Neutral Citation No: [2019] NIFam 11	*Ref:* **McF11018**
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:* **04/01/2019**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

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17/011182

BETWEEN:

A FATHER

Applicant

and

A HEALTH & SOCIAL CARE TRUST
and
A MOTHER

Respondents

(Application to discharge the care orders in respect of the female child and the male child)

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17/034204

BETWEEN:

A HEALTH & SOCIAL CARE TRUST

Applicant

and

A MOTHER AND A FATHER

Respondents

(Application by Trust to free the male child for adoption)

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13/107393

BETWEEN:

A MOTHER

Applicant

and

A HEALTH & SOCIAL CARE TRUST
AND
A FATHER

Respondents

(Application under the Human Rights Act)

17/011182

BETWEEN:

A MOTHER

Applicant

and

A HEALTH & SOCIAL CARE TRUST
AND
A FATHER

Respondents

(Application to discharge the Care order in respect of the female child)

IN THE MATTER OF A FEMALE CHILD BORN ON 19 JULY 2007 and
IN THE MATTER OF A MALE CHILD BORN ON THE 30 NOVEMBER 2012

HIS HONOUR JUDGE McFARLAND
RECORDER OF BELFAST sitting as a HIGH COURT JUDGE

Introduction

The proceedings

[1] These applications relate to a female child who was born on 19 July 2007 and a male child born on the 30 November 2012. The title and content of this judgment preserve the anonymity of the children and the family and no report may be made of this judgment or these proceedings that could lead directly or indirectly to the identification of the children or their parents. The female child will be referred to as the girl, the male child as the boy, and the mother as the mother. The father is the father of the boy, but he is not the natural father of the girl. However, he fulfilled the role of the father when he lived with the mother and they both cared for the children. Again for convenience, he will be referred to as "the father".

[2] The children were made the subjects of care orders on 17 April 2014. The care plans are that the girl should remain in her current long-term foster placement and that the boy should be freed for adoption and be placed with his current carers. The father initially sought the discharge of the care order pursuant to Article 58 of the Children (Northern Ireland) Order 1995 ("the 1995 Order") in respect of both children and in the event of discharge he was seeking a residence order in relation to both of the children. During the course of the hearing the father sought leave to withdraw his application to discharge the care order in respect of the girl. The Trust is seeking an order freeing the boy for adoption pursuant to Article 18 of the Adoption (Northern Ireland) Order 1987 ("the 1987 Order"). The mother has made two applications, the first a Human Rights Act 1998 application in relation to the

decision taken by the Trust in 2016 to remove the girl from her then foster placement, and the second seeking the discharge of the care order in respect for the girl and, in addition, for more contact between her and both children whatever the outcome. During the course of the hearing the mother sought leave to withdraw her application under the Human Rights Act 1998 in respect of the girl.

[3] Adele O'Grady QC appeared with Janice Gilkenson for the father, Moira Smyth QC appeared with Fiona McNulty for the mother, Noelle McGrenera QC appeared with Joanne Hannigan for the Trust, and Andrew Magee appeared for the Guardian ad Litem ("the GAL"). This was a difficult and complex case and its presentation to the court was made much easier by the skill and industry of counsel and their instructing solicitors.

[4] Although the matter is now academic, the father's initial application in relation to the care order for the girl created difficulties. The father did not have parental responsibility for the girl. He was therefore not able to apply for her care order to be discharged (see Article 58 of the 1995 Order). A residence order is an order settling the arrangements to be made as to the person with whom a child shall live, and is one of a number of orders provided for by Article 8 of the 1995 Order. The father can make an application for a residence order in respect of the boy, but, lacking parental responsibility for the girl, he was prevented from doing so in respect of her, as none of the provisions of Article 10(4) and (5) applied to him. He could have made the application if he has been granted the leave of the court to do so under Article 10 (1)(a)(ii). To avoid unnecessary delay, the court had decided to consider the father's application for leave and the substantive application for the residence order together. (By a more circuitous route as may have been intended by the father, it would have been possible for him to achieve his objective. Should the court have been minded to grant leave and then a residence order in favour of the father, it would have been required under Article 12(1) of the 1995 Order to make a parental responsibility order in his favour in respect of the girl. By virtue of Article 179(1) of the 1995 Order, the making of the residence order in relation to the girl would have revoked the care order. In any event the father decided to withdraw his application, and leave having been granted for him to do so, I now formally dismiss the application by the father to discharge the girl's care order.) The mother's application to discharge that care order still remains to be adjudicated upon and I will deal with this later in the judgment.

[5] The mother is also granted leave to withdraw her application under the Human Rights Act 1998 and that application is also formally dismissed.

The family background

[6] The family background has its complexities on both sides of the Irish border. Both parents are from the Republic of Ireland. The mother has five children in total. The eldest is a boy who is now 12 years old, and he currently lives with his father. When younger he was living in the Republic of Ireland with the mother and the girl

(whose father is unknown), and at that stage the father (in these proceedings) commenced a relationship with the mother. The actual date of the commencement of the relationship is uncertain but it was in or about 2010 or 2011. The girl was about three or four years of age at that time, and she accepted him in the role of the father and has continued to do so, currently referring to him as "daddy". The mother then became pregnant by the father with the boy. The mother and father then moved to Northern Ireland where the boy was born, and continued to live in Northern Ireland as a family with the boy and the girl. This period was not without its difficulties, and during a time when the father was away from home working in the Republic of Ireland, the mother admitted the boy and girl into care on a voluntary basis. There then followed a period of the children moving in and out of care, until there was formal court intervention. This ended with a contested hearing in Dungannon Family Proceedings Court and a care order in respect of both children was made on the 17 April 2014. The care plans at that time were for permanence for the children away from the parents.

[7] Dungannon Family Proceedings Court in making the care orders in relation to each of the children on 17 April 2014 found certain threshold criteria. The threshold criteria determined by the court can be summarised as an inappropriate level of care, significant neglect, abuse and supply of drugs with involvement in criminal activity, there had been a complaint by the girl of physical chastisement by the father, with a failure on the part of the parents to co-operate with a safe care plan, a failure to show adequate insight into the effect of their behaviour on the children, demonstrated hostility and aggression towards professionals, and a prioritisation of their own lifestyle choices over the needs of the children.

[8] The family situation was further complicated and with the mother and the father presenting intermittently as a couple, and then being estranged from each other. The mother has given birth to two other children. Both these children are male and were born in the Republic of Ireland. Although the older of the two boys bears a surname incorporating the surnames of the mother and the father, the father has not acknowledged himself to be the father stating his separation from the mother at the time of the conception. He has offered to undertake DNA testing, but the mother has declined to co-operate in this regard. These children are the subject of intervention by the Republic of Ireland social services, and although there was a time that both lived with the mother, currently they are in care, and living with foster parents.

[9] The boy and the girl continued to live with foster parents after the making of the care orders, but problems arose in that placement due to the conduct of that couple's adult son, and the boy and the girl were moved to another placement, the current carers for the boy in August 2015. In April 2016 that placement also broke down in respect of the girl, and the Trust were forced to separate the boy and the girl, with the boy remaining with the foster carers and the girl being placed with another couple as foster carers. That is the current arrangement with the care plans

now being the adoption of the boy and placement with his current carers and long term fostering of the girl with her current carers.

[10] The contact arrangements with the mother and the father are that each sees both children together for one hour once a fortnight. These contact sessions are supervised by Trust staff and at Trust premises, with the mother's session followed by the father's session.

The hearing

[11] The hearing took place over a number of days in May and June 2018, evidence being given on the 14th May, 15th May, 16th May, 17th May, 18th May, 23rd May, and 4th June. Written closing submissions were given by the end of June. There was a further complication in relation to evidence relating to a discreet issue involving the baptism of both children in 2015, which meant that the final submissions on this issue were made in September 2018. Evidence was given by the father, Sean Magee of AMH [Action Mental Health] Fermanagh, Dr Michelle Kavanagh, Professor Robin Davidson, Cathy Donnelly (independent social worker), Kerry Malone (Trust social worker), Jonny McGivern (Trust social worker) and Heather Foster (the guardian ad litem). The mother declined to give evidence, although she was present during part of the proceedings. Voluminous documentary material was also available to the court.

[12] I do not propose to catalogue the evidence presented during the hearing at this stage in the judgment and will refer to it later in the analysis of the issues in the case.

The Law

[13] As this was a multi-faceted case it is necessary to summarise the law in several sections, dealing with discharge of a care order, adoption proceedings generally, adoption being in the best interests of the child, parents withholding their consent unreasonably, and religious practices.

Discharge of a care order

[14] Article 58(1) of the 1995 Order provides that "a care order may be discharged by the court on the application of (a) any person who has parental responsibility for the child". Article 3(1) of the 1995 Order states that "where a court determines any question with respect to (a) the upbringing of a child … the child's welfare shall be the court's paramount consideration." In Re S [2002] NI Fam 26 it was stated that the burden of showing that the welfare of the child requires revocation of a care order rests on the person applying for the discharge.

[15] Waite LJ in Re S (Discharge of Care Order) [1995] 2 FLR 639 at 643d referring to the equivalent and identical English legislation stated:

> *"Section 39 of the Act allows the court to discharge a care order on the application of … a parent. Here the jurisdiction is discretionary from the outset (there being no obligation on the parent to satisfy the court that the threshold requirements no longer apply). The issue has to be determined by the court in accordance with s 1 of the Act, which (by s 1(1)) makes the child's welfare the court's paramount consideration, and (by s 1(3) and (4)) makes it mandatory for the court to have particular regard to the child's wishes and needs, the likely effect on him of any change of circumstances, the capability of his parents to meet his needs, the range of powers available to the court, and specifically: "(3).. (e) any harm which he has suffered or is at risk of suffering;.."*

In Re S it was emphasised that in considering any harm which a child has suffered or is at risk of suffering the risk to be considered should focus on recent harm and appraisal of current risk. As a consequence conclusions reached in earlier proceedings are of limited value, as are examples of conduct in the past. It is for this reason that I attempted to curtail an examination of any alleged acts and omissions of the parents in the past. Their only relevance was in the historical context of the case, and whether or not they assisted in the assessment of current harm and current risk.

[16] Hughes LJ in Re C (Care: Discharge of Care Order) [2009] EWCA Civ 955 at [33] stated that the jurisdiction to discharge a care order must not be exercised as some kind of reprimand or punishment to a child. In this case there has been an element of criticism of the Trust as to how it managed the care plan for both children and its attitude towards the father. As with the case of a child, the court will not use this jurisdiction to punish or reprimand a Trust should it be found to be in error. In a similar vein, some of the evidence has focussed on the significant progress that has been made by the father since 2014. This has been acknowledged by the Trust and the GAL. The court will not use its jurisdiction to reward the father for this undoubted progress in his personal life. The focus has been, and remains, on the well-being of the children now and in the future.

[17] The paramountcy of the welfare of the child will always guide the decision making of the court. This was emphasised in the case of AR –v- Homefirst Community Trust [2005] NICA 8 by Kerr LCJ at [104] when he concluded that:

> *"We have decided that [the mother's] convention rights were infringed and that the care order should not have been made. It does not follow, however, that we should reverse the order of the learned judge. As we have said, the matter of overwhelming importance now is that J has been living with his new family for seven months and is happy with them. His siblings have established a bond with him and he is happy in a loving family*

background. We are reluctantly driven to the conclusion that the disruption to his young life that would come about by his being taken from that environment is such that we cannot sanction it."

This reflects what can sometimes be seen by parents as an unpalatable truth. The court does not ignore the journey that has been taken during the intervention by social services. It will note errors that may have been made, but ultimately it looks at the present situation, and it attempts to foresee the future based on reliable evidence and opinion available to it now, and then determines what is best for the child now. In this context the court is not attempting to find a perfect solution. The 1995 Order sets the bar for statutory intervention, and continuing intervention, as the existence of, or likelihood of, significant harm to the child. I have added the emphasis because the legislation recognises that harm to the child, provided it is not significant, will not permit intervention at the level of a care order or a supervision order. On this basis the well-used phrase – "good enough parenting" has emerged.

Adoption proceedings

General provisions

[18] In relation to the application to free a child for adoption, Article 9 of the Adoption (NI) Order 1987 provides –

"In deciding on any course of action in relation to the adoption of a child, a court or adoption agency shall regard the welfare of the child as the most important consideration and shall –

(a) have regard to all the circumstances, full consideration being given to –

(i) the need to be satisfied that adoption, or adoption by a particular person or persons, will be in the best interests of the child; and

(ii) the need to safeguard and promote the welfare of the child throughout his childhood; and

(iii) the importance of providing the child with a stable and harmonious home; and

(b) so far as practicable, first ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding."

[19] Article 18(1) of the 1987 Order provides "where on an application by an Adoption Agency, an authorised court is satisfied in the case of each parent or guardian of a child that his agreement to the making of an Adoption Order should be dispensed with on a ground specified in Article 16(2) the court shall make an Order declaring the child free for adoption." Article 16(1)(b)(ii) and (2)(b) provides that an Adoption Order should not be made unless the court is satisfied that the agreement of the parents to the making of an Adoption Order should be dispensed with on the grounds that each parent is withholding their agreement unreasonably.

[20] The test to be applied in respect of the decision to free any child for adoption is twofold. First the court must be satisfied that adoption is in the best interests of the child and secondly it must decide that a reasonable parent would consent to such adoption.

[21] Articles 17(3) and 18(3) of the 1987 Order provide that on the making of an order freeing the child for adoption, the parental rights and duties relating to the child shall vest in the adoption agency (i.e. the Trust), and a further effect is that Article 12 (2)-(4) of the 1987 Order are made applicable thereby extinguishing the parental responsibility of both parents in respect of the boy and the mother in respect of the girl.

Adoption in best interests of the child

[22] Before reviewing some of the case law relating to adoption it should be noted that English case law after 2002 has to interpreted taking into account the change of legislation. Although the law in relation to care orders is virtually identical in the two jurisdictions, the law in relation to adoption was virtually identical up to 2002, Section 1(2) of the Adoption and Children Act 2002 now provides that: "the paramount consideration of the court must be the child's welfare throughout his life". Although this heralded an enhancement of the child's welfare to a status of paramountcy in England as opposed to the most important consideration in Northern Ireland, I am of a view that the English case law still has some relevance to the issues in this case.

[23] The jurisprudence in relation to the general approach to be taken in relation to adoption decisions and care order decisions involving care planning of permanence by way of adoption is now well established. Kerr LCJ in AR –v- Homefirst Community Trust [2005] NICA 8 at [77] said that

> *"the removal of a child from its parents is recognised … as a draconian measure, to be undertaken only in the most compelling of circumstances".*

The Supreme Court in Re B (a child) [2013] UKSC 33 used similar language in setting out the test to be applied by any court considering care planning involving adoption. Lord Kerr at [115] spoke of the need to consider the question of proportionality and

stated that "*a decision as to whether a particular outcome is proportionate involves asking oneself, is it really necessary?*" Lord Neuberger considered an order of this type as being "*a last resort*" (at [73]) and "*when all else fails*" (at [104]), and Baroness Hale said of the test – "*only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do*." (at [198]). Baroness Hale's much quoted phrase "*nothing else will do*" has now entered the legal lexicon achieving iconic status, however McFarlane LJ in Re W (A child) [2016] EWCA Civ 793 at [68] observed that:

> "*the phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase "nothing else will do" is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime*".

[24] Black LJ in Re P (Care Proceedings: Balancing Exercise) [2013] EWCA Civ 963 stressed at [107] the need for a court to carry out a proper balancing exercise in order to determine the necessity of making an adoption order, an exercise she described as "*a proportionality analysis*".

[25] Although Lord Neuberger in Re: B (above) at [104] stated that "*although the child's interests in an adoption case are "paramount" …, a court must never lose sight of the fact that those interests include being brought up by her natural family, ideally her natural parents, or at least one of them*" this did not create any presumption in favour of a natural family. McFarlane LJ in Re: H (a child) [2015] EWCA 1284 and later in Re: W (a child) (above) was very firm in his rejection of such a concept. In Re: W (a child) at [71] he stated:

> "*the repeated reference to a 'right' for a child to be brought up by his or her natural family or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only right is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life in a manner which is proportionate and compatible with the need to respect any Article 8 rights which are engaged*".

To put the matter in the context of the decision of the Supreme Court in Re: B (a child) (above) he further stated at [73]:

> "*It may be that some confusion leading to the idea of there being a natural family presumption has arisen from the use of the phrase 'nothing else will do' but that phrase does not*

establish a presumption or right in favour of a natural family; what it does do, most importantly, is to require the welfare balance for the child to be undertaken after considering the pros and cons of each of the realistic options, in such a manner that adoption is only chosen as the route for the child if that outcome is necessary to meet the child's welfare needs and it is proportionate to those welfare needs".

Parent withholding their consent unreasonably

[26] The question for the court to consider is whether the refusal of the father is unreasonable. It is an objective test and requires the court to consider the circumstances of the father in this case but endowed with a mind and temperament capable of making reasonable decisions (to adopt the description of Lord Wilberforce in Re: D [1977] AC 602 at 625). In this case that is not such a difficult exercise as the father is a man of above average intelligence (assessed at 105 verbal IQ) who has been able to achieve reasonable stability in his well-being despite earlier mental health and drug abuse issues.

[27] It is important to recognise that the wording of the 1987 Order recognises that a reasonable parent could legitimately still reject adoption for his or her child even if adoption was in the best interests of the child. As the Court of Appeal of England and Wales said in Re: C [1993] 2 FLR 260 at 272:

"the law conjures the imaginary parent into existence to give expression to what it considers that justice requires as between the welfare of the child as perceived by the judge on the one hand and the legitimate views and interests of the natural parents on the other".

However, Lord Denning MR in Re L (an infant) (1961) 106 SJ 611 observed that

"I must say that in considering whether [the parent] is reasonable or unreasonable we must take into account the welfare of the child. A reasonable [parent] surely gives great weight to what is better for the child. [The parent's] anguish of mind is quite understandable; but still it may be unreasonable for [the parent] to withhold consent. We must look and see whether it is reasonable or unreasonable according to what a reasonable [parent] in [the parent's] place would do in all the circumstances of the case."

[28] Lord Hailsham LC in Re W (an infant) [1971] AC 682 at 699C, summarised the correct approach as follows:

"It is clear that the test is reasonableness and not anything else. It is not culpability. It is not indifference. It is not failure to

> *discharge parental duties. It is reasonableness and reasonableness in the context of the totality of the circumstances. But, although welfare per se is not the test, the fact that a reasonable parent does pay regard to the welfare of his child must enter into the question of reasonableness as a relevant factor. It is relevant in all cases if and to the extent that a reasonable parent would take it into account. It is decisive in those cases where a reasonable parent must so regard it."*

[29] Higgins J in Re E & M [2001] NI Fam 2 stated:

> *"Thus the band of decisions which can be adjudged to be unreasonable may be a narrow one. However the ultimate test is one of unreasonableness judged against what a hypothetical reasonable parent would do … the test is held to be an objective one and the court must guard against substituting its own view for that of a reasonable parent".*

[30] Whilst stating that factors to be taken into account will vary from case to case Higgins J then set out a number of factors which would arise in most cases:

> *"for example a reasonable parent would consider the welfare of the child and look at all the circumstances and apply the test to the circumstances as they exist at the date of hearing … the prospect of rehabilitation, the level of contact if any, the nature and security of the present placement of the child. The prospect of rehabilitation is relevant as is the failure of a parent to seek rehabilitation. The degree of responsibility for the current situation which is attributable to the parent would be relevant as would be the extent and regularity of contact. The age of the child and the length of time he is in care as well as the length of time the child has been cared for by the parent or not are relevant. Those are factors which a reasonable parent would consider. Often parents feel a sense of grievance against Social Services for the way they perceive they have been treated by them. In some cases that sense of grievance may be justified. But the sense of grievance itself is not a relevant factor, difficult as it may be for a reasonable parent to ignore it. However the factors giving rise to that sense of grievance are relevant and would and should be taken into account by a reasonable parent".*

[31] In relation to factors that may give rise to a sense of grievance on the part of a parent, he further stated:

> *"those events happened and cannot be undone. The welfare of the child is not the sole criteria. It is one of the criteria a reasonable parent would take into account and the weight to be attached to welfare will depend on the weight which a reasonable parent would attach to it in the circumstances of the particular case. In some cases it can be decisive. It would be unusual if it played no part in a reasonable parent's deliberations. A reasonable parent would balance all those factors giving such weight to them as the circumstances demand".*

[32] The Re: E & M case (which was finally resolved by the House of Lords under case reference Down Lisburn H & SS Trust –v- H [2006] UKHL 36) also clearly indicated that the issue of contact between a child being considered for adoption and his birth parents is a matter that a reasonable parent would take into account when considering whether or not to consent to the adoption of their child.

Religious practices

[33] Article 52(6)(a) provides that while a care order is in force with respect to a child, the Trust designated by the order shall not 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. Gillen J in Re T (a child : religious upbringing) [2001] NIFam 4 (and again in Re D (Care order: Declaration of Religious Upbringing) [2005] NIFam 10) emphasised that the religious aspect would not trump the paramountcy of the welfare child, notwithstanding the wording of the legislation. In Re T he stated on page 11:

> "*Undoubtedly Article 52(6) does define restrictions on parental responsibility by the Trust in the exercise of its powers under a care order, but that does not preclude the court exercising its own jurisdiction, guided as it must be by the paramountcy of the welfare of the child in certain areas. …. Clearly it is incumbent on the Trust to keep this matter under constant review and to determine regularly whether or not steps cannot be taken to meet the obligations under 52(6) consistent with the welfare of the child. I am satisfied that the present situation does not permit the wishes of the mother with reference to the religious upbringing of this child to be accommodated in the interests of the welfare of the child.*"

Article 8 right to respect for private and family life

[34] For completeness, I conclude my review of the law as it applies to this case, by setting out Article 8 of the ECHR:

> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
> *2. There shall be no interference by a public authority with the exercise of this right except as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of crime and disorder, for the protection of health or morals or for the protection of the rights and freedom of others".*

[35] Even before the formal incorporation of the European Convention into U.K. law, Hale LJ in Re C and B (Care Order: Future Harm) [2000] EWCA Civ 3040 at [33] and [34] recognised the need for the proportionality analysis mentioned by Black LJ in Re: P (see [24] above). She stated:

> *"I would have reached that conclusion without reference to the European Convention on Human Rights, but I do note that under article 8 of the Convention both the children and the parents have the right to respect for their family and private life. If the state is to interfere with that there are three requirements: firstly, that it be in accordance with the law; secondly, that it be for a legitimate aim (in this case the protection of the welfare and interests of the children); and thirdly, that it be necessary in a democratic society.*
>
> *There is a long line of European Court of Human Rights jurisprudence on that third requirement, which emphasises that the intervention has to be proportionate to the legitimate aim. Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child."*

[36] European Court of Human Rights in YC v United Kingdom (2012) 55 EHRR 33 at [134] stated:

> *"The Court reiterates that in cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and secondly, it is in the child's best interests to ensure his development in a safe and secure environment. It is clear from*

the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained."

Lord Wilson at [33] and [34] in Re B (a Child) (above) referred to this as a correct statement of the proportionality test, describing it as demonstrating the high degree of justification which article 8 demands of a determination that a child should be adopted or placed in care with a view to adoption.

Discussion

Discharge of the care orders

[37] The father initially applied to discharge the existing care orders in respect of both children but now wishes to continue his application in relation to the boy. The mother, the Trust and the GAL oppose this application. The mother also issued an application to discharge the care orders in respect of the girl. The father does not have parental responsibility for the girl. The application is opposed by the Trust and the GAL. The burden is on the applicant parent in both applications to show that the welfare of the child requires discharge of the care order. The relevant circumstances in relation to the consideration of the child's welfare are set out in Article 3(3) of the 1995 Order and of particular relevance are the following:

(b) The child's physical, emotional and educational needs;
(c) The likely effect on the child of any change in his circumstances;
(e) Any harm which the child has suffered or is at risk of suffering;
(f) How capable of meeting the child's needs is each of his parents.

[38] Although the court may discharge the care order and substitute in its place a supervision order, the impact of any discharge, notwithstanding such a substitution, is that parental responsibility will become the sole responsibility of the parents (the mother in respect of the girl and the mother and the father in respect of the boy) and it will not be shared with the Trust. Problems arising from the immediate return of any child into the care of its natural parents could be mitigated by the court giving an indication of an intention to discharge the care order and then adjourning the proceedings to facilitate a phased return.

[39] I propose to deal with the mother's application first. She has failed to give evidence, although every opportunity was afforded to her to enable her to do so. Failing to give evidence is not fatal to her application, but it does create a difficulty for her as her statements of evidence in the proceedings are not formally proved

under oath and will be given less weight as she has not presented herself as available for cross-examination. This is particularly relevant in respect of any disputed evidence between the parties and also in respect of any assertions made by the mother which are not accepted by the other parties.

[40] The focus must be on the welfare of the girl and a determination of her current needs and her needs in the future. She is now 11 years old and has been living with her current foster carers since April 2016. She has had a difficult childhood having been removed from her mother's care in this jurisdiction from 2013. She had been previously been placed in foster care when living in the Republic of Ireland. When removed from her mother's care in 2013 she lived with foster carers and the boy, (her step-brother) but due to problems with an adult son of those foster carers, the two children moved in 2015 to another foster carer. With a breakdown in the relationship with these foster carers, the daughter alone moved in April 2016 to her present foster carers, with the boy remaining. For the girl these numerous placements, coupled with the separation from her step-brother, were particularly significant.

[41] The need for stability in her life is crucial, particularly with the key milestone of change from primary to secondary education. She currently receives ongoing support from the Trust's Scaffold Service and engages with the Trust's psychologist. The GAL has had contact with her recently and describes her as well settled. The girl still maintains a close relationship with both her mother and the father through regular fortnightly contact. The father, although not her natural father, does fulfil a father-type role.

[42] The mother is the subject of ongoing assessment in the Republic of Ireland and in a report of May 2018 Ms O'Connell and Ms McGill, social workers have reported to Sligo District Court which is currently dealing with the future of two younger children aged three and four who are the subject of interim care orders. That report echoes statements made in numerous earlier reports. They state –

> *"..historical concerns regarding [the mother] include patterns of multiple house moves, chaotic parenting, substance misuse and entering into abusive relationships. There has been a significant history of social work involvement with [the mother] and there is a well-established pattern of periods of engagement and disengagement, stability and instability from [the mother]."*

and later:

> *"[The mother] has shown time and time again that she has the ability to care for her children however she cannot seem to consistently sustain any substantial level of change for an*

extended period of time and this brings in to question her parenting capacity."

The report concluded that the social workers were extremely concerned about the mother's mental well-being, her ability to refrain from misusing substances, her ability to consistently meet the needs of her children to ensure that the children's living environment was safe and appropriate and her ability to protect the children from the issues within her relationship with her current partner.

[43] Considering all the evidence before me in relation to the girl's needs and the mother's ability to provide for those needs, I am satisfied that she has not shown that the welfare of the girl requires the discharge of the care order. The girl requires stability and her needs are being met in the current placement. Her mother is not in a position to provide the care that the girl requires and is not likely to be able to do so in the medium, or even in the long, term.

[44] The mother's application to discharge the care order in relation to the girl is dismissed.

[45] The various applications in respect of the boy were the main focus of the court's deliberations. The appropriate starting point is the joint report of Dr Kavanagh, consultant clinical psychologist, and Dr Jo Hewitt, educational, child and adolescent psychologist dated 17th April 2018. That report was prepared on the instructions of the GAL and Dr Kavanagh gave evidence at the hearing. The conclusions in relation to the assessment of the boy and his current and future needs, were not really in dispute, although the father's legal representatives made some criticism of the content of the report. That criticism was more in the context of the assessment of the boy's current attachment to his foster carers which they say was based too much on the self-reporting of the foster carers rather than on objective evidence. I will return to this in due course.

[46] The joint assessment involved interviews with the foster carers, each parent, the boy's teacher, and a social worker. It also involved observations of contact between the boy and each of his parents and activity at the home of the foster carers. Dr Kavanagh carried out cognitive and functional psychometric testing of the boy who was 5½ years old at the time.

[47] The functional psychometric testing indicated that he has difficulties with relationships with a non-reciprocal pattern of interactions and a poor ability to discriminate within relationships with a pattern of distress consistent with a profile of trauma symptomatology which would require sensitive and attuned responses. Cognitive functioning was considered to be average with a Full Scale IQ of 95, although it was noteworthy that one poor subtest score influenced the overall profile, to an extent that the stated average IQ score should be considered as a conservative representation of his ability. These assessments are supported by the school consultation, where he is regarded as an academically able child with a

positive attitude to learning and teaching staff. The teacher did, however, report that there were frequent low-level disruptive incidents. He has difficulty regulating his emotions at school and accurately interpreting the behaviour of others. His social skills are somewhat delayed and he struggles with co-operating, turn taking and sharing.

[48] Commenting on the boy's development and his needs, the joint authors of the report concluded:

> *"He will require a reflective carer who can hold their own anxieties while at the same time demonstrate reflective abilities that can support his curiosity and exploration about the circumstances of being in care. This can only take place in an environment that affords him adequate security and informed sensitivity."*

[49] The care order for the boy has a care plan of permanence away from both parents with a plan for adoption by his current foster carers. The father wishes the return of the boy to his care by the discharge of the care order. The court's focus is on the welfare of the boy as a paramount consideration, and in this context the harm he has suffered to date and is likely to suffer in the future is relevant. The court will also take into account any wishes and feelings the boy may have, the likely effect of the change of circumstances should the care order be discharged, and the capability of the father to meet the boy's needs.

[50] Much of the evidence in this case has focussed on the father's ability to care for the boy. There is no real dispute as to his lack of parenting ability in April 2014 when the care order was made, and even as late as December 2015 a period when the father himself acknowledged was extremely difficult. His evidence was that since then he has decided to better himself and there has been a significant improvement in his life. He argues that the Trust have not recognised the progress that he is making, and have not engaged with him to any meaningful degree.

[51] The father has maintained a consistent attendance at contact sessions with the boy, not having missed a session since the summer of 2013. Contact is recognised as being of high quality and is currently for one hour once a fortnight at Trust premises. The father is of the view that despite the quality and regularity of the contact the failure on the part of the Trust to suggest a variation in contact venues or an extension of time for the contact reflects a failure on the part of the Trust to consider any form of rehabilitation with the father.

[52] In support of his case, the father called several witnesses. Sean Magee of Action Mental Health described the father's engagement with the local AMH facility and described the father as being exceptional in relation to attendance and progress he has made. Professor Robert Davidson had assessed the father at the time of the earlier care proceedings and then again for the purposes of this hearing. He was

therefore able to observe the progress that had been made, remarking that the father had worked very hard to address the problems in his life. The father was now presenting in a much better physical state and had developed a more reflective and understanding of his previous problems. As far as Professor Davidson was concerned, the father did not require any further work and that he was now able to care for the child and should be given the opportunity to do so. Professor Davidson did indicate that the father did harbour a degree of distrust of and resentment towards the Trust.

[53] Professor Davidson's opinion was also supported by Cathy Donnelly, an independent social worker. She had observed a contact session which she described as of very good quality, noting in particular the boys exclamation that "this is great". In particular she noted that there would be wider support given to the father from his parents, with whom she had contact.

[54] The thrust of the father's case is that he is not the same person he was in 2014 and he has made significant changes to his life since then. Despite all the problems he has maintained a full commitment to his son, has attended contact sessions regularly and has enjoyed very positive contact with his son. Despite this the Trust has not carried out any rehabilitative work with him. It has not acknowledged the progress that he has made. Despite being given advice as early as 2012 to engage in motivational interviewing with the father, this was never undertaken until very recently. As further support for his complaints concerning the Trust's approach towards him, he called evidence from his general practitioner. She confirmed that the Trust's assertion that she had expressed negative comments about the father's ability to look after children as false. She was also able to give evidence as to the negative results of recent drugs tests and reported a general stability in his mental health.

[55] The father's application was opposed by the mother, although as I have indicated earlier she did not give evidence. Her statement of evidence did however voice her opposition. The main opposition came from the Trust and the GAL, and they relied on evidence given by Dr Michelle Kavanagh, Kerry Malone and Jonny McGivern, both Trust social workers.

[56] I have referred to the report of Dr Kavanagh in the context of the assessment of the boy. The emphasis of the evidence of Dr Kavanagh was not so much that she did not recognise the father's efforts and success but that she was of the view that it was at an early stage. When this was then placed against the potential harm for the boy with a move of residence from his current carers, Dr Kavanagh was of the view that the boy should remain with his foster carers. The joint report summarised the position as follows –

> *"It is the authors' view based on evidence in both the papers for review, assessment of [the boy's] development, their understanding of attachment needs and support required that*

such a move is not indicated. It would trigger devastating consequences for [the boy], not least to his relationship with his father."

This opinion was criticised by the father's legal representatives as it relied on what were comments by the foster carers, and that there was evidence that the foster carers were capable of given differing accounts to different people about the needs of the boy.

[57] In their evidence, Ms Malone and Mr McGivern also acknowledged the progress made by the father, but emphasised that the timescales involved as being outside the timescale that would be in the best interests of the boy. The timescales that were suggested were 12 months and 15 months.

[58] The starting point has to be the condition of the boy. He has lived in foster care since he was 3 months old. The threshold criteria that were found by the earlier court are set out at [7] above, and these would have been applicable during the boy's short period living with both the mother and the father. Even though that was a relatively short period, the neglect he suffered would have had an impact on him. He is currently in his third placement and each of these attachments, and in particular the breaking of attachments will have further compounded the problems. The most unfortunate circumstances surrounding the separation from his sister in April 2016 when he remained with his carers and the sister moved to other carers will have had a significant effect on him.

[59] His current situation is set out in the joint report of Dr Kavanagh and Dr Hewitt, and that has not been the subject of any criticism. Leaving aside any alleged self-serving reports emanating from the foster carers, the analysis of the joint experts appears to be supported by the evidence from the school. His current needs are as quoted at [48] above.

[60] Returning to the approach suggested by Waite LJ in Re S (Discharge of Care Order) the emphasis must be the likely effect of any change of circumstances, namely the change of caring responsibilities from the foster carers to the father. This is an extremely vulnerable young boy. He has suffered harm as a result of his upbringing. He is currently in a stable placement. Whilst there is some criticism of the foster carers by the father's legal representatives I would regard this, even at its height, to be at a modest level, and without them being either parties to the proceedings or witnesses in the case, I am reluctant to make any significant finding in this regard. The conclusion of the joint report is that any move would trigger 'devastating' consequences for the boy. Even taking on board the suggestions by the father's representatives that Dr Kavanagh has over relied on what she was told by the foster carers, the adjective used by both professionals is significant.

[61] A discharge of the care order would result in the boy moving from the current placement initially to the father, although the role of the mother, despite her lack of

engagement in these proceedings cannot be ignored. Given her support for the adoption of the boy, there must be uncertainty as to how she would react to this new situation. Ongoing private law disputes could not be ruled out, with these focussing on either residence or contact, or both.

[62] There is no doubt that the father has made improvements in his life and he is in a much better position now to cope with parenthood. As to how much further work he needs to do is a matter of debate, ranging from Professor Davidson's estimate of nil, and Mr McGivern's estimate of 15 months' work. Whatever is required, the boy's behaviours will present as challenging and there is an uncertainty as to how the father will be able to cope as the pressures would start to build within the household which consisted solely of the father and the boy. Support would be available from the father's parents and this would clearly be of some benefit, but would not be at a level that would potentially be required in the event of daily challenging behaviour from the boy.

[63] Kerr LCJ in AR –v- Homefirst Community Trust acknowledged that the decision to remove the child in that case was wrong, but that the court had to look at the current situation and at the consequences of the decision. For that reason it declined to interrupt what had been the status quo established by the removal.

In this case there can be no criticism of the original decision to remove the boy. There may be some criticism of the Trust's failure to engage at a proper and sufficient level with the father to assist his rehabilitation, but the test to be applied is not in retrospect but is to be applied today, and the question posed – has the father shown that the welfare of the boy requires the revocation of the care order? The view of the court is that the answer is – No.

[64] On a discreet point relating to the wishes and feelings of the boy, he is of an age whereby he could express wishes and feelings. Unfortunately the GAL has not spoken to him recently so I have not been able to ascertain them. I note that the boy appears to be well settled in his current placement and at school. He has a good relationship with his father and enjoys contact. I do not consider in all the circumstances that the absence of evidence concerning his wishes and feelings prevents me from making an assessment and a decision in this case.

[65] I therefore dismiss the father's application for a discharge of the care order in relation to the boy.

[66] I now turn to consider the application by the Trust in relation to the freeing of the boy for adoption. First I must be satisfied that adoption is in the best interests of the child, and if so, I must then go on to consider whether the parents are withholding their consent unreasonably. This must be applied in respect of both parents. Although the mother has indicated in her statement and through her counsel that she consents to the adoption, she did not complete the formalities in

relation to a properly witnessed written consent, and it falls on the court to consider dispensing with her consent in those circumstances.

[67] Having declined to discharge the current care order primarily on the ground that a change of placement from the current foster carers to the father (or mother) there is an acknowledgment that the care plan of permanence away from the parents is in the best interests of the boy. The stability offered by the current carers would indicate that this should remain. Should that continue as it is now, as a foster placement or should it be adoption? The Trust considers that it should be adoption and it is supported by the GAL. The mother has indicated her consent for this arrangement, but the father opposes it.

[68] The differences for any child between adoption and long term fostering are well established, as are the advantages and disadvantages. Analysing this in the form of a table may not be the best approach as much depends on the actual placement, the personalities involved and the interaction between the personalities rather than the legal relationship within the placement. Adoption severs the parental tie with the birth parent, and the adopting parents will assume the role of parents. This adds a degree of permanence to the new 'family'. Social services are no longer involved directly with the child although they may have an involvement in contact arrangements with the birth parents. The contact arrangements are likely to diminish.

[69] There has been no evidence placed before the court to indicate that the current foster arrangement would cease should the court decide not to free the boy for adoption. The carers appear to be committed to the boy. Whatever the rights and wrongs concerning their presentation of him to the church for baptism, that decision to promote the baptism and to seek out god parents to make solemn vows concerning the boy, would appear to be strong evidence of their commitment to providing a permanent home for the boy.

[70] The carers have had an attachment with the boy for nearly 3 ½ years, and it is a significant and positive attachment. It has helped the boy to recover from the care provided by his parents and the disrupted attachments from his early childhood.

[71] The Kavanagh/Hewitt reports stressed at [10.2] there were many positives in the father's relationship with his son. Their expressed concern about the father was more to do with time-tabling and the fact that the father's "*current stability of circumstance is at an early stage and as such not compatible the [the boy's] need for security]*. As for the boy's future well-being at [10.6] they considered that this would be a joint effort between the carers and the father:

> "*[The boy's] need for security cannot be underestimated given the influence of change in routines on his behaviour and emotional presentation. While there are many positives in his presentation they can only be sustained by the commitment of*

> *his carers and his father to maintaining for [the boy] an overall sense of security and stability."*

[72] In the same paragraph, after stressing the time-tabling issue mentioned above, the authors continued:

> "*This is not to say that [the father] should not make a contribution to [the boy's] recovery and development. As such the authors have outlined recommendations to afford [the boy] the best opportunity to avail of the father's contribution to support his well-being in the future*" (the authors' emphasis).

[73] It is difficult to see how adoption promotes this joint approach of the carers and the father. It promotes the stability and solidity of the new family unit, but to the diminution of the father's role – in that it removes his legal rights as a parent with the consequential dramatic reduction in his contact and attachment with the child, thus diminishing his ability to contribute to the boy's recovery and development.

[74] It cannot be ignored that although efforts are being made to achieve permanence and stability by the proposed adoption placement, the dramatic reduction in contact, is likely to have a de-stabilising impact on the boy. This is a contact that is accepted across the board in this case as constant, consistent and positive. It has been in place since 2013, has pre-dated the current placement by two years, and has been maintained by the father despite all the other factors impacting on his life.

[75] In addition to the reduction in contact with the father and mother, it is planned that the current arrangement of his weekly contact with the girl be reduced to every two months, although the GAL considers every month may be more appropriate. How the boy, an enquiring 6 year old, will react to the reduction in the contact with his sister, a girl with whom he has shared his formative years and many traumatic incidents, is unknown. She will remain in her current permanent foster placement and will be seeing her parents fortnightly under present arrangements.

[76] The GAL has not had an opportunity to ascertain the boy's wishes and feelings concerning adoption and reduction in contact with his parents and sister. He is a boy of sufficient age and understanding to have a view on these issues, but regrettably the court is unaware of his views. The issue is sensitive but direct questioning on the matter could have been avoided, and the GAL could have been able to give the court some idea about what the boy's wishes and feelings are. The GAL does not give any assessment as to the impact on the boy of this reduction in contact with his parents and sister, although by suggestion that the Trust's plans are too drastic, the GAL acknowledges that the reduction will be to the boy's detriment. In her September 2017 report, she does, perhaps stating the obvious, concede at 11.10

that "*it is important that contact meets the needs of the children and does not cause them stress or disrupt their placements in any way*". This was stated in the context of the quality of contact but equally applies to regularity of contact. The GAL appears to reject any possibility of risk in this area, being of the view that there should not be any disruption.

[77] Given the uncertainty that will attach to a significant reduction in contact between the father and the boy, the mother and the boy and the girl and the boy, and the potential for an impact on his general well-being in any prospective adoptive placement, I am not satisfied, on the balance of probabilities, that freeing the boy for adoption in in his best interests. I have, earlier in this judgment, ruled that the current placement at present best serves the boy's best interests. Permanence can be achieved through a foster care arrangement, but still allows the boy to have meaningful attachment to his birth family members, and in particular, allows the father to continue to play a significant role in the boy's life. The joint role of the foster carers and the father, as envisaged by the Kavanagh/Hewitt report, will allow the boy to maintain the overall sense of security and commitment. I have referred to the role of the father, as much of the evidence has focussed on him. In no way do I seek to diminish the role of the mother and the sister. Each in their own way, and subject to the ability that they have, will have a role to play.

[78] The reduction in the contact which will be necessary to allow any adoption to take place, is too much of an unknown quantity that can just be ignored, relying on a hope that everything will work out.

[79] As I have determined that freeing the boy is not in his best interests, the issue of parental consent is therefore no longer relevant, however as evidence was received relating to certain matters and submissions were made, I will briefly comment on the several matters raised.

[80] If I am wrong concerning adoption not being in the boy's best interests, I would still not have freed the boy for adoption as I am of the view that the father is not withholding his consent unreasonably.

[81] I do so for a number of reasons. The principle reason is that a reasonable parent of the boy would consider the relevance of parental attachment and contact with the boy. The contact has been regular and beneficial over the previous 5 years, and the plan is to reduce this significantly from once a fortnight to once every six months for direct contact.

[82] Second, although the prospect of rehabilitation is not considered viable within the boy's current time scale, the father has made significant progress in his own journey. There is a debate as to how much progress has been made and how much still needs to be made (see paragraph [61] above), but it would be wrong to rule out, on a permanent basis, any possibility of rehabilitation.

[83] The issue concerning sense of grievance is more complex. There are two principle matters – the treatment of the father by the Trust and social workers employed by it, and the matter concerning the baptism of the child. The former is to some extent a matter of degree and perception. At one level, the Trust did not provide the necessary support and facilities to enable the father to enhance his prospects, but this has to be seen in the context of the father's antagonism towards the social workers and a difficult relationship that this created. The court acknowledges that if someone is hostile towards you and is not engaging with you, it can be a difficult exercise to attempt to engage with them. There is an element of grievance, but not to the extent that the underlying cause of the grievance would impact the thinking of a reasonable parent.

[84] The baptism was really a most unfortunate set of circumstances. The background was that the girl and boy had moved to their new placement in August 2015, which is the current placement of the boy. The foster carers were members of the Roman Catholic church. The girl was attending a church school, and it was anticipated that her class would be presented for their First Holy Communion the following Spring. To receive her first Holy Communion it was necessary for the girl to be baptised into the church. It was also anticipated that she would make her first confession in the Autumn of 2015, and again baptism was a pre-requisite of this event. Confession is not a public exercise, but the tradition of the church and the school was that the class mates would be undertaking their individual confessions at the same time. Irrespective of the religious significance of these events, the court recognises that the participation of the girl in both these events was potentially significant, and her inability to do so could have impacted on her well-being.

[85] I accept that there was an anticipation on the part of the girl that she would take part in her confession and then her holy communion, and her baptism was a pre-condition of her doing so. It was clearly an issue in relation to her that needed to be addressed. There was no need at all for the boy to be baptised as he was aged 3 at the time, not attending school, and with no need or desire for his first confession and his first holy communion.

[86] I am again conscious that the foster carers are not parties to these proceedings and have not given evidence. I am also conscious that representatives of the school and the church have not been called to give evidence. In the absence of evidence from these sources, it is for the Trust to justify its conduct as the party exercising parental responsibility.

[87] There are no records available to record the developments relating to this issue. I do not know if such records were ever kept, were created and were then either lost or destroyed. If either lost or destroyed there is no explanation as to why the records and not others relating to the children are missing. The most likely explanation is that no records were kept relating to the issue, recording contact between the foster carers, the parents, the school and the church. Why the Trust

would undertake its role relating to the religious upbringing of the boy in light of Article 56(6)(a) of the 1995 Order without any record keeping is strange.

[88] One matter that is certain, is that the father of the boy is an atheist, and when the issue of baptism was raised at a LAC meeting on the 15 December 2015 (after the event) his views were clearly recorded – "*[The father] reported that he is an atheist and his children are not Catholic and he cannot understand why they have been baptised into the Catholic Church.*" The minutes of this meeting, or any subsequent meeting, do not appear to record what explanation was given, if any. The position of the girl is different given the social pressure that she would have been under to comply with what would appear to be 'rite of passage' events to be embarked upon by, in all likelihood, her entire class at school. For her not to have participated, and remained isolated within the class group, would have created a clear issue that had to be resolved. In relation to the boy who was not in a similar position at school, the father's lack of understanding is shared by the court. The Trust has been unable to provide any explanation to the simple question – why was the boy baptised into the Catholic Church?

[89] It is the court's understanding that the Roman Catholic church would not normally baptise a foster child in these circumstances as any child is normally presented for baptism by its natural parents with nominated god parents also being present. Vows concerning the upbringing of the child are then entered into. This would be part of the sacrament of baptism as performed by the Roman Catholic church. As foster carers would not have any parental responsibility and the god parents would have no permanent connection with the child, it is understandable why the church would not undertake such an exercise. It is possible that the church authorities were ignorant of the position, as the Baptismal Certificate for the boy had the names of the foster carers as the parents of the child. It is reported to the court that the church has indicated that this was a mistake as the foster carers were only witnesses to the baptism, although it is a strange occurrence that mere witnesses should somehow be recorded as the parents of the child in a formal church record. Fortunately, the error has now been discovered and has been rectified.

[90] The baptism occurred on the 17th November 2015 and prior to the event there was an exchange of emails between legal representatives. An email sent from the Trust's solicitors at 11.30 on 22nd October 2015 stated:

> "*The Trust have advised of the following options in respect of [the girl's] and [the boy's] baptism:*
>
> *1. [The mother] and [the father] can engage with the Trust and be part of the baptism, organising it in a venue agreeable with both [the mother] and [the father] (within reason)*

> *2. [The mother] and [the father] do not to wish to engage, are not agreeable to the baptism, the Trust will go ahead and organise the baptism."*

The parents were given until 26th October 2015 to respond. There appears to have been some discussion between social workers and the parents prior to this, although, again, such conversations were not recorded.

[91] The father's solicitors responded by email at 15.59 on the 4th November 2015 stating – "*in principle my client..would be broadly in support of your proposals regarding baptism. He would however, seek clarification on the extent of his involvement both in the arranging and attendance at the actual baptism.".* The Trust's solicitors replied at 11.24 on the 5th November 2015 as follows – "*If the baptism was going to have been undertaken by [the mother] and [the father] it would have been for them both together, separate baptisms would not have been facilitated*".

[92] In an email at 12.38 on 2nd December 2015, the Trust's solicitors stated – " *The Trust made all reasonable effort to engage and seek [the father's] views in respect of the christenings….The christening was progressed as it was very evident that [the girl] was becoming anxious about being able to make her first confession with her classmates."* There was no reference to the boy in this email.

[93] The situation relating to the baptism of the boy (as opposed to the girl) would appear to be as follows - Baptism is a significant sacrament in the Roman Catholic church representing the presentation of a child as a member of the church. The responsibility for presenting a child and nominating god parents rests with the parents of the child, and not on foster carers. The mother appears to have acquiesced in the baptism of her son. The father, by his solicitor's email, broadly supported the idea but wanted more detail. The Trust and the parents, and not the foster carers, had the responsibility for the religious upbringing of any child in care, with the proviso (subject to the overriding welfare of the child) that the Trust cannot override the wishes of the parents on the issue of religious upbringing. The issue of the boy's baptism was never referred to a LAC meeting, and not discussed or sanctioned by a LAC meeting. Social workers appear to have made a decision to allow the foster carers to present the boy for adoption, and having made that decision imposed a strict and unrealistic timetable on the parents to respond to their demands relating to the baptism. Finally the Catholic Church proceeded with the baptism with either the clergy and officials being unaware the boy was in foster care, or being aware and acknowledging the foster carers as the parents, and recording them as such.

[94] I consider that the Trust was not in formal breach of its obligations under Article 52(6)(a) of the 1995 Order as religious upbringing encompasses much more than a single event. Religious upbringing would involve much more than this. However, the legislation clearly implies that the views of the birth parents are

important in relation to this issue, and the Trust proceeded in this case without any, or adequate, consultation or discussion.

[95] I am of the view that a reasonable parent, in the circumstances of the father, would have a clear grievance, and the underlying facts creating the grievance are such that a reasonable parent would not consent to the boy being freed for adoption.

[96] As it is not necessary for me to do so, I decline to make any ruling as to the reasonableness, or otherwise, of the mother's failure to give her consent on a formal basis.

[97] For the reasons that I have given, I decline to free the boy for adoption and dismiss the application by the Trust.

[98] The mother's application under the Human Rights Act relates to the Trust's decision, using its powers under the care order, to remove the girl from her then foster carers in April 2016 and place her with her current foster carers. A significant period of time has elapsed since that decision. Although covered in various reports and documents submitted to the court, no direct evidence was received on the issue. I consider that the facts as they presented themselves created a very difficult decision for the Trust to make, and in all the circumstances the decision could not be said to have been made in breach of the mother's Article 8 ECHR rights. Fortunately the placement into which the girl was moved has proved to be a stable one, and is meeting the needs of the girl. In the circumstances, I dismiss the mother's application.

[99] The final decision relates to the mother's contact with both children. She is seeking additional contact. The current arrangements are that she sees both in a joint session in Trust premises for one hour once every fortnight. This session is supervised by Trust staff. The quality of contact is reported to be good. The court's focus is on the benefit that the children achieve by this contact with their mother. The current regularity of contact could be regarded as reasonably high given the current care plans of permanence away from the parents. It is difficult to see how additional contact could be arranged without disrupting each child's placement and the attachment they have with each other, and with both parents.

[100] The mother has also significant logistical commitments in the Republic of Ireland in relation to contact with her other children. Whilst additional contact may be the mother's wish, it has not been considered in light of all the implications for the mother and, in particular, the welfare of the girl and the boy. The current level of contact is sufficient to meet the needs of each child.

[101] I therefore decline to make any order requiring the Trust to increase the current level of contact between the mother and each child.

[102] In conclusion, I make the following orders:

(a) On file 17/011182 (the application by the father to discharge the care orders in respect of the girl and the boy), I grant leave to the father to withdraw his application in relation to the girl, and I dismiss his application in respect of the boy.

(b) On file 17/034204 (the application by the Trust to free the boy for adoption), I dismiss the application.

(c) On file 13/107393 (the application by the mother under the Human Rights Act), I dismiss the application.

(d) On the second application on file 17/011182 (the application by the mother to discharge the care order in respect of the girl and for additional contact with both the girl and the boy), I dismiss both applications.

(e) I make no order as to costs between parties.

(f) I order taxation of the costs of those legally assisted parties.

[103] I will hear counsel in relation to any other orders that are required.