

Neutral Citation No: [2025] NIFam 16

Ref: HUM12906

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Delivered: 02/12/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**FAMILY DIVISION
OFFICE OF CARE AND PROTECTION**

Between:

JL

Applicant

and

MA

First Respondent

and

A HEALTH AND SOCIAL CARE TRUST

Second Respondent

**IN THE MATTER OF A CHILD, RA
RE: TERMINATION OF PARENTAL RESPONSIBILITY; DISCHARGE OF CARE
ORDER AND SUBSTITUTION OF SUPERVISION ORDER**

**Moira Smyth KC & Nicola Rountree (instructed by Fox Law) for the Applicant
Suzanne Simpson KC & Anna McHugh (instructed by Patrick Fahy & Co) for the first
Respondent**

**Timothy Ritchie (instructed by the Directorate of Legal Services) for the Trust
Zara McKay (instructed by the Official Solicitor) on behalf of the child
Patrick Gillen (instructed by Logan & Corry) for the Children's Court Guardian**

HUMPHREYS J

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

Introduction

[1] On 27 June 2023, Kinney J made a care order in respect of the child, RA, who is now aged five years and nine months. Since that date, parental responsibility has been held by the applicant mother JL, the first respondent father MA and the Trust.

[2] There are two applications before the court. JL applies, in private law proceedings pursuant to Article 7(3A) of the Children (Northern Ireland) Order 1995 ('the Children Order'), to terminate MA's parental responsibility. The Trust applies for the care order to be discharged and substituted for a supervision order, pursuant to Article 58(4) of the Children Order.

[3] All parties agree that since MA acquired parental responsibility by being registered as the child's father on the birth certificate, the court may, if it thinks fit, make an order that the father cease to have such responsibility.

The history of the care proceedings

[4] On 2 August 2021, staff at his nursery made a referral to social services as a result of unexplained facial bruising on RA. Subsequent clinical examination revealed multiple fractures of the left tibia, three ribs and right clavicle, as well as multiple bruises. In all likelihood, these injuries required three separate applications of force to the infant child.

[5] On 31 March 2023, MA pleaded guilty to two charges of grievous bodily harm, four counts of child cruelty by neglect and one of child cruelty by assault. On 29 September 2023, he was sentenced to a determinate custodial sentence of three years, to be split as one year in custody and two years on licence, along with a Violent Offenders Prevention Order ('VOPO') which is in place until 29 September 2028. The VOPO prohibits him without the prior approval of his Designated Risk Manager or Social Services, from:

- (i) Residing at any address or place;
- (ii) Having contact or being in the presence of a child under the age of 16, save for everyday unavoidable contact;
- (iii) Entering into a relationship with any adult which would afford him access to a child under 16 years.

[6] He is also obliged to engage and co-operate in all reasonable requests made by his Designated Risk Manager in relation to treatment programmes or courses which will assist in reducing his risk, addictions, anger management and relationship problems.

[7] On making the care order on 27 June 2023, Kinney J approved a care plan of kinship care with his maternal grandparents alongside rehabilitation to the mother over a two-year period.

[8] There is considerable overlap in the evidence relevant to each of the applications and it is proposed to outline this, before addressing the legal principles and their application to the facts of this case.

The psychiatric report

[9] MA was examined by Dr Husain, Consultant Forensic Psychiatrist, on 25 July 2023. He recorded that MA was raised in a physically abusive and violent childhood home. At the age of 13 he manifested sexually inappropriate behaviours towards his young stepsiblings. He had some engagement with adolescent mental health services but lapsed into a pattern of drug and alcohol abuse. His criminal record prior to the serious assault on RA included gross indecency, indecent assault on a female child, causing grievous bodily harm and wounding.

[10] MA did not give an account to Dr Husain of the actual assaults but did discuss his involvement, referring to his “intense anger” and abuse of alcohol. He stated that he could not believe that he could be capable of “such horrible things.” He explained that he wanted to understand how he had become so violent towards his baby son and recognised that one day he would ask why he did this to him. MA is recorded as saying:

“I have to work hard on myself to be able to face him when that time comes.”

[11] Dr Husain perused MA’s medical history, noting that he had been abstinent from alcohol and drugs for a period of about three years but relapsed in February 2023, in an apparent suicide attempt.

[12] Dr Husain concluded:

“...it will take a very long time for [MA] to truly emotionally understand himself and his acts of violence against his baby...he would also need to address this complex psychological work in the absence of alcohol and drugs”

[13] In his opinion, MA manifested features of a dissocial personality disorder but he also demonstrated an emergent ability to think about his life and crimes. He commented:

“In any case, I think it would be extremely unwise and dangerous to ever allow [MA] any parental responsibility for any child”

[14] It is not clear whether Dr Husain is referring to parental responsibility in the strict legal sense or from the perspective of a layperson.

The probation reports

[15] The Probation Board for Northern Ireland (‘PBNI’) prepared a pre-sentence report (‘PSR’) in which reference is made to admissions made by MA in his police interview. He accepted squeezing the child forcefully, and one occasion hearing a pop from his chest. This was a result of a loss of control prompted by the baby’s crying.

[16] MA was assessed as presenting a high likelihood of reoffending as a result of his history of substance abuse, poor decision making, unprovoked violence, adverse childhood experiences and a lack of victim empathy. He did not meet the threshold for significant risk of serious harm.

[17] At the direction of this court, the PBNI prepared a further report, dated 17 November 2025 in relation to MA’s licence period following his release from prison in May 2024. The probation officer records that his compliance has been generally positive, and he has abided by his risk management plan. There has been no contact with RA. Between December 2024 and March 2025, MA engaged in eleven one to one sessions and was observed to be motivated to develop an understanding of his behaviour. Further intervention is planned in the form of a ‘coping skills’ programme. PBNI anticipate that he will abide by his licence conditions and continue to engage until his licence expires in May 2026.

The social work report

[18] In October 2023, JL moved into the placement and resumed a caring role for her child. Since that time, she has exercised parental responsibility along with the Trust and oversees RA’s health, educational, social and emotional needs. MA has had no contact with RA of any nature given that his licence conditions prohibit this. He did request a photograph of the child in January 2023 but there have been no other requests from him.

[19] In a Looked After Child (‘LAC’) review in January 2025, the Trust determined to make an application to discharge the care order as a result of the progress along the trajectory made by JL.

[20] RA is in good health and well looked after. He is a very sociable boy who has thrived in his pre-school and school environment. He is much loved by his mother and the wider family.

[21] During a care planning meeting in January 2023, a decision was made not to provide a photograph of RA as requested by his father. This was due to his lack of engagement with the Trust, lack of motivation and lack of clarity as to how the picture would be kept safe. MA was invited to a meeting to discuss but did not attend.

[22] The social workers express concerns about the potential impact on RA if MA were to choose to exercise his parental responsibility in the future. In particular, the Trust is of the view that any involvement of MA, directly or indirectly, would have a significant impact on JL's wellbeing which could, in turn, impact upon her care giving role with RA.

[23] The Trust recommendation is for no contact to occur between RA and MA. In the social worker's opinion, MA should also be prevented from having any access to RA's educational reports and medical records, and JL should only be required to contact him in the event RA is seriously ill.

[24] JL engaged in a programme of therapeutic and educative work which is recorded as having been both successful and positive. However, given that both JL and RA remain in the maternal grandparents' placement, the view of the Trust is that the extent of JL's ability to parent the child on her own has yet to be tested. In addition, it is stressed that JL has not entered into any new romantic relationship, and this may be a matter which will require some support and guidance, if it occurs.

[25] The Trust seek the discharge of the care order since, in light of the progress, made, it is no longer the case that it is necessary for it to share parental responsibility. The social workers have considered the step-down approach and advocate a supervision order of 12 months' duration in order to support, guide and help the family.

The evidence of the mother

[26] JL says in her statement that prior to the injuries being inflicted on RA, MA controlled every aspect of her life, including finances and food. He was violent towards her and on one occasion in 2014 he punched her to the face. He did not support the use of conventional medicine or vaccinations.

[27] Since RA has transitioned back into her care, MA has played no role in the child's life. He has not attended LAC reviews or communicated with social services. He pays no maintenance. It is her belief that no contact would be safe for RA.

[28] JL describes how traumatised she was by what happened to her child and how she has managed to escape the abusive relationship and undertake substantial therapeutic work. In her opinion, MA may seek to abuse his parental responsibility in the future and exert control over her and RA. She does not believe it will ever be in RA's best interests for his father to have any input into decisions around his life and therefore seeks the order to revoke the parental responsibility.

[29] In the public law proceedings, JL supports the discharge of the care order but does not accept that a supervision order is necessary. She contends that a residence order should be made in favour with an appropriate support plan in place for RA. She remains fearful about having to communicate with MA in the future.

The evidence of the father

[30] MA states that he struggled as a parent and lost control, causing the injuries to RA. He says that there was no element of premeditation and is full of remorse for what he did. He is glad that the child has been rehabilitated to the care of the mother and is heartened by the progress which the boy has made.

[31] In terms of his relationship with JL, he accepts it was toxic and unstable. He admits to his addiction to alcohol and drugs and that he was violent towards her. He denies that he coercively controlled JL and says that there was not the level of domestic abuse which she alleges.

[32] MA outlines that he has not sought to intervene in RA's life in any way since the events of August 2021 and states that he has no intention of abusing his parental responsibility. He says that he has no issue with RA getting any vaccinations which are medically recommended for him.

[33] He stresses that he has engaged with educative work both with Northlands and Relate NI, both before and during his period in custody. Since his release he has fully co-operated with PBNI and continues to attend with a forensic psychologist. He asks the court not to grant the draconian order sought in the private law proceedings.

[34] In the public law application, he supports the discharge of the care order and the making of a supervision order.

The Official Solicitor's position

[35] In her position paper, the Official Solicitor, instructed on behalf of the child in the private law proceedings, has considered the key issue of RA's best interests. The view was taken, unsurprisingly, that in light of his age and experience it would not be appropriate to seek the child's wishes and feelings on this issue.

[36] The Official Solicitor agrees that there is a strong argument for revocation of MA's parental responsibility but also that, in the event the care order is discharged, there are remedies to restrict the extent of the exercise of parental responsibility via Article 8 of the Children Order.

The Children's Court Guardian assessment

[37] The Guardian advises that RA has settled well into primary school and is generally thriving. He no longer shows any signs of emotional distress but presents as a happy, contented child. She has no concerns about JL moving out of the home and parenting RA independently. JL has engaged in every possible assessment and intervention necessary to demonstrate her ability in this regard.

[38] By contrast, grave concerns are expressed about the consequences of any contact between the boy and his father. The Guardian recommends there be no contact, whether direct or indirect.

[39] The Guardian agrees that the care order ought to be discharged in light of the significant progress which has been made since it was granted. She does not support the substitution of a supervision order, asserting that there are no outstanding interventions or supports which require to be put in place.

The legal principles

(i) Discharge of the care order

[40] Article 58 of the Children Order provides:

“(1) A care order may be discharged by the court on the application of –

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the authority designated by the order.

...

(4) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

(5) When a court is considering whether to substitute one order for another under paragraph (4) any provision of this Order which would otherwise require Article 50(2) to be satisfied at the time when the proposed order is substituted or made shall be disregarded.”

[41] An application brought to substitute a supervision order for a care order must be based on the principle of the paramountcy of the child's welfare enshrined in Article 3(1) of the Children Order. There is no requirement to consider whether the threshold criteria set out in Article 50(2) are met. Similarly, the key question when considering whether to discharge a care order without substitution is the welfare of the child, with due regard in either case to the welfare checklist in Article 3(3) of the Children Order. The court must also be cognisant of the article 8 ECHR rights of parents and children and ensure that any interference with these is both necessary and proportionate.

[42] A supervision order does not vest parental responsibility in the Trust. Its effect is set out in Article 54 of the Children Order:

“(1) While a supervision order is in force the supervisor shall –

- (a) advise, assist and befriend the supervised child;
- (b) take such steps as are reasonably necessary to give effect to the order...”

[43] Schedule 3 to the Children Order makes further provisions in relation to supervision orders. In the first instance, its duration cannot be more than 12 months although extensions can be made up to a maximum period of three years. A range of powers and obligations can be given and imposed on both the supervisor and the responsible person designated under the order which may relate to residence, activities, medical treatment and the like. The supervision order may be made by the court with or without such requirements, again on the basis of the paramountcy principle

(ii) Termination of parental responsibility

[44] Article 7(3A) of the Children Order provides:

“A person who has acquired parental authority under paragraph (1), (1ZA) or (1A) shall cease to have that responsibility if the court so orders.”

[45] The parties agreed that MA had acquired parental responsibility under Article 7(1)(a), having been registered as the child's father and, therefore, the court had jurisdiction to make an order under Article 7(3A).

[46] In *Re DD* [2019] NIFam 17 McAlinden J identified four ‘broad situations’ in which applications to terminate parental responsibility are made:

- (a) cases involving the sexual assault of the child in question or a sibling of that child;
- (b) cases involving the infliction of non-accidental injury on the child in question or a sibling of that child;
- (c) cases involving severe domestic abuse of the other parent of the child in question; and
- (d) cases involving significant criminal behaviour, usually sexual offending in relation to adults or children outside the family. (para [21])

[47] The judge identified that a court determining such an application must recognise the paramountcy of the welfare principle and consider whether the making of the order constitutes a necessary and proportionate interference with the right to family life enshrined in article 8 ECHR.

[48] In *Re RE* [2021] NIFam 36, McFarland J adopted McAlinden J's statements of principles and added the following observations:

"...Firstly, parental responsibility does not equate to parentage. Removal of parental responsibility does not remove parentage and it does not prevent a parent applying for, and having contact, with the child. Secondly, the court can limit the extent to which a parent can exercise parental responsibility (see Article 5(7), Article 8(1) and *Re B & C* [2017] EWHC 3250). Thirdly, the court can regulate how a parent accesses the family courts under Article 179(14)." (para [10])

[49] McFarland J also stressed that parental responsibility should not be removed unless there is good reason, and the burden of proof in such a case is on the moving party.

[50] In *D v E* [2022] 1 FLR 582 MacDonald J stated:

"The authorities set out above make clear that the court must ask itself whether, were the father now to be applying for an order conferring parental responsibility for G on him, an application for parental responsibility would be granted. In seeking the answer to this question the court will consider, amongst other factors, evidence of attachment and a degree of commitment, the presumption being that, other things being equal, a parental responsibility order should be made rather than withheld in an appropriate case. I also have regard to the fact that

the removal of parental responsibility from a parent is a serious step that must be justified on the available evidence and proportionate. However, these factors must all be considered with a view to answering that the *fundamental* question for the court, namely whether it can be said to be in G's best interests for the father to have parental responsibility for her, taking her welfare as the court's paramount consideration." (para [52])

[51] In that case, where the father had been convicted of serious sexual offences against a child, an order was made terminating his parental responsibility in light of the following factors:

- (i) There was no evidence of any attachment between the child and the father;
- (ii) There was no evidence of any level of commitment on behalf of the father;
- (iii) The father had taken no steps since conviction to address his offending behaviour;
- (iv) The court concluded that he would use his parental responsibility to control the mother, seen in the context of his previous behaviour, which would be intolerable to her and cause a risk to the stability and security of the child; and
- (v) The father had failed to engage in the legal proceedings.

[52] Various in the caselaw the threshold for removing parental responsibility has been described as a "high" bar or one requiring "solid grounds" or something not to be "removed lightly." It is incumbent on the mother, in this case, to establish that its termination would be in the best interests of the child.

Consideration

(i) Discharge of the care order

[53] The evidence before the court clearly supports the discharge of the care order. This is a proposition supported by all parties in light of the very significant progress made by JL and the settled, comfortable and loving environment enjoyed by RA.

[54] The only issue relates to whether it should be discharged without further order, or whether the court should make a supervision order for a period of time.

[55] If the care order is discharged then parental responsibility will rest with the mother and father (subject to the determination of the other application before the court). A supervision order does not interfere with parental responsibility save to the

extent that, by virtue of Article 5(7) of the Children Order, the holder of parental responsibility cannot act in a way which is incompatible with such an order.

[56] There is a difference of opinion between the Trust and the Guardian on the issue of whether a supervision order is necessary or proportionate in all the circumstances. In light of the significant trauma which this family has undergone and the very successful relationship which has been established between JL and the social workers, I have concluded that it would be in the best interests of RA to have the support framework of a supervision order in place. It is likely that he will begin to ask questions about his father in the near future and the Trust will be able to recommend and guide appropriate responses. The level of intervention occasioned by a supervision order is modest and its duration is time limited. On my analysis, this represents a necessary and proportionate interference with the family's article 8 rights.

[57] Following the hearing, the Trust's representatives submitted a draft of various Schedule 3 requirements which it sought to be included within the supervision order. These related to RA's place of residence, any new relationship embarked upon by the mother, therapeutic plans for RA and meetings between social workers and family members.

[58] The inclusion of any such requirements must themselves be in the best interests of the child and be a proportionate interference with article 8 rights. It is apparent from the evidence in this case that the mother and maternal grandmother have co-operated fully without any coercive directions having been in place since August 2021 to date. The Guardian records:

"[JL] is a compliant individual. If the Trust want or need access to [RA], she would never deny this."

[59] In all the circumstances, I am not satisfied that it is necessary or proportionate to make any of the directions or requirements sought by the Trust. There is no evidence to suggest for instance, that JL would be resistant to a programme of therapy for RA. In fact, she has actively sought out such treatment for him. The Trust and the family have worked well in partnership together without any court-imposed requirements and I have no reason to believe that the position would be any different during the currency of the next 12 months. I, therefore, make the supervision order without any specific requirements.

(ii) Termination of parental responsibility

[60] This case falls squarely within category (b) of McAlinden J's taxonomy in *Re DD* and, on the applicant's submission, also within (c) and (d). There can be no doubt that MA inflicted terrible and cruel injuries on a defenceless child. His behaviour fully merited condign punishment. He also, on his own admission, was violent towards JL. The mother points to the lack of any relationship between RA and

his father and the potential harm which the exercise of parental responsibility by MA could cause.

[61] Without seeking to minimise his conduct and its consequences, MA's counsel made a number of submissions:

- (i) There was no premeditation involved, nor was there intent to inflict grievous bodily harm;
- (ii) MA made admissions to the police in interview on 5 August 2021 and fully accepted his guilt;
- (iii) He made his remorse clear both to probation officers and Dr Husain;
- (iv) He himself suffered a traumatic childhood and has had mental health issues; and
- (v) He has engaged with the therapies provided to him and has fully co-operated with probation and complied with his licence conditions.

[62] It is argued therefore that this case is quite different on its facts from *D v E* and it would be, in all the circumstances, disproportionate to make an order under Article 7(3A).

[63] The key question here is the welfare of RA. There can be no doubt that JL had made every effort to address the causes of concern in relation to her failure to protect RA. She is to be commended for her determination to develop her own resilience and self-confidence and enable progress to be made towards the discharge of the care order. The mother has now become the primary carer for the child, and the court must carefully consider the impact of any decision upon her, since that may have a negative impact on RA.

[64] The extent of the psychological harm caused to RA as a result of his treatment by his father is not yet known. There will be a need as he grows up to produce a narrative for him, and it is likely that he will need to engage in therapeutic treatment to address the underlying issues.

[65] JL has concerns about any direct communications with MA which may occur if he retains parental responsibility. These could relate to, for instance, decisions around his education or medical treatment. JL fears that this could traumatise her and destabilise the settled family unit.

[66] RA is too young for his wishes and feelings on this issue to be taken into account.

[67] Rehabilitation remains an important goal of our criminal justice system (cf. the comments of McCloskey LJ in *R v Ferris* [2020] NICA 60). As matters currently stand, MA is subject to the strictures of his licence conditions and a VOPO. He will not be able to make any contact with his child or the mother within this framework until the end of September 2028. However, it is apparent from the most recent PBNi report that he has been seeking help to address the underlying issues associated with his offending. There is an ongoing programme of work scheduled throughout the remaining period of his licence.

[68] I have concluded that it would, in all the circumstances, be disproportionate to terminate MA's parental responsibility at this time. I take into account the young age of RA and the possibility that they may be able, sometime in the future, to establish some form of relationship between them. There are a range of other options open to the court, by the use of prohibited steps orders or specific issue orders pursuant to Article 8 of the Children Order, by which the parental responsibility enjoyed by a parent can be significantly restricted, in the event that the care order is discharged. As Sir Andrew McFarlane P explained in *Re A (Parental Responsibility)* [2023] EWCA Civ 689:

“... where the facts of the case justify it, the court may make a combination of orders which have the effect of prohibiting a parent from taking any step in the exercise of his or her parental responsibility and clothing the other parent with the exclusive right to exercise parental responsibility...” (para [10])

[69] At this moment in time, there is no prospect of any contact, nor has the father sought to intervene in any key decisions around RA's life.

[70] I make a Prohibited Steps Order, pursuant to Article 8, that the father shall not exercise his parental responsibility for the child for a period of five years. This constitutes a significant interference with his article 8 rights but is, in the circumstances of this case, a necessary and proportionate step. The father has much therapeutic work to do in order to address his issues around anger, substance abuse and criminal offending. This order will mean that, for the specified period, JL will be permitted to exercise her parental responsibility relating to health, education, documentation and upbringing generally without reference to the father.

[71] The prohibition will specifically extend to any liaison with educational establishments or obtaining education reports; to contacting the child's GP, dentist or other medical authority and to obtaining medical information and from contacting any religious institution or club, group or society that the child may attend and from obtaining any information from them.

[72] I also make a Specific Issue Order, for the same duration, dispensing with any requirement that the father's signature be required in order to apply for a passport for

the child and entitling the mother to make any decisions in relation to the child's education without the father's consent.

[73] I also order that the mother is under no obligation to provide the father with any information about the child, save for:

- (i) If the child is suffering from any life-threatening illness; and
- (ii) If the mother intends to relocate to live with the child outside of Northern Ireland.

Conclusion

[74] I, therefore, order as follows:

- (i) The care order is discharged and substituted with a supervision order of 12 months' duration; and
- (ii) Prohibited steps and specific issue orders are made as outlined above.