



Neutral Citation Number: [2021] EWHC 1616 (Fam)

Case No: LS19C00525

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Coverdale House  
East Parade  
Leeds

Date: 14/06/2021

**Before:**

**THE HONOURABLE MR JUSTICE COBB**

-----  
**Between:**

**M**  
**- and -**  
**F**  
**X Local Authority**  
**P**  
**(By his Children's Guardian)**

**Applicant**

**Respondents**

-----  
Re P (Circumcision: Child in Care)  
-----

**Ms Semaab Shaikh** (instructed by **Jordan's Solicitors**) for the Mother  
**Mr William Lindsay** (instructed by **Ramsdens**) for the Father  
**Ms Louise McCallum** (instructed by **Local Authority solicitor**) for the Local Authority  
**Ms Sara Anning** (instructed by **Switalskis**) for the Children's Guardian

Hearing dates: 29 April 2021  
-----

**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE COBB

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.

**The Honourable Mr Justice Cobb:**

*The application*

1. The application before the Court concerns P. He is a boy aged 21 months. He is currently subject to an interim care order in favour of X Local Authority (“the Local Authority”); he has lived all his life with extended maternal family members (Mr and Mrs R), who (it is agreed by all parties) are likely soon to become his permanent carers under a Special Guardianship Order.
2. P’s parents are Muslim: his father by birth and heritage, and his mother by conversion to Islam some years ago.
3. By application dated 25 November 2020 brought under the Court’s inherent jurisdiction, P’s mother (“the mother”) seeks the court’s authorisation for P to be circumcised, in accordance with the custom of the Muslim faith; she wishes this procedure to be undertaken forthwith, and in any event before P’s second birthday. The application is supported by P’s father. The Local Authority and the Children’s Guardian both contend that the decision about P’s circumcision should not be taken now, but should be deferred until later in P’s life.
4. I have read a bundle of documents including a number of statements and reports; among them is a very helpful medical report from Mr Altaf Mangera MBChB(Hons) FRCS(Urol), M.D, FEBU of Sheffield Teaching Hospitals NHS Trust, a Consultant Urologist, and a Muslim. I have received able oral and written submissions from counsel for all parties. It was agreed that I would need to hear no oral evidence on this issue at this hearing.

*Background facts*

5. P is the mother’s third child, and the second child born to these parents. P has an older brother Q, aged 3 (rising 4), and an older half-brother T (aged 5) both of whom live with maternal family relatives (not Mr and Mrs R) in a joint permanent placement under a Special Guardianship Order.
6. In early 2017, P’s oldest half-sibling (T) suffered non-accidental injuries while in the care of his parents; these injuries were inflicted against a worrying backdrop of domestic abuse within the home, the father’s poor anger management, and the parents’ low level of co-operation and engagement with childcare professionals. T was removed

from his mother's care. In view of those concerns, Q was removed from his parents' care when he was born, and, following a pre-birth assessment during which the parents indicated that they did not accept the earlier court findings, P too was removed at birth, and he was placed with Mr and Mrs R.

7. Mr and Mrs R are not Muslim. It is nonetheless agreed that they will care for P throughout his life; they have been positively assessed as Special Guardians for P, and the parents agree that this order should now be made. Mr and Mrs R have agreed that they will respect P's Muslim heritage; they have acknowledged the parents' preference for P to follow a broadly (but not strictly) halal diet.
8. The parents were assessed during the proceedings as joint carers for P, using a Resolutions Approach; in fact, their relationship ended after the assessment. Thereafter, the father recognised he could not care for P as a sole carer due to his work commitments and his caring commitments for his elderly mother. The mother recognised that she too would not be able to complete the Resolution work on her own, as a single parent to P. Accordingly the parents have both indicated that they would not oppose P remaining in the care of his maternal aunt and uncle.
9. The Local Authority have offered, and indeed arranged, to facilitate regular contact (three times per week) between the parents and P. The mother has not taken up any contact with P since 7 October 2020; she claims (wholly unconvincingly in my judgement, and there is no evidence to support this) that she has sought to pursue contact through contacts with the social worker. The father has not seen P since 18 December 2020; he claims to be unable to attend contact until the issue of circumcision has been resolved.

*Expert evidence*

10. As indicated above, I have received a report from the single joint expert, Mr. Mangera. He opines as follows:

“Male circumcision is the surgical removal of the foreskin i.e. the portion of skin covering the glans (head of the penis). This allows the penile head to be fully exposed at all times. There are many techniques that can be used to achieve this but by far the most common in UK practice is to use a “ring” technique such as plastibel. This is most often performed under local anaesthetic by qualified doctors who are required by law to be registered with the Care Quality Commission as per GMC guidance. Given [P]’s age, I suspect this is the most likely procedure which will be offered to him. The alternative technique is an “open” or “sleeve” technique which is generally reserved for older children and adults”.

Of the ‘ring’ technique, he says this:

“The procedure takes between 3 to 5 minutes and the child is restrained either by an assistant or the parents or by using a restraint board for the time taken to undertake the procedure (3 to 5mins). Post-operatively, the child is given over the

counter oral analgesia such as paracetamol and/or ibuprofen. Some parents report not requiring any analgesia for their children and some report requiring regular analgesia until the ring has fallen off. I have not come across any cases where even stronger analgesia has been required ... I and also the vast majority of practitioners in the UK would use a ring technique for [P] given he is less than 2 years of age. Two years of age is only a rough guide to when a ring procedure may not be feasible anymore as it is dependent on penile size”.

The risks of an open procedure are similar to those of the ring procedure:

“The procedure can take between 7 days and even up to 4 weeks to heal. During this age range, the most difficult factor to deal with for practitioners is fear of the injection or the procedure and requires a calm and willing child. If the child cannot remain calm then the procedure is not undertaken and deferred. The time taken to do the procedure can vary depending on age and is between 5 to 15minutes. The procedure is technically more demanding and may not be available locally as not all clinics offer services for older children and can undertake such a procedure”.

11. Mr. Mangera helpfully discusses the risks of male circumcision upon a child of P’s age: he references the likely pain from the anaesthetic injection, and during the healing process (“mild to moderate... manageable with paracetamol”); he describes bleeding occurring in 1% of cases, usually in the first 12 hours; he describes infection being caused in less than 1% of cases; cosmetic issues are reported in 2% of cases; he references in passing other more minor risks. He refers to the suggested benefits of male circumcision, but does not expand on these extensively given (a) that circumcision for P is not proposed as a therapeutic intervention, and (b) the apparently divided medical opinion about the therapeutic benefits of circumcision.
12. Cohen J, who gave permission for the instruction of Mr. Mangera, specifically incorporated into the proposed instruction that the expert should be “able to speak as to the religious importance and timing of the procedure”. On that issue, Mr Mangera adds this:

“When it is strongly felt that the child will be raised in his parents’ religion and they both agree then children of his age are not given an opinion as a matter of routine practice. Therefore, the conviction that he will be raised Muslim needs to be there. In my opinion if the court feels [P] should be raised as a Muslim child, as per his parents requests, he/his parents should be given the same rights as all other Muslim families; which is to have a circumcision at a young age provided both his parents understand the risks and benefits. If the court feels he may or may not be raised as a Muslim child and there is doubt in this fact, then due to the irreversible nature of the procedure the court may wish to delay the procedure until [P]

is capable of making his own decision. The time taken to decide by [P] carries the risks that the procedure is technically more difficult, takes longer to perform, is more memorable for him, more costly and takes longer to heal”.

This last quoted section is interesting, but does not – for obvious reasons – offer, or even purport to offer, a wider welfare perspective on the issue.

*The arguments of the parties*

13. Ms Shaikh argues on the mother’s behalf that circumcision of P represents an important component of his identity and cultural and religious heritage; she accepts that male circumcision is *recommended* not *obligatory* in the Islamic faith (she suggests that “it is the usual practice”).
14. Ms Shaikh argues that the combined and strongly held views of the parents should carry considerable weight with the court. She further points to the fact that the Local Authority had initially been willing to contemplate, even allow the parents to arrange, for P to be circumcised when he was a new-born infant, but it had not happened; in this respect, I must observe that the mother fails to acknowledge that neither she nor the father took the appropriate or necessary steps to arrange it. The mother is concerned that if P is not circumcised now, he will not choose to be circumcised later in his life as he would be deterred by the likely pain and discomfort which the procedure would then cause him. The mother has requested that P follow a halal diet, and this is largely to be followed; however, it is noted that this request was only made after he had been with Mr and Mrs R for over a year.
15. Mr Lindsay adopts the arguments of Ms Shaikh. The father’s case is that circumcision should take place now, as:

“[t]he issue of circumcision is central to [P]’s need to understand his identity and background both now and in the future. [P] will always have a connection with his parents who are practicing Muslims. The Local Authority’s final care plan proposes a high level of contact with the parents following the making of a Special Guardianship Order. [P] will benefit from a shared sense of belonging and identity”.
16. Mr Lindsay submits that, like the mother, the father is concerned that if left until later in his life P would not choose to be circumcised as he would not be sufficiently motivated by his faith to do so.
17. The Local Authority position is summarised by the social worker thus:

“The Local Authority defers to the medical advice in that unless it is medically necessary that this is something that we would not support and believes that it is in [P]’s best interests to make his own decisions about this when he is old enough to do so and knowing all the facts about circumcision and the cultural reasons that underpin this”

In a later statement, the social worker says this:

“The best way in which [P]’s cultural beliefs and his Muslim identity can be promoted is through regular contact with his birth parents, both of whom confirm that they are practicing Muslims. It can also be promoted by having contact with members of his birth family who also follow the Muslim faith and practices. Additionally, by having access to materials which will help him to understand the importance of the Muslim faith for his parents, such as him having a Qur’an, a prayer mat and books that are age appropriate and child friendly and can explain key parts of the faith and traditions and what being a Muslim means”.

18. In December 2020, both parents made a commitment to provide items for P which would aid his understanding of the Muslim faith and identity; they also agreed that they would attend regular contact with their son. They have (as I have already mentioned re: contact) done neither. I note that the Local Authority has in the circumstances provided P with three child friendly board books: ‘My First book about Allah’, ‘My First Book about the Prophet Muhammad’ and ‘My First Book about the Qur’an’ (authored by Sara Khan and detailed to be teachings for toddlers and young children).
19. The Local Authority contends that the decision on circumcision should now be deferred. Ms McCallum accepts that when P was first born in the summer 2019, the Local Authority was indeed willing to contemplate P’s circumcision in accordance with the tenets of the Muslim faith. They had placed the expectation on the parents to make plans for this, and to propose a suitable clinic; the parents did not do so. Only in October 2020 did the father first make any specific proposals for this procedure to be undertaken. Ms McCallum contends that if the parents wish to promote P’s identity and cultural heritage, this could be achieved more meaningfully for P by them committing to seeing him in contact as planned, and providing cultural / religious books for P as agreed. She contends that circumcision for P must be seen in the wider context of his religious and cultural identity.
20. The Children’s Guardian echoes the views of the Local Authority.
21. The Guardian reports that Mr and Mrs R do not support P being circumcised at this stage; they are not parties to the proceedings, but their views are expressed through the Guardian thus:

“Mr and Mrs [R] believe that they can support his cultural heritage in other ways, such as promoting the celebration of Eid with his father, mother and his siblings. [P] has taken part in Eid celebrations at nursery and alongside his paternal family previously. This is something that they would continue to support and feel it is important that [P] has an understanding about his culture but is also allowed to make his own choices as to whether he wishes to follow the Muslim faith”.

That said, it is reported that they will unquestioningly accept the decision of the court an if he is to be circumcised are committed to providing him with the highest quality of after-care.

*The law*

22. I have been referred to a number of authorities relevant to this issue, though all previous decisions referred to me have been taken in the context of private law. Counsel have surprisingly not been able to locate any High Court or Court of Appeal authority in which the court has been required to consider circumcision of a child in interim care, as a contested issue, in public law proceedings.
23. Taking the statutory framework first, it is of course accepted that the parents both have parental responsibility for P, and will retain that parental responsibility even when the permanent arrangements for P are, as seems likely given the evidence filed and the consent of the parties, endorsed by the Court. The Local Authority currently has parental responsibility (*senior* parental responsibility) for P under *section 33(3) Children Act 1989* ('CA 1989') though this will be ceded if/when Special Guardianship Orders are made in favour of Mr and Mrs R. No party argues that as a matter of statutory construction either the parents or the Local Authority have the decisive 'say' in relation to the issue.
24. It is also noted that the Local Authority is required, for as long as it has an interim care order, not to take any step to change his religious upbringing. *Section 33(6)* of the *CA 1989* provides that:

“...While a care order is in force with respect to a child, the local authority designated by the order shall not—

(a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made;...”
25. As to the case-law, I have been taken to a number of authorities, including
  - i) *Re E (An Infant)* [1963] 3 All ER 874; [1964] 1 WLR 51; (Wilberforce J).
  - ii) *J v C* [1969] 1 All ER 788 at 801; [1970] AC 668; (HL);
  - iii) *Re J (Specific Issue Orders: Muslim Upbringing and Circumcision)* [1999] 2 FLR 678 (Wall J); and *Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* [2000] 1 FLR 571 (same case on appeal);
  - iv) *Re S (Change of Names: Cultural Factors)* [2001] 2 FLR 1005, at 1015-1016 (Wilson J);
  - v) *T v S (Wardship)* [2011] EWHC 1608 (Fam), [2012] 1 FLR 230 (Hedley J);
  - vi) *Re S (Specific Issue Order: Religion: Circumcision)* [2004] EWHC 1282 (Fam), [2005] 1 FLR 236 (Baron J);

- vii) *Re A and D (Local Authority: Religious Upbringing)* [2011] 1 FLR 615 (Baker J) (§74):
  - viii) *Re G (Children)* [2012] EWCA Civ 123 (CA);
  - ix) *Re B and G (Children)(No 2)* [2015] EWFC 3, [2015] 1 FLR 905 (Sir James Munby P);
  - x) *Re L and B (Children) (Specific Issues: Temporary Leave to Remove from the Jurisdiction; Circumcision)* [2016] EWHC 849 (Fam) (Roberts J).
26. Ms Shaikh contends that *Article 9* of the *ECHR* is engaged (Freedom of Thought, Conscience and Religion). Interestingly, the right enshrined in the Convention is one which includes a freedom to “change his religion or belief and freedom”; the freedom to manifest one’s religion is to be subject only to such limitations as are prescribed by law “and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.”
27. From the legislation and authorities cited to me, the following important guiding principles can be collected:
- General*
- i) While it can never be reasonable parenting to inflict any form of FGM on a child, the position is different with male circumcision; “Society and the law, including family law, are prepared to tolerate non-therapeutic male circumcision performed for religious or even for purely cultural or conventional reasons, while no longer being willing to tolerate FGM in any of its forms”<sup>1</sup>;
- Welfare*
- ii) The welfare of the child, both in the immediate and long-term, is the paramount consideration in reaching a decision about circumcision for a male child (the law in its current form is in *section 1(1) Children Act 1989*); this is uncontroversial in the instant case, and has been the starting point of all previous decisions;
  - iii) The welfare checklist (*section 1(3) CA 1989*) is engaged;
  - iv) Religious upbringing of a child in care may be a matter of great importance; the significance of the issue will vary from case to case depending on the strength of the religious beliefs and observance of the child’s parents; on any account, this factor will need to be incorporated within (and not in place of) the wider welfare review;
- Local Authority duty*
- v) A local authority is under a duty to ensure that a child in their care is not brought up in any different religious persuasion from that followed by his parents prior

---

<sup>1</sup> *Re B & G @* [72]



to the care order. If the local authority breaches that duty, it will be exceeding the limitation imposed on its exercise of parental responsibility by *section 33(6)(a) CA 1989*;

*Medical issues*

- vi) That the circumcision procedure is irreversible is a matter of significance when looking at the short and longer term implications for the child;
- vii) The court must review the medical risks and benefits of such a procedure, particularly where it is proposed for a non-therapeutic purpose;

*Views of parents and others*

- viii) The religious views and wishes of both parents carry significant weight (they may of course as between themselves have different views/wishes); the court should pay these views ‘serious heed’. The court will be slow to conclude that a parent faithfully striving to follow the teachings of their religion is acting unreasonably;
- ix) The court is not bound to give effect to the wishes of the parents about religious upbringing “when satisfied that the child’s welfare requires otherwise, and in giving effect to them the court has power to do so in such a manner as it may consider to be best in the child’s interests”;
- x) The views of the primary carers of the child (if not the parents) also carry significant weight; it is a strong thing to impose a medically unnecessary surgical intervention on a residential carer/parent who is opposed to it;
- xi) The particular environment in which the child is going to be raised is an important factor; if the environment is one in which circumcision is not a part of family life, or in which it is not in conformity with the religion practised by his primary carer, this would be a relevant factor;

I would add this:

- xii) That where a disputed issue of non-therapeutic circumcision arises again in relation to a child in care, it is appropriate for the matter to be referred promptly to the court for resolution. In this instance, the mother has done so; it may be more appropriate for the Local Authority to take the initiative in such circumstances.

*Conclusion*

- 28. As I indicated to Counsel during the hearing, I regard this as a finely balanced decision, in which there are potent arguments on both sides of the debate.
- 29. As a matter of law, no party holds the ‘trump card’ before the court. Had there been no interim care order in place, these two parents acting in agreement, and exercising their shared parental responsibility, would have been able to provide consent for P’s circumcision for either therapeutic or non-therapeutic reasons. But P is currently subject to an interim care order; the Local Authority currently has senior parental

responsibility, and presently opposes the procedure. I am satisfied that *section 33(3)(b)/(4) CA 1989* does not give the Local Authority absolute authority to oppose the procedure; I am equally satisfied that in opposing the procedure the authority is not offending against the statutory proscription on causing P “to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made” (*section 33(6)*) – P remains a Muslim boy being raised broadly in accordance with Muslim tenets.

30. The issue for determination requires me to exercise a pure welfare-based jurisdiction. The authorities referred to above are of some assistance in shaping that welfare judgement; the principles extracted from those authorities it seems to me apply as much in public law as in private law.
31. While not merely mechanically adhering to the *CA 1989* statutory checklist, its structure provides useful checkpoints to my decision. No assessment of P’s ascertainable wishes and feelings can be obtained on this issue, given his age. The social worker nonetheless made a reasonable point when observing that:

“When [P] is older he may be very happy that he was circumcised- he may strongly align with the Muslim faith and traditions and may be happy that the procedure has been undertaken. However, there is also a possibility that [P] may not align himself with the Muslim faith or traditions as an older child and may view his circumcision in a negative way. The only way those involved with [P] would be able to garner his wishes and feelings on being circumcised is if the procedure took place when he is of an age where he can express his own wishes and feelings”

32. I am wholly satisfied that P should be brought up, as his parents wish, as a Muslim child albeit that he will be living in a non-Muslim household (these are current relevant ‘background’ and ‘relevant characteristics’). It is important that P retains, and is allowed to develop an interest in, the profound and rich tenets of the Islamic faith. I recognise and accept that circumcision is an important and symbolic demonstration of his commitment to Islam, and that it is one of the five acts which are intended to fulfil the expectation of cleanliness (called ‘fitrah’). But I also note that neither of P’s older brothers (Q and T), with whom he spends time, and who are also placed in a home within the maternal family, have been circumcised.
33. I am equally satisfied, from what I have read, that Mr and Mrs R understand the importance of P’s Muslim heritage, and will honour that as far as it is possible for them to do so. P’s identity will quite naturally be influenced by the family within which he lives, and those who have the key parental role in his life, as well as his birth heritage and any contact with his parents. It is a matter of significance to me in this decision that Mr and Mrs R currently feel unable to support the circumcision, and propose that a decision in relation to this should be deferred until P is older.
34. I accept that both parents, practising Muslims, earnestly wish the circumcision procedure to take place in order for P to connect with his Muslim heritage. Their views are of considerable importance, and I attach significant weight to them. That said, circumcision alone is not likely to establish or enhance P’s sense of cultural or religious

identity; this would be best achieved at his age by regular contact with his parents who can, in the best way they consider possible, help him to understand his identity and the faith into which he has been born. When he is older, they can be on hand to help him to reach a decision on whether to be circumcised. My decision has, to some extent, been influenced by the fact that presently neither parent chooses to see P, and neither parent has (contrary to their offer to do so) provided P with age-appropriate books and/or learning materials about Islam.

35. I am satisfied that were I to order the circumcision, the procedure could be completed in the next few weeks, and if so, that the 'ring' procedure could/should be adopted; this would be painful and distressing to P for a number of days or weeks, but no more. If the procedure is deferred until P is older, the procedure is more complex, would require greater cooperation from P, and the recovery period would be longer. I do not regard it as an inherently risky procedure, but I do bear in mind its irreversible nature.
36. On balance, and with specific regard to the range of matters which I have summarised above, I have concluded that the decision to circumcise P should be deferred until he is able to make his own choice, once he has the maturity and insight to appreciate the consequences and longer-term effects of the decision which he reaches. I encourage the parents to resume their contact with P, so that not just his Muslim heritage, but also his experience of his wider family and origins, can be better understood and appreciated by him.
37. I therefore propose to make no order on this application.
38. That is my judgement.