make application to a Gender Recognition Panel. Rayden and Jackson on Divorce and Family Matters, Volume 1(1), 18th Edition, paragraph 35.32 states:-

“The criteria to be met by an applicant who is living in the other gender are that he or she (a) has or has had gender dysphoria (defined in s 25 as ‘the disorder variously referred to as gender dysphoria, gender identity disorder and transsexualism’); (b) has lived in the acquired gender for at least two years; (c) intends to continue to do so for the rest of his or her

life, and (d) provides the evidence required. The evidence required is a report from a registered medical practitioner or chartered psychologist practising in this specialist field, and a second report from any registered medical practitioner. At least one report must contain details of any treatment undergone or prescribed or planned for the purposes of modifying sexual characteristics.

Where an application is successful, a Gender Recognition Panel must issue a gender recognition certificate to a successful applicant. Where the applicant is single, this is a full gender recognition certificate; where the applicant is married, this will be an interim gender recognition certificate.”

19. We may take note of the provisions of the Act and so we are not obliged to follow the conclusion of their Lordships in Bellinger.
20. We do not need to decide today whether, or in what circumstances, the Royal Court would recognise a gender reassignment carried out in a jurisdiction other than the United Kingdom or a reassignment which has not been recognised in accordance with the criteria set out in the Gender Recognition Act 2004.
21. My Direction to you, on a point of law, is that the Royal Court must, in an appropriate case, recognise the Convention rights of a person with reassigned gender to whom a full Gender Recognition Certificate has been issued under the Act.
22. Is the case before you today an appropriate case? The Petitioner has explained how she considers her Convention rights are presently being infringed. The embarrassment, and indeed confusion, that may be caused whenever the Petitioner is required to produce her birth certificate in order to prove her identity is obvious. I will cite one example.
23. The Petitioner is normally resident in England where she is recognised as a female and is, I understand, entitled to a passport in her new name and new gender. In Guernsey, the Island of her birth, she also has an entitlement to a passport but unless she were to obtain a special concession, which cannot be guaranteed, it would be issued only in her old name, which she has now abandoned, and declaring her to be of the male gender, a physical description which does not accord with reality.
24. In the application before us today, HM Greffier seeks permission to alter the General Register of Births by making an additional entry therein containing the details necessary to enable him to issue a new birth certificate to the Petitioner in her new names and new gender. The new entry would include today's date as the 'Date of Registration' and would be assigned the next number available for the Petitioner's year of birth. The original entry relating to the Petitioner would be unaltered.
25. In the circumstances of this case, and in the light of my Directions to you, do you agree to grant the Application?

[The Jurats granted the application]

R J Collas
3 December 2007