Neutral Citation No: [2023] NIKB 91 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **SCO12264** *ICOS No:* **22/083851/01** *Delivered:* **19/09/2023**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY JR241 AND OTHERS FOR JUDICIAL REVIEW

AND IN THE MATTER OF A DECISION OF THE SOUTHERN HEALTH AND SOCIAL CARE TRUST

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Neasa Murnaghan KC and Colm Fegan (instructed by Paul Campbell, Solicitors) for the applicants
Michael Potter (instructed by the Directorate of Legal Services) for the respondent

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SCOFFIELD J

Introduction

[1] There are three applicants in these proceedings: a mother (JR241) and her two children (C1 and C2), for whom she also acts as next friend. They collectively seek to challenge a decision of the Southern Health and Social Care Trust ("the Trust"), taken at a child protection conference on 28 June 2022, to cease funding the provision of day care for the second and third applicants from September 2022. Without objection, the applicants were granted anonymity in order to protect the identity of the minor applicants.

[2] Ms Murnaghan appeared with Mr Fegan for the applicants; and Mr Potter appeared for the respondent trust. I am grateful to all counsel for the helpful written and oral submissions.

Factual background

Overview of the factual picture

[3] At the time of issue of these proceedings, the first applicant was 26 years old and her two children (the second and third applicants) were 6 and 3 years old respectively. The family has had Trust involvement for a number of years. The two minor applicants are 'children in need' within the meaning of that term in the Children (Northern Ireland) Order 1995. There has been domestic violence at the hands of the children's father. The first applicant has averred that he was extremely abusive towards her. Indeed, he was convicted of assaulting the first applicant, for which he received a six month prison sentence; as well as being investigated for a historic assault on their older son. As a result, the children have been on the child protection register (CPR) since 2018 under the categories of potential emotional and physical abuse. They were taken off the register for a time but then put back on it following a domestic incident in November 2020. In June 2022, at the time of the decision impugned in these proceedings, their registration was extended for at least another six months until December 2022, this time with emotional abuse confirmed. In December 2022 the children were finally removed from the CPR.

[4] The family moved from their home in the Newry area to a different area (within the responsibility of the Banbridge Family Intervention Team), on the advice of the Trust, in April 2021. This was to provide distance between the first applicant and the children's father and so that he was not aware of where they lived. For that reason, the details of their school and nursery are not included in this judgment. The applicants moved area for this reason; but this meant leaving behind the first applicant's support network of close friends. The second applicant was in Primary 1 at that time and moved school. As part of this move, the Trust determined that, in order to safeguard and promote the children's welfare, they should be provided with additional services. In the course of this, the Trust arranged for them to avail of some day care provided at Nursery A. It is this provision which is at issue in these proceedings.

[5] Up until the end of August 2022, the Trust provided day care for the children at Nursery A, twice a week, on Mondays and Fridays. C1, who was of school age, attended from 2.00 pm to 6.00 pm on Mondays and Fridays, apart from during the summer when he attended all day on Mondays and Fridays. C2, who was not of school age, attended all day on Mondays and Fridays. Nursery A was right beside the family's new home and this arrangement appears to have worked well. The first applicant has averred that the children loved the nursery, and from her point of view, it offered them stability and structure, as well as the opportunity to socialise, play and develop. This was particularly the case for C1, who had been more affected by the domestic issues in his mother's previous relationship than his younger brother. The cost of day care was significant (£43 per day for C2 and £25 per day for C1), which is not an expense the family would have been in a position to meet without Trust funding.

[6] At the time when the decision was made to provide day care, the family social worker was a Ms Metcalfe. That later changed and the new social worker assigned to work with the family, after their move, was Ms Elliott, who took over in September 2021 and was the designated social worker up until June 2022. The first applicant says that, on 23 June 2022, she was advised that she had a new social worker, Ms Rooney; and she first met Ms Rooney via Zoom at the case conference on 28 June 2022 which gave rise to these proceedings.

[7] A decision was taken on 28 June 2022 to stop funding the day care provision referred to above. As discussed further below, there is contention about the level of pre-warning or consultation which preceded this decision.

[8] On the first applicant's case she was advised by a staff member of Nursery A (the manager, Ms Chambers), on the morning of 28 June 2022, that the Trust had decided to stop funding day care there from the start of the new term in September 2022. She says this was the first time that she had been told of this. Later that day, the decision was 'confirmed' to her at the case conference which she attended. The first applicant has averred that, in the conversation she had with Ms Chambers that morning, she was informed that Ms Chambers could not attend the case conference but that she wanted to let the first applicant know that the Trust had contacted the nursery and told it that they would be withdrawing funding from September 2022.

[9] C2 was able to obtain nursery provision via the Education Authority at Nursery A from 9.00 am to 12.00 noon for the forthcoming year. However, due to the Trust's decision, he would no longer attend after 12.00 noon on Mondays and Fridays as he had done from April 2021 to the end of August 2022. C1 would no longer attend Nursery A at all due to the Trust's decision. (That was the position when the proceedings commenced. In the first applicant's second affidavit, however, sworn in December 2022, she indicated that she had obtained part-time employment. As a result she would be working on Wednesdays and Fridays. With the benefit of this employment, she had booked the boys in to attend Nursery A again on Wednesday and Friday afternoons. She was having to pay privately for this at a cost of around £145 per week; but was hopeful that working tax credits would cover some 85% of the costs of this.)

[10] At the case conference on 28 June, it was determined that the only support which was then required to be provided was trauma therapy, to which the family had been referred (although they remained on the waiting list). The Trust no longer deemed it necessary or appropriate to provide childcare.

[11] As to the substance of the decision-making, the applicant is concerned that the Trust did not fully appreciate the benefits to her children, and to her, of the day care provision. Although C1's school hours are longer than they previously were, the removal of his funded 8 hours per week day care resulted in his having less time socialising with other children than was previously the case. The first applicant says

that his behaviour has deteriorated as a result. On the other hand, the Trust considered that the children's social needs would be met at pre-school in the case of C2 and at school in the case of C1. The funded day care had assisted the family in its transition to the new area and had, in the Trust's view, served its purpose.

[12] Two issues of particular factual contention in this case related to the extent of engagement with the first applicant about the proposal to remove day care funding in advance of the formal decision to do so at the case conference on 28 June 2022; and the level of input the first applicant was afforded at that conference. I briefly discuss each of these aspects in further detail below.

Engagement in advance of the meeting on 28 June 2022

[13] A key issue in this case is the extent of engagement with the first applicant, in advance of the crucial case conference on 28 June, as to the possibility of the children's day care no longer being funded. The respondent's case is that the first applicant was advised on 21 June 2022 that the provision of childcare was being reviewed and that she had the opportunity then, or at any time between then and the case conference, to make representations in relation to this. That was, on the Trust's case, in addition to the opportunity for her to make representations at the case conference itself.

[14] The first applicant disputes this analysis. She has averred that she 'completely refutes' any suggestion that the issue of removal of the day care funding was discussed with her or that she was aware of it in advance: "Categorically I was not. I was not spoken to at all, never mind even in a brief sense, about the possibility of [Nursery A's] funding being removed." She says that, had she known about this, or the possibility of it, she would have immediately contacted her solicitor and asked him to attend the case conference with her.

[15] In its pre-action response, the Trust stated that, on 21 June 2022, Ms Elliott was able to complete a home visit and, in the course of that visit, advised the first applicant that the Trust were reviewing the childcare provision. It stated that the applicant made no response to that information since, in the course of the meeting, her focus was instead in relation to the boys' father. In further pre-proceedings correspondence on her behalf, the first applicant 'completely refuted' this.

[16] The parties have since joined issue on this matter in their affidavit evidence also. Ms Elliott has provided evidence which is consistent with the Trust's position in advance of these proceedings. She avers that she told the first applicant on 21 June 2022 that the day care was under review; and that the first applicant understood this. She also offered to come back to see her to share and discuss the report for the case conference.

[17] In evidence there was a written record (a Form Rec 6) created by Ms Elliott in relation to the home visit on 21 June. It gives the date and time of the visit and those

present. According to this record, the social worker spoke to the two boys (in the presence of the first applicant) and asked how they were. There is then a summary of the discussion with the first applicant about various issues. The record includes the following note: "[Social worker] advised mum the day care provision for the boys is under review – [The first applicant] understood same." This record also suggests that the social worker spoke to the first applicant "at length" in the front hall of the home. In the context of a discussion about Ms Elliott and the first applicant not enjoying the same relationship that she had had with her previous social worker, there is a note that the first applicant indicated that this was not a personal issue; that she felt the same way about the current health visitor; and that she "feels she doesn't need professionals involved now." There seems to have been a significant discussion about the first applicant's ex-partner. The note concludes as follows:

> "[Social worker] told [first applicant] [registration case conference] will be due next week and advised recommendation will be ongoing registration – [First applicant] is fed up with [child protection] planning. [Social worker] offered to come back out later this week and share RCC report with her – [first applicant] didn't want this and agreed for it to be posted through the letter box."

[18] Consistent with this, the 'Action to be taken' section of the form referred to the forthcoming case conference and noted that Ms Elliott was "to provide copy of report" to the first applicant. I have also been provided with a copy of that report. In the Education and Learning section, it notes that this has been improving for the boys. An agreed action was that the first applicant would continue to avail of day care provided by the Trust for the children to help improve their behaviour and social skills. However, in the 'progress' column of this section, it is noted that, although both boys continue to attend Trust-funded day care two days per week, "this service provision has been reviewed and will end in September 2022." In short, the report indicated that it was proposed to cease the funded day care from the start of the next school year.

[19] The 'parent copy' of this report appears to have been printed at lunchtime on 27 June 2022, the day before the case conference. This is consistent with the respondent's case, and Ms Elliott's averment, that she put the report through the first applicant's letter box (as had been agreed) the day before the case conference. It is common case that this was not as far in advance of the conference as ought to have been the case, applying the relevant guidance.

[20] In the months before the home visit on 21 June 2022, there appears to have been a regrettable lack of successful visits between the social worker and the family she was supporting. There were a variety of unsuccessful attempts to conclude a home visit in April. In May, a planned home visit was cancelled. This resulted in correspondence warning that the Trust may convene a pre-proceedings meeting, to

which the first applicant appears to have reacted negatively. She did contact her social worker on 10 June but later cancelled a further announced, planned visit on 14 June. The first applicant has indicated that this was because of an emergency situation and does not accept that the prior cancelled or unsuccessful appointments for a meeting were her fault, or at least not exclusively so. In any event, it is a fact that the engagement in the weeks prior to the home visit of 21 June 2022 was less than satisfactory; and it is also clear to me from the evidence I have seen that there was quite a strained relationship between the social worker and the first applicant around this time. It seems that this was in part because of the first applicant's frustration at Social Services' involvement with her, including in ways which impinged on her personal life, in circumstances where (as she perceived it) her ex-partner, who was responsible for the risk to the children, had no such impingements. The reason for this, of course, is that she was the primary carer for the children at this point.

The detail of the meeting on 28 June 2022

[21] The key meeting in this case was the one held on 28 June 2022. It was a child protection case conference, which is a multi-disciplinary agency meeting held to discuss a child and family's situation. Its primary decision-making role is to determine if a child should remain on the CPR and also to agree a plan for the child. This particular meeting was chaired by a Ms Magner, an independent chair with knowledge and expertise in child protection. I have been provided with a copy of the minutes of the meeting, as well as some sworn evidence about its conduct.

[22] The first applicant has averred that, during the meeting, she tried to make the point that the boys love Nursery A and that they need stability, such that the removal of this service would cause them considerable upset. She believed the service was important for their general health and development. The applicant contends that she was not given a fair opportunity to be heard at the case conference. She says she was "spoken over" when she tried to explain why the nursery provision was so important to the boys. She has also averred that the case conference was ended when she was still trying to explain why the boys needed this provision. She says it was clear to her that the decision had already been taken in advance and that her concerns were irrelevant.

[23] The record of the case conference discloses that the second applicant's designated teacher attended all of the meeting, as did the first applicant, the senior social worker (Ms O'Hare), the social worker (Ms Elliott) and a health visitor. Apologies were sent by a number of others, including staff from the Trauma Centre and Nursery A, as well as the safeguarding nurse specialist and the applicants' GP. Written reports were provided by the social work team, the health visitor and on behalf of the GP. Other professionals would have had the opportunity to submit views in writing. I return to that issue below.

[24] There is a section of the record of the meeting recording 'Parent Views.' This summarises the first applicant's input. In the course of this, the first applicant said that she did not know why Social Services were still worried about the boys. She made the point that her previous social worker had explained that the boys would be kept on the CPR "as it would be best for them as they could still stay at [Nursery A]." She went on to talk about a cancelled appointment for a visit and her relationship with the current social worker.

[25] Ms Elliott has given evidence about the conference in her affidavit. She has averred to the Chair seeking the first applicant's views. It is Ms Elliott's recollection that the first applicant stated that she did not agree with the proposal to cease funding for the day care and that she became rude and argumentative. Ms Elliott takes issue with the first applicant's suggestion that the applicant was spoken over and/or that the case conference ended when she was still trying to explain why the boys needed the nursery provision. Ms Elliott's evidence is that this issue was discussed towards the beginning of the conference, when reviewing the previous child protection plan. The first applicant was very vocal about her disagreement with the proposal to remove day care provision and continued to focus on this particular issue until the Chair intervened and requested that the meeting move on. When the meeting was concluding and next steps were being discussed, day care provision was again addressed. When it was confirmed that this service provision would come to an end in September 2022, the first applicant removed herself from the meeting (which she was attending online) before the registration decisions were made.

[26] There is also an affidavit from Ms Magner, the Chair of the case conference. She is a retired social worker who worked for the Trust for 24 years. She has chaired case conferences for 19 years. She has emphasised that the conference makes its own decision and can accept or reject recommendations contained in the investigating social worker's report. Her affidavit confirms that the first applicant chose to participate via Zoom, despite having had the option to attend in person. Ms Magner does not accept that the applicant's attendance in this way hampered her participation. She has averred that, when given the opportunity to contribute on the day care issue, the first applicant presented as angry and upset. She expressed her view that day care was being taken away and that she had not been advised that this was going to happen. Ms Elliott maintained that she had told the first applicant that the day care was under review.

[27] Ms Magner described that, having heard from all parties, the case conference decided to cease the day care provision from September. She has set out a number of reasons for this: (1) there was a seamless transition for C2 into nursery school; (2) C1 was getting help and support at school; (3) the first applicant had greater support than previously with the children being taken some weekends; and (4) the family's circumstances had changed significantly since 2021 and it was now settled in its life in the new area. Ms Magner denies that the first applicant was spoken over or that the case conference was cut short while she was speaking. Ms Magner's evidence is

that she provided the first applicant with opportunities to contribute and that she availed of these opportunities. She was provided with time to share her opinion with everyone in attendance. Ms Magner considers that the meeting was managed appropriately. She has described the suggestion that the meeting was ended whilst the first applicant was trying to speak as "untrue", as the meeting continued as per the agenda and a child protection plan was agreed. (Although provided only in hearsay form – by means of a note made by Ms Elliott of a conversation they had had – the representative of the second applicant's primary school, who also attended at the meeting, appears to support the evidence of Ms Elliott and Ms Magner in this regard.)

The subpoena application

[28] In the course of the proceedings, there was an application to have the manager of Nursery A subpoenaed to provide oral evidence at the substantive hearing. This was because the applicants' solicitor considered that she had evidence to provide which might assist the applicants' case and which would, or might, contradict evidence provided by the social worker relating to her engagement with the nursery in advance of the case conference. The application was listed for review on a number of occasions and, in the event, it was resolved without the court being required to determine it. It arose because the applicants' solicitor had spoken to the potential witness (Ms Chambers) by telephone on a number of occasions in late October 2022. The detail of these discussions was then set out in a letter from the solicitor to Ms Chambers of 10 November 2022; but Ms Chambers did not wish to provide sworn evidence in the case.

[29] The substance of the evidence which the applicants wished her to give related in part to the children's development, namely that they were getting on well at the nursery and that it would be detrimental to them to cease the funding for their then current level of day care. As to the issue of consultation, the evidence the applicants wished to adduced from Ms Chambers was to the effect (i) that she had learned of the 'decision' to remove day care funding from the end of August 2022 on 28 June 2022; (ii) that she had not been consulted about that issue in advance; (iii) she advised the first applicant about this in a telephone call that morning and formed the opinion that this was the first time that the first applicant had become aware of this decision; and (iv) that she had not been spoken to by the Trust in advance of a case conference in order to provide an update (but, rather, she always just gave an oral update at the conference itself).

[30] The letter of 10 November 2022 also noted that Ms Chambers had initially said that she would be willing to provide a sworn affidavit but, later, indicated that she no longer wished to do so. Upon the first applicant taking this up with her, Ms Chambers confirmed that she did not want to get involved or to involve the nursery in the litigation. Ms Chambers responded to the applicants' solicitor in writing on 11 November 2022 advising that she felt she had given all the information that she could and did not wish to provide an affidavit. She had checked whether

she had any relevant records (by way of call records or the letter sent to her from the Trust in relation to the case conference) but no longer retained these and felt that she had provided as much assistance as she could. She did not wish to provide evidence by way of affidavit; nor to have any further correspondence in relation to the matter.

[31] Further to that, a witness subpoena was issued, and the applicants sought an urgent review. I directed that the respondent should provide a further affidavit from Ms Elliott setting out in further detail the interactions she had had with the nursery and that Ms Chambers should then be given an opportunity to respond to that in writing (by affidavit or by some other means, should she prefer). Ms Chambers then provided a written response to Ms Elliott's affidavit, the contents of which I have taken into account.

[32] Ms Chambers' settled position, expressed in her own words, disclosed that Ms Elliott had indeed been in contact with her over the review period in advance of the case conference. Although this was primarily about financial issues relating to payment for the funded day care, Ms Elliott did ask for an understanding of how the two boys were getting on in the nursery in general, which might then have formed the basis of her later report to the case conference. No other member of staff recalled giving an update prior to a case conference. Ms Chambers received an invitation to attend the case conference with which this case is concerned but was unable to attend. She was only able to determine this on the morning itself, so that no written report was provided on behalf of the nursery (since Ms Chambers had expected to be in attendance). She was informed that morning that day care funding was to cease; and she did not raise any objections to this.

[33] Significantly, Ms Chambers said that she "agreed with the decision of the social worker as she had several other inputs from agencies that have contact with the family and therefore had more reasoning behind her decision." She did indicate that there had been a "big improvement" with the children since attending the nursery. She recounted her telephone conversation with the first applicant, in which she mentioned the proposed withdrawal of funding. She said, "To the best of my knowledge, this was the first time she [the first applicant] had heard of this information. I cannot be sure on the exact wording of this conversation."

[34] It was helpful to have this information from Ms Chambers and to receive it in writing, in her own words. I would, however, add the following brief observations about the potential for a witness to be subpoenaed in order to give oral evidence in a judicial review application:

(1) It is well established that evidence in judicial review proceedings in this jurisdiction is principally to be provided by way of affidavit evidence.

(2) The court retains a discretion to hear oral evidence in an application for judicial review. Section 18(2)(e) of the Judicature (Northern Ireland) Act 1978 requires that the court rules providing for judicial hearings must provide that

the court may "authorise or require oral evidence to be given where this appears to the Court to be necessary or desirable." However, this discretion is rarely exercised. This reflects the nature of the court's supervisory jurisdiction and the fact that judicial review procedure is recognised to be ill-suited to the resolution of disputed issues of fact.

(3) Nonetheless, in appropriate cases, the court will permit or require oral evidence to be given. Other than in cases of extreme urgency (where the taking of oral evidence is more convenient than the drafting and swearing of an affidavit), this is likely to be where a dispute has arisen on a discrete but key factual issue, or a small number of such issues. Oral evidence is unlikely to be permitted where there are wide-ranging issues of factual dispute between the parties which indicate that the case is generally unsuitable for judicial review.

(4) The question of whether oral evidence should be permitted or required should generally be assessed once the totality of the affidavit evidence in the case has been filed and the court has a good overview of how any issues of factual contention sit and what their significance might be. In such circumstances, it may be appropriate for the court to hear oral evidence from deponents and permit them to be cross-examined upon the contents of their affidavits pursuant to RCJ Order 38, rule 2(3) and Order 53, rule 8. Some guidance as to the exercise of this power was set out by Carswell LCJ in *Re McCann's Application* (unreported, 13 May 1992). There has long been judicial reticence towards permitting cross-examination in judicial review proceedings (some reasons for which were expressed in Lord Denning MR's judgment in *George v Secretary of State for the Environment* (1979) 38 P&CR 609, at 615). Although the modern approach may be more open to cross-examination in certain circumstances, this is still likely to be rare.

(5) Although the court also has power to compel the attendance of a witness and hear oral evidence from them where they have not provided affidavit evidence in the proceedings, it is likely to be even more rare for this power to be exercised in a judicial review application. The existence of such a power was recognised at first instance in *Re Williamson's Application* [2008] NIQB 81, at paras [22]-[32], relying in part upon the decision in *R v Secretary of State for Transport and Others, ex parte Port of Felixstowe Ltd* (1997) COD 356 in which such subpoenas were issued. However, Gillen J emphasised that the power to subpoena witnesses who have not made affidavits should only be issued in exceptional circumstances: see paras [32] and [38]. On appeal (see [2008] NICA 52), different views were taken by Kerr LCJ and Girvan LJ about the extent of this power. Kerr LCJ viewed it as more restricted than Girvan LJ, and limited to circumstances (which might cover the present case) where a party wished to call their own witness but there were exceptional reasons why an affidavit could not be provided. In any event, both judges who gave written judgments agreed that the power should not be exercised in that case.

(It is unfortunately unclear from the reports with whom the third member of the court, Coghlin LJ, agreed.)

(6) In assessing the exercise of any of its powers in this regard, the court will be guided by the overriding objective in RCJ Order 1, rule 1A and the question of whether the exercise of the relevant power is necessary in order to fairly dispose of the proceedings or is otherwise in the interests of justice.

(7) Where an individual is in a position to give potentially relevant evidence, this should be done by way of affidavit. In the event that the individual is not prepared to swear or affirm an affidavit, another way in which relevant information in their possession might be provided is in letter form (as occurred in this case) with that letter being exhibited to an affidavit. Such evidence is admissible under the Civil Evidence (Northern Ireland) Order 1997. The provision of evidence in this way is less than ideal; and is necessarily likely to affect the weight to be given to the information so provided. However, this approach is generally to be preferred to the immediate issue of, or application for the issue of, a subpoena.

(8) The provision of information from an unwilling deponent by way of a solicitor's summary of their conversation with them is generally to be avoided. This is a classic instance of hearsay evidence, one step further removed from the provision of the information directly in the individual's own words. However assiduous the solicitor, there may be a temptation, even subconsciously, to lead the individual by way of the questions asked and/or to summarise or present the information in a way most favourable to their client's case. In doing so, important detail or nuance may be lost.

(9) Where, exceptionally, there is a basis for applying for the issue of a subpoena in judicial review – where this may be the only means of obtaining evidence which is absolutely crucial to the case and where the holder of relevant information is unreasonably failing to assist or where to ask for their assistance may itself defeat the ends of justice – an application should be made to the court for permission to require a witness's attendance to give oral evidence. In my view, it is not appropriate in judicial review to simply issue a subpoena for the attendance of a witness to give evidence orally and then leave it to the witness to seek to have that subpoena set aside, even though (in strict terms) the rules of court permit this. Even if the subpoena is effective to secure attendance, it is still a matter for the court as to whether it will permit or require oral evidence from the witness. It would be better if that question is determined in advance of the issue of the subpoena. If necessary, the application can be made *ex parte*. Any such application should, however, be made in advance by way of formal application, grounded upon an affidavit. That affidavit should set out the evidence which it is contended the witness may be able to give; why that evidence is sufficiently important to warrant the witness being compelled to attend; and the steps (if any) which have been

taken to seek to secure the witness's cooperation or, as the case may be, the reason why it would not be appropriate to seek to secure the witness's cooperation.

(10) As a general rule, those approached to give evidence in judicial review proceedings should, so far as possible, seek to engage constructively with any such request. It is in the interests of justice for the court to have relevant evidence on issues which it is required to determine. Solicitors representing their clients are entitled to make reasonable requests for assistance from persons holding relevant information, subject of course to matters such as obligations of confidentiality or data protection. Both sides in a judicial review application owe a duty of candour towards the court. For that reason, potential deponents acting in good faith should not fear the consequences for them from either party of providing frank and honest evidence to the court about matters within their knowledge relevant to the issues in the case.

Relevant statutory provisions

[35] This challenge relates to the provision of services under Part IV of the Children (Northern Ireland) Order 1995 ("the 1995 Order"). The concept of a "child in need" is defined by Article 17 of the 1995 Order:

> "For the purposes of this Part a child shall be taken to be in need if—
>
> (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by an authority under this Part;
>
> (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
>
> (b) he is disabled,
>
> and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living."

[36] Article 18(1) imposes a general duty on an authority to provide personal social services for children in need and their families. It provides:

> " It shall be the general duty of every authority (in addition to the other duties imposed by this Part)—

(a) to safeguard and promote the welfare of children within its area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of personal social services appropriate to those children's needs."

[37] For the purpose principally of facilitating its general duty under Article 18, every authority is given specific powers and is subject to specific duties set out in Schedule 2 to the 1995 Order: see Article 18(2). An authority shall also facilitate the provision by others, including voluntary organisations, of services which the authority itself has power to provide and may make arrangements for others to act on its behalf in the provision of services: see Article 18(5).

[38] Article 19 of the 1995 Order makes specific provision in relation to the provision of day care. "Day care" is defined as "any form of care or supervised activity provided for children during the day (whether or not it is provided on a regular basis)." Article 19(2) is relevant to the third applicant. It provides that every authority shall provide such day care for children in need within the authority's area who are aged five or under and not yet attending schools as is appropriate. Article 19(5) is relevant to the second applicant. It provides as follows:

"Every authority shall provide for children in need within the authority's area who are attending any school such care or supervised activities as is appropriate—

(a) outside school hours; and

(b) during school holidays."

[39] Pursuant to Article 19(7), every authority shall, in carrying out its functions under the Article, have regard to any day care provided for children within the authority's area by a district council or an education and library board or by other persons.

Summary of the parties' cases

[40] After a contested leave hearing, I granted leave in this case on a limited basis. The central thrust of the applicants' case is one of procedural unfairness. The first applicant contends that she was taken by surprise entirely when, on the morning of 28 June 2022, she was told by Ms Chambers from the nursery that funding for the boys' attendance there was to be withdrawn. She further contends that, when she attended the case conference, she had no effective opportunity to contribute to this

decision: partly because (on her case) the decision had already been made, and also because she was talked over and cut short in the points that she wished to make. She also contends that a number of others who ought to have been consulted, principally other professionals who were aware of her children's needs and the benefits to them of the day care provision which was being withdrawn, were not consulted adequately or at all. Further, the applicants contend that the Trust applied the wrong test in addressing whether the funding for day care should be continued.

[41] The respondent contends that there was adequate engagement with the first applicant in advance of, and in the course of, the conference at which the impugned decision was made; and that, overall, there was no unfairness in the process. As to engagement with other relevant professionals, the respondent submits that the applicant has wrongly conflated the Trust's *Tameside* duty (which it accepts) with a more stringent duty of consultation with relevant professionals. On the Trust's case, it was subject to the relevant team's obligation to make reasonable enquiries, which it contends it discharged. As to the contention that the decision-makers applied the wrong statutory test, it is submitted that there is no evidence of this, and that the applicant has placed undue reliance on phraseology used in correspondence well after the event.

Procedural fairness and engagement with the first applicant

[42] The applicant relied upon the 'UNOCINI Guidance' ('*UNOCINI GUIDANCE: Understanding the Needs of Children in Northern Ireland*, published by the Department of Health and Personal Social Services, Revised Edition, June 2011). This indicates, *inter alia*, that assessment of a child's needs should be undertaken in partnership with the child and their family (see section 2.2); and that this partnership should be evidenced, with the parent being invited to participate and contribute in a meaningful way, with their views clearly recorded (see section 4.2). As outlined above, the first applicant contends that she was not aware of the provision of day care being reviewed in advance of the day of the case conference and that she was not able to participate effectively in case conference.

[43] A parental contribution form is included with the parent invite to a case conference and provides an opportunity for a parent to make a written contribution. In the present case, the evidence is that the first applicant was sent such an invitation and contribution form on 15 June 2022, but did not return the form. On the one hand, it is perhaps unsurprising that she did not do so if, at that stage, she was unaware of any proposal to remove funding for the day care provision. At the same time, it was also possible for the first applicant to use this form to provide any comments she wished, including for instance to emphasise her view on the importance of the funded day care being continued. This was one way in which the first applicant was entitled to, but did not, make her views known to the case conference.

[44] I accept Ms Elliott's evidence that she raised the issue of the review of day care provision at the home visit on 21 June 2022. I cannot see how or why she would have recorded this on the contemporaneous Rec 6 Form (see para [17] above) if she did not consider that she had addressed the issue with the first applicant. Insofar as there is a straight conflict of evidence on the point, the applicant has not discharged the burden of proof to satisfy me that this issue was not raised. That said, I am also inclined to accept that the first applicant may well not have fully appreciated the significance of what Ms Elliott had raised with her. It may well have been that her focus was on other issues discussed on that occasion. However, from Ms Elliott's perspective, she had flagged the issue for the first applicant. Had it been made clear that there was a firm proposal to withdraw funding for day care, I consider it likely that the first applicant would have reacted strongly to this (as she later did). This supports my view that she did not fully understand the implications of the review of day care which Ms Elliott mentioned. However, it also undermines the applicants' case that a firm decision to remove day care had been taken at that stage. In fact, given that the case conference was the key decision-making forum, any proposal in that regard could only have been provisional.

[45] In the course of the case conference, the first applicant made the point that she did not feel she had the same relationship with Ms Elliott as she had had with her previous social worker. This concern was also noted in the Rec 6 Form relating to the statutory visit on 21 June. At the case conference, the senior social worker also noted that it was fully apparent that Ms Elliott did not have the same relationship with the first applicant as her previous social worker had had. Ms Elliott had not been allowed into the home to develop a relationship. The case was therefore being transferred to a different social worker. From the time of the Trust's response to pre-action correspondence, it has contended that the first applicant's engagement with it has been poor since she moved from Newry. For several months, social workers had struggled to complete statutory visits, with the first applicant requesting that these be completed at the nursery; and a number of calling cards left at her home and voicemails left on her phone to arrange visits were, on the Trust's case, not responded to. (A variety of written records are exhibited to Ms Elliott's affidavit to substantiate this history.) Ms Elliott's affidavit evidence in these proceedings gives some more details about the relationship, from her perspective, and describes it as more often than not "not positive and forthcoming." It appears that the health visitor also shared some concerns about the first applicant's level of engagement with her. It is regrettable that this was the case. Had there been better engagement, it is likely that the misunderstanding in relation to the exchange on 21 June 2022 may not have arisen.

[46] More importantly, I am satisfied that – whatever the first applicant's precise understanding of the position at or immediately after the visit on 21 June – she had the opportunity to discuss the report and planned recommendations with the social worker in advance of the case conference, which she declined. Had she taken up the invitation of a further meeting to discuss the recommendations, she would in my

view undoubtedly have been pre-warned, in advance of 28 June, of the proposal to reduce the day care funding.

[47] The Child Protection Case Conference Procedure document, upon which the applicants relied, makes provision for the report to be prepared by the investigating social worker. It goes on:

> "The social worker should provide a parent and child/young person where relevant, with a copy of the report at least two working days prior to the Child Protection Case Conference unless to do so may present a risk to the child/young person or another party. The report should be explained and discussed with the family in advance of the Child Protection Case Conference. The parent's and child/young person's agreement or disagreement with the content and any recommendation contained in the report should be recorded in the Child Protection Case Conference Report and minutes…"

[48] As it was, the applicant was provided with a copy of the report on the day before the case conference. The report made clear reference to the proposal to cease the day care funding (see para [18] above). Although this was not provided as far in advance of the conference as it ought to have been, there was adequate opportunity for the first applicant to familiarise herself with the content of the report before the case conference commenced the next day. In any event, it is also common case that the first applicant, through her conversation on the morning of 28 June with Ms Chambers, was aware of the proposal in respect of the day care funding in advance of the case conference.

[49] Equally importantly, parents can also make representations at, as well as before, a case conference. The first applicant had the option to attend the case conference personally or via Zoom; and chose the latter method. Having received the report the day before, with the reference to the day care coming to an end, or at the very least in light of her conversation with Ms Chambers that morning, the first applicant was in a position to address this at the meeting. The Trust's evidence is that, had she wanted more time to prepare for the conference or to have brought her solicitor, arrangements could have been made for this. No such request appears to have been made.

[50] During the case conference itself, there was a specific section for the provision of parent views. The Chair is recorded as having asked the first applicant what she thought had gone well. This section of the minutes of the meeting records the first applicant referring to her understanding that the boys would be kept on the CPR in order to facilitate them staying at Nursery A. I am satisfied from all of the evidence in this case that the applicant had the opportunity, at a number of occasions during

the case conference, to express her opposition to the proposal to reduce day care funding and that she made her opposition clear in strong terms.

[51] I do not accept that the applicant was 'cut off' from making points which she wished to make or that she was materially disadvantaged in doing so. In my view, it is much more likely that the Chair sought to move the meeting on when the first applicant had made her views clear but in circumstances where her opposition had not prevailed and the first applicant was then dissatisfied with the decision of the conference. It is clear from the evidence that the participants in the conference would have been aware of the strong opposition of the first applicant to the proposal in relation to day care and that they were aware that the provision of day care had been working well for the boys (which was not in dispute) and that the first applicant strongly favoured it being continued. However, that was not the test for the Trust in determining whether it should continue at the then current level.

[52] I also have not been persuaded that the applicant was removed from the meeting, as her evidence suggested. Rather, it seems to me that this is likely to be a mistaken reference either to the Chair having tried to move the meeting along (in the exercise of her responsibility to manage the meeting and ensure it proceeded in an orderly way), to some technical issue which may have arisen with the applicant's connection to the meeting, or possibly to the applicant having removed herself from the meeting in frustration (as the respondent's evidence suggests). Excluding a parent from such a case conference would be a serious and significant step. This has been denied by the relevant deponents on behalf of the respondent. I am not satisfied that this occurred in the way in which the first applicant has alleged; and, indeed, this also reflects on her credibility more generally in my view.

[53] For the reasons given above, I do not consider that the applicant was unfairly deprived of an opportunity to make representations in relation to the proposal to reduce day care funding. She was aware of that proposal in advance of the case conference and had an opportunity, which she took, to make clear her opposition to this proposal and the basis for that opposition. The key issue in this case is that the decision-making panel nonetheless decided that it was appropriate to reduce that funding even in the face of the first applicant's opposition to that course. That leads on to the applicants' second and third areas of challenge in these proceedings.

Engagement with relevant professionals

[54] Aside from the representations made on her own behalf, the first applicant also contends that the Trust was not sufficiently apprised of other engaged professionals' view on the reduction of day care funding. The UNOCINI Guidance referred to above also indicates that assessments should be knowledge-based, showing the evidence which underpins them; and that they should value the contribution that different professionals and their agencies can make to both understanding the needs of children and in meeting these needs (see section 2.2). Information and evidence gathered should be analysed; and it may be useful to

consider differing perspectives, including those of different professionals (see section 2.8). All such assessments should incorporate the views, assessment and analysis of information from all those working with the child and family across the multi-agency group (see section 4.2).

[55] The Child Protection Case Conference Procedure document, upon which the applicants also relied, notes that the investigating social worker must prepare a written report for the Child Protection Case Conference using the UNOCINI Assessment Framework. This should be concise but provide all relevant information. It goes on: "The social worker should make contact with all professionals invited to attend a Child Protection Case Conference in order to obtain information to incorporate into the relevant section of the UNOCINI Child Protection Assessment Report." It goes on to provide that the report must include a number of matters. These include "the expressed views, wishes and feelings of the child/young person, parents and other family members" and "analysis of the implications of the information obtained and any risks for the child/young person's future safety." It later states that other professionals invited to attend the case conference should provide a written report summarising the details of their knowledge of, and involvement with, the family and other relevant information at least two working days prior to the case conference.

[56] The applicants are particularly concerned that no one attended the case conference from Nursery A to provide input as to the benefit that the second and third applicants obtained from their time there. The first applicant also believes it is significant that there was no attendance from anyone from the Trauma Centre, so that the meeting did not have the benefit of advice as to what the children's needs might be relevant to the trauma they had previously experienced. Nor was there anyone there from the Safeguarding Nurse Specialist or the children's GP practice. The children's health visitor did not attend either but had sent someone else to attend on her behalf.

[57] The first applicant has also averred that it is relevant that, when the impugned decision was made, there had been three statutory visits which had been 'missed' between her and the Trust in February, April and May 2022. C1 had been discharged from speech and language therapy for non-attendance; and the first applicant herself had been discharged from Women's Aid, also for non-attendance. The first applicant complains that the case conference did not inquire into these issues, which may all have been relevant to the children's needs and her ability to cope with them. I have already mentioned the issue of poor engagement between the first applicant and Ms Elliott during the review period, of which the case conference was aware.

[58] At the case conference itself, Ms Elliott updated the meeting on information she had received from Nursery A. The CP1 Assessment Form contains information from Ms Chambers at Nursery A, which had obviously been passed on to the social worker, Ms Elliott. The report identifies some concerns with behavioural issues on C1's part, although these did not appear to be major; and recorded that when he

came out of school, he sometimes looked like he did not want to go with nursery staff, although he would come round as the afternoon went on. The minutes of the meeting also record the social worker providing an update in respect of C1 at the nursery.

[59] Ms Elliott has also averred that, prior to completing her report, she spoke to the boys' GP, the health visitor, the nursery and primary school staff. In her second affidavit, Ms Elliott has provided further detail of liaising with relevant professionals throughout the period of assessment (February 2022 to June 2022). This included a number of occasions where she spoke with school staff. She also had contact with the staff at Nursery A in relation to both children "on approximately 4 occasions." Each time she liaised with the nursery she sought an update on how both boys were getting on within the setting. As discussed above, Ms Chambers' correspondence accepted that there had been some discussion about these issues in her communications with Ms Elliott, although she considered this to be more informal than providing a formal update for the purpose of a case conference. In my view, it is only to be expected that a conscientious social worker will take opportunities such as this to informally seek information on how children in need for whom he or she has responsibility are getting on. There is no reason at all why information so gleaned cannot form part of a social worker's ongoing assessment of the children's needs and how they should be met.

[60] On 15 June, an invitation to attend the case conference was sent to Ms Chambers. It requested that, if she was unable to attend, she send an apology 48 hours in advance and provide a written or verbal indication of her views regarding registration. In this instance, Ms Elliott did not receive a report from the nursery and was expecting the manager to attend in person. As it transpired, she was not able to do so; but contacted Ms Elliott on the morning to send her apologies. Ms Chambers' correspondence has explained how this came about, in circumstances where she had intended to attend at the conference but only learned that she could not do so at very short notice. It is unfortunate that, in those circumstances, she had not provided more detailed written input. However, there was clearly discussion between Ms Chambers and Ms Elliott that morning. Ms Elliott told Ms Chambers that her recommendation was for ongoing registration of the children but for the day care funding to cease. The manager agreed to record this as the notice point and, Ms Elliott avers, raised no objections. Indeed, as set out above (see para [33]), Ms Chambers has now confirmed that she does not take issue with the decision.

[61] I am satisfied that an appropriate opportunity was provided to Nursery A to provide input into the decision-making process. Due to circumstances which were not the Trust's responsibility, the nursery manager was unable to attend the conference and, because she had anticipated being there, did not send a written report instead. However, there was appropriate contact between her and the social worker so that input from the nursery as to how the boys were getting on there could be fed into the decision-making process. It was this information which was most relevant to the decision under challenge in these proceedings, since it supported the

views of the first applicant that the boys were generally getting on well at the nursery and benefitting from their time there. Indeed, that does not appear to have been in doubt, although it was not determinative. Ms Chambers was also aware in advance of the case conference of the Trust proposal to cease funding at the start of the next school year. She was in a position to make representations in opposition to this but did not.

[62] Turning then to input from others. There was a detailed written report from the health visitor. Some of the concerns raised included the first applicant's emotional health and social isolation; and her non-use of practical support offered to her and the children by her family at the weekends. It was also noted, however, that the family had settled well into their new home and school; and that the children were enjoying the social integration in creche, school and after-school facilities. A short pro forma document was completed by the GP. There was no input from the Trauma Centre; but they had been provided with an opportunity to provide input and the conference was aware that the second applicant was accessing trauma counselling in school.

[63] I accept the respondent's submission that the applicants' case in relation to the 'consultation' limb of this challenge wrongly focuses on an alleged duty to consult professionals involved in the welfare of the children as if they (the professionals) were the party whose rights and interests were at stake. In my judgment, there is no such requirement within the statutory scheme, nor does a legitimate expectation to that effect arise. In summary, the applicants' case amounts to a contention that the social worker should collate information and views, take them into account when settling upon proposed recommendations to be included in her report, and then re-consult all of the professionals involved specifically with a view to ascertaining their views on the proposed recommendations. However, that final step is not required. The obligation is to take into account the appropriate information from the various disciplines when making any recommendation in the report and then also when the case conference itself makes its decisions. It is during the case conference that the professionals involved will have an opportunity, should they wish, to take issue with the social worker's recommendations. That is one reason why it is important for all those who are supposed to attend to do so insofar as they are able.

[64] The obligation of procedural fairness towards the first applicant is not replicated in terms of the engagement which there must be with other professionals engaged in the children's wider care. The relevant obligation upon the Trust in this regard is to properly inform itself of input which each professional can provide within the field of their specialty so that a holistic view of the child's needs and how they should be met can be taken. This obligation is distinct from, and less hard-edged than, the obligation to act fairly towards those whose interests are directly affected; and case-law has firmly established that the court's role in a challenge for want of enquiry is one of relatively low intensity. The court will not interfere unless the decision-maker has acted in a way which is irrational in failing to pursue information: see, in general, Hallett LJ's eloquent summary of principles at

paras [97]-[100] of her judgment in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice and others* [2014] EWHC 1662 (QB). The UNOCINI Guidance also recognises that the level of detail within assessments should be proportionate.

[65] In this case, the social worker had appropriate involvement with all relevant professionals before compiling her report which included the recommendation to reduce funding for day care provision. All of the professionals engaged had an appropriate opportunity to feed into the social worker's consideration. They could do so either by speaking to her directly or by providing views in writing. They were also at liberty – indeed, expected – to attend the case conference itself or, in the alternative, provide their input in writing. I was told by Mr Potter that the social worker's report would be provided to participants in the conference in advance. It was then the job of the panel assembled in the case conference to make decisions in light of all of the available information and views, which it did. It was not, in my judgment, irrational for the case conference to proceed on the basis of the information which it had. There has to be a degree of realism about the fact that not every attendee will be able to attend every case conference, although those charged with this important obligation should obviously do their utmost to attend. The case conference in the present case was quorate; and considered input from a wide variety of professionals involved in the second and third applicants' care, whether they were in attendance at the conference or not.

The statutory test

[66] Finally, the applicants contend that the Trust wrongly directed itself by reference to the question of whether the day care services which had previously been provided were "necessary" for the two children as children in need. They submit that this was an error of law because the question is what services are "appropriate" to provide for the particular child's needs. This argument hinges, in particular, upon two statements made in the course of the (protracted) pre-action correspondence in this case. Having set out the background to the decision and a variety of relevant factors which set the context of its decision, in a letter of 23 August 2022 the Trust's solicitor then went on to state the following:

> "The Trust's assessment, for which a case conference was held on 28th June 2022, concluded that the Trust no longer deem it necessary to provide childcare for the purposes of Article 17 and 18 of the Children Order 1995 for the following reasons:
>
> - [C2] is starting Pre-School in September and his social needs will be met in that environment
>
> - From September, [C1] will now be in school until 3pm on Monday, Tuesday and Wednesday and

until 2pm on a Thursday and Friday and his social needs will be met in that environment

- The Applicant is currently not attending any services therefore a childcare provision is not required to enable her to do so

- Mum has self-reported that her own Mum is a support to her and aids with childcare"

[underlined emphasis added]

[67] In a response of 25 August 2022, the applicants' solicitor contended that, since the second and third applicants had been identified as 'children in need', it followed that they must be provided with *some* services by the Trust and, as the impugned decision had removed the final remaining service from the family, they were then unlawfully being provided with *no* services. (I refused leave to apply for judicial review on this ground as unarguable; as I considered that it was plainly wrong in fact and law). In response to this argument, in a further letter of 5 September 2022, the Trust's solicitor said this:

"The children therefore remain children in need within the meaning of Article 17. The range and level of supports to be provided to meet their needs is determined by an assessment of need (Article 18). To be clear there is no absolute duty to provide services, they are only provided if such services are deemed necessary pursuant to the assessment.

At the Case Conference on 28th June 2022, it was determined the only support currently required to be provided is trauma therapy to which the family have been referred and remain on the waiting list.

As was outlined in our PAP response dated 17th August 2022 and subsequent correspondence dated 23rd August 2022, the Trust's most recent assessment, which was approved at the case conference held on 28th June 2022, is that the Trust no longer deem it necessary to provide childcare.

… Finally, in respect of your comments regards Article 19, your interpretation of the law is erroneous. As with Article 18, there is no absolute duty to provide such services, only if they are deemed necessary pursuant to the assessment."

[underlined emphasis added]

[68] It is unfortunate that these pieces of correspondence did not faithfully recite the statutory tests included in Articles 18 and 19 of the 1995 Order, which are set out above. Mr Potter accepted in his submissions that the correspondence could and should have been expressed more clearly. However, I think I can see how this infelicitous contraction may have come about. The Trust's general duty under Article 18 requires the provision of a range and level of social services "appropriate to those children's needs." The more specific duties in Article 19 refer to the provision of such day care "as is appropriate" for children in need. In each case, however, what is "appropriate" is to be defined by reference to the child's *needs* (or, put another way, what is appropriate in light of what is necessary for the child's health and welfare). A strict test of necessity is obviously not envisaged by the legislation; but neither is a free-wheeling notion of what might be appropriate or best. The services provided must be appropriate to the child's needs in all of the relevant circumstances. That assessment, as case-law has clearly established, can also take into account a range of factors such as other provision which is or may be made available for the child, and the question of the resources available both to the parent(s) and the Trust.

[69] It is the respondent's case that the provision of day care was (at least in part) to help the family to integrate into the community in their new setting and to enable the first applicant to attend services, particularly at a time when there had been a deterioration in her mental health. She says that she still does not feel integrated into the area or settled. As noted above, the first applicant is also concerned about C1's behaviour, which she feels has deteriorated as a result of the removal of the day care.

[70] On the other hand, C1's school hours have increased so that, last academic year, he was in school for longer than he was previously (when he availed of the after-school day care two days per week). The first applicant has also accepted that his school has been very understanding and helpful. C1 has one hour in the sensory room each day. He also gets regular one-to-one assistance in some subjects; and he attended with a trauma counsellor on Wednesdays. The school also suggested a charity in the local community which might assist. After a referral from the school, C1 goes there for two hours on a Thursday. It has a sensory room, a homework club and playtime. The children's health also appeared to be good; and their education going reasonably well. C1's behaviour issues at school were "low level" and all school staff were receiving training on behaviour from the EA. Issues with this were being monitored. At the time of the decision, C2 was about to start EA funded nursery provision each day.

[72] There are a number of issues where there was, to a greater or lesser degree, a dispute of fact. For instance, the first applicant contends that the Trust have over-estimated her mother's ability to assist with the boys at weekends; and has under-estimated the impact upon her own ability to avail of services of the boys' attendance at nursery. The Trust evidence pointed towards the first applicant not using her mother as much as she could; and to her having been discharged for

services due to non-attendance even when she had the benefit of the day care which has now ceased. These are matters which it is not possible for me to resolve in these proceedings.

[73] In her affidavit in these proceedings, Ms Elliott has referred to the relevant statutory provisions and averred that she applied those provisions when making her recommendation in June 2022. Moreover, she has specifically averred that she took the view that "it was no longer appropriate for the Trust to continue day care provision" for a range of reasons which are then set out. To similar effect, Ms Magner has indicated that she is familiar with the relevant provisions of the 1995 Order and that these were applied by the decision-making process at the case conference in this case.

[74] In light of the averments referred to above, I am satisfied that the appropriate statutory test was applied when the matter was considered and determined at the case conference in June 2022. I have not been persuaded that the later correspondence sent by the Trust solicitor shows that an incorrect test was applied in the case conference. In light of the improvement in the boys' circumstances in a range of ways, the amount of time they had had to settle in their new surroundings, and the additional supports which were available or soon to be made available to them, it was in my view a rational and lawful decision that it was no longer appropriate to their needs to continue the funded day care.

Conclusion

[75] I do not underestimate the disappointment or frustration caused to the first applicant by the withdrawal of funding for the previously provided level of day care to her two sons. I do not for a moment doubt her good faith in her opposition to this course. Moreover, she is to be commended for the steps she has taken (referred to at para [9] above) to ensure that her boys can still continue to avail of day care in the nursery at her own expense. However, I do not accept that there was unfairness or illegality in the manner in which the Trust's decision was taken to reduce the level of day care funding. Trusts, and those making decisions on their behalf in panels such as that constituting the case conference in this case, have difficult decisions to make, taking into account a range of factors, including changes in the circumstances of the children with whose care they are involved and a limited amount of resources. As a result, parents may often be disappointed where the level of support with which they are provided is reduced. One important means of managing this process is an open and constructive relationship between service users and the social workers assigned to support them. I have already commented in the course of this judgment that it is regrettable that that does not appear to have been the case at the crucial point of consideration and decision-making in this case.

[76] Nonetheless, for the detailed reasons given above, I have not found any of the applicants' grounds of judicial review made out and, accordingly, dismiss the application.