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| <b>Neutral Citation No: [2025] NIFam 11</b>                                                     | <b>Ref:</b> HUM12887         |
| <i>Judgment: approved by the Court for handing down<br/>(subject to editorial corrections)*</i> | <b>ICOS:</b> 19/62232/03     |
|                                                                                                 | <b>Delivered:</b> 10/11/2025 |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**FAMILY DIVISION  
OFFICE OF CARE AND PROTECTION**

**Between:**

**AM**

**Applicant**

**and**

**A HEALTH AND SOCIAL CARE TRUST**

**and**

**BM**

**Respondents**

**RE DISCHARGE OF CARE ORDER: FACT FINDING HEARING**

**The Applicant appeared in person  
Louise Murphy KC with Paula McKernan (instructed by the Directorate of Legal  
Services) for the first Respondent  
Adrian Colmer KC with Marie-Therese Hyland (instructed by Thompson Mitchell  
Solicitors) for the second Respondent  
Moira Smyth KC with Lisa Casey (instructed by Haugheys Solicitors) for the Children's  
Court Guardian**

**HUMPHREYS J**

**This judgment has been anonymised as it involves children. The ciphers given to the parents are not their initials. Nothing must be published which would identify the children or their parents.**

***Introduction***

**[1] Before the court are two applications. Firstly, an application for contact with children in care pursuant to Article 53 of the Children (Northern Ireland) Order 1995**

(“the Children Order”) dated 22 November 2023 and secondly, an application to discharge a care order under Article 58 of the Children Order, dated 8 May 2024.

[2] In the context of each of these outstanding applications, the applicant has sought, by way of a C2 dated 22 September 2025, that a fact-finding hearing be convened determining what are described as “allegations of domestic abuse, coercive control, harassment, financial abuse, institutional failures and safeguarding breaches as set out in the applicant’s schedule of allegations.”

[3] The subject children are now both teenagers. Their parents separated in 2016 and become embroiled in lengthy private law proceedings. The Trust sought to intervene in 2021 and interim care orders were made on 6 October 2021. At the time, the children were removed from the applicant mother’s care and placed in a kinship arrangement. This was short-lived and in November 2022 the elder sibling was placed in a long-term foster arrangement. The younger sibling returned to the care of her father, the second respondent, in March 2023. The applicant currently has weekly contact.

### *The care order proceedings*

[4] The interim care orders were made in October 2021 by consent and at that time a statement of threshold criteria was agreed. It reads as follows:

“The Trust submits that on the date of intervention, being the date of the application, that the children had suffered and were likely to suffer significant harm by virtue of the parenting that was afforded, and was likely to be afforded, to them, not being what it would be reasonable to expect, such that the Threshold Criteria as required by Article 50(2) of the Children (Northern Ireland) Order 1995 are met. In establishing that these criteria are met the Trust relies on the following facts:

1. The breakdown in the parties’ relationship and ongoing acrimony in their relationship;
2. The mother’s acceptance that on occasions she has difficulty in managing the children’s behaviours such is the impact upon them;
3. {The elder child} has difficulties in managing his own emotions, and at age 11 was assessed as presenting as highly anxious, angry and as having low self-esteem;
4. {The younger child}, at age 8 years, was assessed as having anxiety, low mood and poor self-esteem;

5. The children's relationship with their father has completely broken down such that they have become estranged from their paternal family."

[5] On 5 December 2022 McFarland J made full care orders in respect of each child and approved the Trust's care plan. The mother was represented by senior counsel, junior counsel and solicitor during the course of the proceedings. The transcript of the hearing reveals that the applicant was upset and declined to come into court for the short hearing which ensued.

[6] During the course of the hearing, senior counsel stated:

"We do agree the care plans of long term foster care. I say that is significant that she is in agreement with them as opposed to being neutral on them...threshold is agreed, we agree the care plans on behalf of the mother..."

[7] McFarland J considered the care plan in respect of each of the children and was satisfied that they were in the best interests of both. Contact with the parents was an essential part of the care planning. Accordingly, final orders were made.

[8] No appeal was brought against the orders made on 5 December 2022.

### *The discharge application*

[9] Some 17 months later, the applicant mother brought the instant application to discharge the care order. Her statement of evidence in support of this application sets out her grounds:

- (i) The care plan of long-term foster care was not in the best interests of the children;
- (ii) Since the full order was made, her contact with the children had been eroded;
- (iii) She had not been made aware of any application to the court for a fact finding hearing and this had put her to a disadvantage in respect of the allegations of parental alienation which she had faced;
- (iv) The views of the children were completely ignored and they ought never to have been separated;
- (v) Her personal data had been unlawfully accessed and processed by the Trust;
- (vi) The children have been the victims of emotional abuse, coercive persuasion and Stockholm syndrome.

[10] This statement has since been supplemented by further evidence to the effect that she vehemently disputes consenting to the full care order, and that this claim has been used to provide a negative narrative to the children by the Trust and Guardian. She states that the reports provided by the Trust since the order was made are works of fiction and is severely critical of the social workers concerned.

### *The fact-finding hearing application*

[11] The applicant has produced a schedule of allegations in support of her application for a fact-finding hearing. These can be summarised:

- (i) Physical intimidation and anger issues – the relates to claims of behaviour of the father in 2015 and 2016;
- (ii) Emotional harm during contact – this concerns the children’s reaction to contact with their father in 2016;
- (iii) Exposure to inappropriate third party influence – it is alleged that neighbours interfered in contact arrangements and spread misinformation about the applicant. These are undated but would seem to have occurred in or around 2016;
- (iv) Verbal abuse – the father is said to have call the mother names in front of the children again, it is assumed, around 2016;
- (v) Unsafe contact arrangements – the mother claims that there were inadequate sleeping facilities and a lack of care on the part of the father in 2016;
- (vi) Financial control – it is alleged the father encouraged the mother to lie to the NIHE to improve his housing position and that he withheld maintenance and failed to pay bills. This would also seem to emanate from the post-separation period in 2016;
- (vii) Harassment – similarly, it is claimed the father made false claims about the mother to third parties and persistently contacted her;
- (viii) Impact on the children – the father’s contact had, it is claimed, an adverse impact on the children’s wellbeing;
- (ix) Medical corroboration – it is said that medical records corroborate the applicant’s case and demonstrate a lack of action by the Trust;
- (x) Sexual abuse allegations – in January 2023 the applicant made an allegation of historical serious sexual assault by the father which the PPS directed no prosecution;

- (xi) Institutional failures and collusion – the Trust and Guardian wrongly relied on the concept of parental alienation and have withheld or redacted documents despite disclosure requests. Two contact meetings in November and December 2019 are cited as examples of social workers acting against her interests.
- (xii) Coercive control – the applicant identifies a pattern of coercive controlling behaviour from 2002 onwards.

[12] The father strenuously denies that he was guilty of any of the behaviour alleged and both the Trust and the Guardian maintain that they have adhered properly to their professional duties.

[13] The applicant therefore seeks a fact-finding hearing to address the issues of domestic abuse and coercive control and the alleged failings on the part of the Trust and Guardian.

### *The legal principles*

[14] It is important to consider the nature of the substantive application to which the question of a fact-finding hearing relates. The approach of the courts to applications to discharge care orders was outlined by Peter Jackson LJ in *Re TT (Children: Discharge of Care Order)* [2022] 1 FLR 211:

“(1) The decision must be made in accordance with s 1 of the CA 1989, by which the child’s welfare is the court’s paramount consideration. The welfare evaluation is at large and the relevant factors in the welfare checklist must be considered and given appropriate weight.

(2) Once the welfare evaluation has been carried out, the court will cross-check the outcome to ensure that it will be exercising its powers in such a way that any interference with Convention rights is necessary and proportionate.

(3) The applicant must make out a case for the discharge of the care order by bringing forward evidence to show that this would be in the interests of the child. The findings of fact that underpinned the making of the care order will be relevant to the court’s assessment but the weight to be given to them will vary from case to case.

(4) The welfare evaluation is made at the time of the decision. The s 31(2) threshold, applicable to the making of a care order, is of no relevance to an application for its discharge. The local authority does not have to re-prove

the threshold and the applicant does not have to prove that it no longer applies. Any questions of harm and risk of harm form part of the overall welfare evaluation.” (para [31])

[15] In *Re S (Discharge of Care Order)* [1995] 2 FLR 639, Waite LJ commented:

“The risk to be considered is the risk current at the date of the discharge hearing...In the great majority of discharge applications the court is likely to be concerned with evidence of recent harm and appraisal of current risk, in which conclusions reached by an earlier tribunal as to past harm or past risk would be of marginal relevance and historical interest only. There are liable nevertheless to be instances in which the interest which every child has in seeing that justice is done to the claims of a natural parent will require the court hearing a discharge application to question, in the light of the evidence before it, not merely the relevance but also the soundness of antecedent findings reached by an earlier tribunal. Such instances are bound, in the nature of things, to be extremely rare.”

[16] The authorities make it clear that the court dealing with an application of this nature has a discretion as to whether to hold a fact-finding hearing, based on whether it is right and necessary to do so. The exercise of this discretion will engage certain fundamental principles, such as the overriding objective enshrined in Order 1 rule 1A of the Rules of the Court of Judicature (Northern Ireland) 1980, and the ‘no delay’ principle found in Article 3(2) of the Children Order. As with any application under this legislation, the paramount consideration for the court will be the welfare of the subject children.

[17] Peter Jackson LJ articulated some of the relevant factors for the court to take into account in *Re H-D-H and C (Children: Fact-Finding)* [2021] EWCA Civ 1192:

- (i) The welfare of the child, including the significance of knowing the truth;
- (ii) The likely cost to public funds;
- (iii) The time the investigation will take;
- (iv) The implications of the result for other cases and the public interest;
- (v) The relevance of the result to future care planning;
- (vi) The opportunity costs for the relevant authority;

- (vii) The prospects of a fair trial;
- (viii) The overall justice of the case.

[18] In the context of a fact-finding hearing which would seek to revisit earlier findings of the court, Keegan J made it clear in *Re A Child Joe* [2021] NIFam 3 that there would need to be real reason to believe that the earlier finding required reconsideration. There is an obvious public interest in finality in litigation to be weighed against sound welfare-based decision-making.

### *Consideration*

[19] Bearing in mind the paramountcy of the welfare principle, and the age and competence of the children, the first step in the analysis must be to consider how a fact-finding hearing would bear on the question of welfare. In the Guardian's report dated 13 December 2024, the wishes and feelings of the children are made plain. Each of them articulated a clear and reasoned desire for the status quo to continue. They did not support their mother's application for discharge of the care order and wished to put an end to the legal proceedings. Each of them stated that things were going well and the existing arrangements should persist.

[20] When questioned by the court, the mother accepted that all was good at the moment with the arrangements for the children. She explained that she wanted these to continue but without the apparatus and constraints of the care order.

[21] In this context, it is very difficult to see what could be achieved by a fact-finding hearing. The court would be asked to hear evidence in relation to events, many of which occurred around ten years ago, for the purpose not of any material change to the children's lives but to "discover the truth". The most likely outcome of such a hearing would not be to benefit the children but to reopen old wounds caused by an acrimonious separation many years ago.

[22] I have had the benefit of the transcript of the hearing of 5 December 2022, the detailed submissions of the parties and the evidence prepared for the full hearing. It is quite apparent that items (i) to (x) and (xii) in the schedule of allegations relate to matters which predated both the interim and full care orders.

[23] The only exception to this is the allegation of institutional failures and collusion on the part of the Trust and Guardian. Insofar as these concern alleged breaches of the applicant's rights under the Data Protection Act 2018 ("DPA"), these are not matters before the court. The appropriate remedies for any such breach are set out in Parts III, V and VI of the DPA. The issue of disclosure does remain before this court but is yet to be determined, pending the outcome of this fact-finding hearing application. The two cited contact meetings from 2019 are highly unlikely to have any bearing on the key issue of the welfare of the children in 2025 or 2026.

[24] In the overall analysis:

- (i) On 5 December 2022, experienced senior counsel outlined her client's instructions on a number of issues to the court, including her express consent to the threshold statement and the future care planning;
- (ii) No appeal was pursued and no application made to discharge the care order for some 17 months;
- (iii) There is no mention at all of parental alienation in the court's findings, either in relation to the interim or full care order;
- (iv) All the issues of fact relevant to the instant application existed at the time of the making of the previous court orders – this application does not raise any new question of fact for the court's determination;
- (v) No reason has been put forward as to why these facts were not the subject of judicial determination at the relevant time in either the private or public law proceedings;
- (vi) No new evidence has been adduced which would give rise to a reason to believe that the outcome of the proceedings would have been any different;
- (vii) The only likely consequences of a fact-finding hearing, aside from the inevitable emotional upset and distress, are further delay and cost to the public purse;
- (viii) This is particularly significant when the children have expressed to the Guardian, that they are "fed up" with the litigation.

[25] I have therefore determined that it would be wholly inimical to the welfare of the children, and contrary to the interests of justice, to hold a fact-finding hearing as part of the application to discharge the care order or to enhance the applicant's contact. It could not be said that it is either right or necessary to convene such a hearing.

### *Conclusion*

[26] For the reasons outlined, the application is refused. In order to obviate any further delay, I propose to make directions to a final hearing of the outstanding applications.

### *Postscript: The citation of authorities*



[27] In the course of her written argument, the applicant referred to some 13 authorities which were found to be incorrectly cited, which did not support the legal proposition being advanced or which could not be found at all. Inevitably, this piece of research occupied hours of time for the lawyers representing the other parties and for the Bar Library staff who provide an extremely valuable service to the court in the production of bundles of authorities.

[28] A number of recent cases across different jurisdictions have alluded to the phenomenon of AI-generated hallucinatory authorities. This may not have been the cause of the wrong citations in this case but is illustrative of the problems which occur when parties do not comply with their duties to the court. If this type of issue recurs, any party, including a litigant in person, can expect to be visited with the costs occasioned by their actions.