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(subject to editorial corrections)**

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

BETWEEN:

A MOTHER

v

A HEALTH AND SOCIAL CARE TRUST

and

A FATHER

IN THE MATTER OF XG AND BL CHILDREN AND IN THE MATTER OF
DISCHARGE OF CARE ORDERS

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

KINNEY J

Introduction

This judgment has been anonymized to protect the identity of the children. I have given them the ciphers XG and BL which have been randomly chosen. Nothing can be published that will identify XG or BL directly or indirectly.

[1] The mother has made three applications. The first is an application for increased contact under Article 53 of the Children (Northern Ireland) Order 1995

("the 1995 Order"). The second seeks to discharge the care orders made in respect of both children. The third application made during the course of the other applications was to set aside the care orders made in December 2022.

Background

[2] Interim care orders were made for both children in October 2021. These orders were made with the consent of the parents. A statement of threshold criteria was also agreed by the parents at that time. The threshold that was agreed by the parents was 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."

[3] XG is now almost 16 years old and BL will be 14 later this year. Full care orders were made for each of the children by McFarland J in December 2022. The care orders were made with the consent of the parents. The mother was at that time fully legally represented and the court was told that she agreed the care plans, the threshold and the making of the care orders in respect of each child. No appeal was brought in relation to the care orders.

[4] XG has been with his foster carers since November 2021. He is well settled in that placement. It is a long-term placement. BL's initial placement was not successful but ultimately she returned to the care of her father in March 2023 and is well settled. BL's placement is also long-term.

[5] The mother brought her application for contact in November 2023. In her statement of evidence she has made the case that her contact with the children has been eroded by social services. She maintains that the children have been conditioned to a narrative of the Trust and that contact for the father has been progressed whilst contact with her has not. The mother maintains that the children, and BL in particular, have been threatened in regard to placement. She asserts that BL is unable to identify her unhappiness in placement as she is afraid to be placed into the system again. The mother maintains that the Trust is unwilling to allow unsupervised contact for her with the children because this would allow the children to be open and tell her what was happening. Quality contact cannot take place with the children as they have to watch what they say to the mother. The children are not being given permission to have family life with her. Supervised contact is an invasion of privacy and one hour per week restricts any meaningful activities.

[6] At hearing the mother confirmed she was seeking unsupervised contact and that the children should be allowed to contact her when they wanted to. She considered the children to be very guarded in their presentation because of state intervention.

[7] The mother then made an application in May 2024 to discharge the care orders. The mother filed a position paper in relation to her application for the discharge of the care orders on 5 January 2026. Amongst the arguments the mother makes in support of her applications are the following:

- The statutory threshold for a care order is not currently met. Care orders are no longer necessary or proportionate and continued compulsory state intervention is not justified by the evidence.
- No judicial findings of emotional abuse, parental alienation, abandonment, or ongoing risk attributable to the mother have ever been made.
- There are no current safeguarding risks attributable to the mother and the records do not evidence continuing significant harm to either child.
- The social work reports contain material inaccuracies including incorrect dates and the presentation of allegations as if they had been judicially determined.
- The children's wishes must be considered but the children have not been provided with neutral explanations that allegations made are not findings.

- The children expressed wishes may reflect fear of consequences, or desire for security rather than free and informed choice.
- There has been placement instability and in particular BL has expressed that she does not wish to return to foster care. This is a relevant emotional factor and raises the possibility of fear-based compliance not wrongdoing.
- The children’s wariness towards the mother may be influenced by imbalanced or inaccurate information.
- Allegations raised in previous proceedings have never been judicially determined.
- The mother has demonstrated sustained stability and a change in circumstances since the making of the care orders.
- The children’s circumstances have now changed. The children are older and the orders are disproportionate. The children have been the victims of emotional abuse, coercive persuasion and Stockholm syndrome.
- Continued reliance on care orders requires justification. State intervention is not required.

[8] As part of her case the mother also sought a fact-finding hearing relating to allegations made by her regarding events that occurred before the making of the care orders. That application was considered by Humphreys J and in a decision handed down in November of last year ([2025] NIFam 11) he refused the application holding at para [25] 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 hearing.”

Legal principles

Discharge of a care order

[9] Article 58 of the 1995 Order provides:

“58. – (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.
- (2) A supervision order may be varied or 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 supervisor.
- (3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.
- (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.”

[10] Guidance on the legal principles in relation to the analogous provisions in force in England and Wales were provided by the Court of Appeal in the case of *Re TT* [2021] EWCA Civ 742. At para [31] the court said:

“In summary, when a court is considering an application to discharge a care order the legal principles are clear:

- (1) The decision must be made in accordance with s. 1 of the Act, 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."

[11] These principles were endorsed in this jurisdiction in *A Mother v a Health and Social Care Trust* [2021] NIFam 25 where McFarland J said at para [14] "this is a succinct and accurate statement of the law."

Contact

[12] Article 53 of the 1995 Order provides:

"53—(1) Where a child is in the care of an authority, the authority shall (subject to the provisions of this Article) allow the child reasonable contact with—

- (a) his parents;
- (b) any guardian of his;
- (c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the residence order was made; and
- (d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the High Court's

inherent jurisdiction with respect to children, that person.

...

- (3) On an application made by –
 - (a) any person mentioned in sub-paragraphs (a) to (d) of paragraph (1); or
 - (b) any person who has obtained the leave of the court to make the application,

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.”

Setting aside the care orders

[13] The mother filed a C2 application on 11 December 2025. She sought an order setting aside the care orders made on 5 December 2022. The basis of this application was that the mother had never agreed to care orders being made and her position was misrepresented to the court by her then legal representatives. Because the case proceeded in this way threshold was incorrect, unproven and never tested. No fact-finding hearing ever took place. The mother further contended that evidence which had been unlawfully obtained by the Trust was used and that the children’s wishes were misrepresented. The issue of whether a fact-finding hearing was required was dealt with by Humphreys J as referred to above.

[14] The mother made clear in written submissions and again during oral submissions that she did not wish to proceed with this application. The mother made written submissions on 20 January 2026 which were headed “clarification note on consent.” In this document the mother said she was not advancing a case to invite findings of fault nor to reopen or relitigate matters previously before the court. However, she maintained the position that she did not consent to the care orders. In her oral submissions the mother confirmed to the court that she was not continuing with this aspect of the case and she was not asking the court to determine whether there was any breach of article 6 rights. She submitted the court should consider the circumstances today, and that consideration should be informed by her position that she did not consent to the making of the care orders at the time and this could impact on the necessity and proportionality issues at this stage.

The children’s experiences

[15] XG has been with his current foster carers since November 2021. Both the Trust reports and the Guardian reports confirm that he is well settled in that placement. It is a long-term placement. BL has been with her father since March

2023 and again this is a long-term placement. I have considered a number of Trust reports but have concentrated on those available since June 2024. There are common themes in the reports relating to both BL and XG.

[16] The Trust report dated 16 July 2024 described XG as generally settled and relaxed but that his emotional well-being could be impacted before and after family time with his mother. He often sought reassurance from his carers, contact workers and social workers, much of which centred on his analysis of the conversations he had with his mother. The report noted how XG frequently described his happiness at living with his foster carers and his positive experience of family life. He felt free in this relationship to discuss things with his carers and often sought reassurance and emotional support. XG did not wish to return to the care of his mother.

[17] BL is described as engaging, energetic and pleasant. By the time of this report she had been living with her father for almost eight months and was described as well settled living in his care. She found it difficult to talk about her early lifetime experiences and struggled with her emotional well-being. This was particularly acute during contact with her mother. BL was receiving assistance involving a mentor which she found very beneficial. The mother had made various allegations against the father but by this time both the Trust and the police confirmed they had no further concerns. BL confirmed she wished to stay with her father and considered that all her needs were being met.

[18] The Trust report provided in June 2024 sets out some of the struggles BL faced in dealing with her earlier lifetime experiences. She expressed herself to feel safe and secure in her placement with her father. Both children were having weekly contact with their mother but in October 2023 BL sought to reduce this to once a month. BL told social services that she was anxious about her mother's reactions to her and both children felt the need to exercise caution in how they spoke to the mother at contact. Social services continued to try and encourage contact and the quality of contact improved. The net result was that BL was able to attend the contact on a weekly basis and appeared comfortable in doing so. At that time the Trust considered whether or not the care order in respect of BL should be discharged and replaced with a private law residence order in favour of the father. However, by October 2024, the Trust had stepped back from the discharge application and instead felt that the care orders for both children should remain in place. BL found contact with the mother difficult. Both children told social services that they felt the need to be cautious in talking to their mother and both were anxious about the mother's reactions to their wishes and feelings.

[19] The most recent Trust reports are dated 3 December 2025. The themes and concerns remain constant and consistent. Both children remained very clear regarding their wishes and feelings surrounding both contact and the potential discharge of the care orders.

CCG Reports

[20] The Children's Court Guardian ("CCG") filed a report on 13 December 2024. She had also been involved with the family during the previous care proceedings. She met with the children. She noted that BL lived with her father and that XG had re-established his relationship with his father, supported and facilitated by his carers.

[21] The CCG considered the wishes and feelings of the children. At this stage XG was 14. The CCG was satisfied that he understood the nature of the applications that the mother had brought to the court. His response to those applications was an emphatic no. XG was content with the current contact arrangements with his mother and wanted no changes. He thought it was important that contact remain supervised as the mother had the potential to ask questions of the children about returning home with her. XG was anxious not to upset his mother or hurt her feelings. The CCG was of the opinion that XG was protective of his younger sister.

[22] BL was also assessed by the CCG as understanding the applications before the court. She was also happy with current contact arrangements which she wanted to continue. She similarly did not wish to cause upset or hurt to her mother. She did not agree with the mother's applications. The CCG recorded that she was struck by both children's level of insight and ability to reflect upon their lived experience. Both also were forceful in stating how frustrated and fed up they were with court proceedings.

[23] The CCG final report was on 12 January 2026. Both children remain very settled in their placements and have regular contact with each other. XG now has regular contact with his father, both on his own and along with BL. Both continue to have weekly contact with their mother but also continue to indicate that they want contact to remain supervised and to remain unchanged. XG is now almost 16. The CCG notes that he has been extremely consistent in his views throughout these proceedings. He wishes to remain with his foster carers, remain the subject of a care order and to maintain contact in its current format. In particular, he wants all court processes to end and expressed his difficulty in understanding why the mother continues to make applications to the court against his express wishes. A separate issue arose in the autumn of 2025 when the mother sought disclosure of Trust records. XG opposed the release of any personal details involving him and again expressed frustration about why these were sought. He loves his mother but still worries that she will make unsubstantiated complaints regarding his carers or his social workers and contact continues to make him nervous.

[24] BL has been equally consistent in her views throughout the proceedings and similarly wants no change. BL has also expressly stated her desire to remain the subject of a care order so that she can continue with and retain statutory social work input. She wants current court proceedings to be brought to an end. She was upset that Trust records regarding discussions she had engaged in were disclosed to the

mother and said that she now worries about expressing her feelings and views to Trust personnel.

[25] Both children enjoy general good health. Both are highly intelligent and each have achieved at a very high level academically. They are significantly involved in their school communities. Both children were assessed as legally competent during these proceedings. The CCG commented in her report that both children have been consistent in their presentation when talking to her, particularly about their current circumstances. The CCG described them as open, honest and competent and that she had observed both to have matured and increased their insight as time has passed.

Consideration

[26] The mother made it clear in submissions and at hearing that she was not pursuing her application to set aside the care orders. I therefore dismiss those applications.

[27] The mother has the burden to show that the discharge of the care orders is required and in the best interests of the children. It is for her to bring forward evidence to support that case. The burden is not on the Trust to show that the orders should continue. However, issues of necessity and proportionality are engaged and the court must look carefully at the orders in place, how they affect the children and how the children would fare without the orders.

[28] The children themselves have expressed ongoing anxiety and concern about the mother and the difficulties in contact with her if it is not supervised by the Trust. BL has gone further to say that she wants the care order to remain in place and that must be given weight against the emotionally traumatic background of her life experiences and her presentation in recent years. I am satisfied that both children have been free to express their views and have not been influenced by anyone.

[29] The mother has placed considerable emphasis on her perception of experiences both before the making of the care orders and indeed subsequently in her accusations against the Trust. I am satisfied the allegations made against the Trust are unfounded. I do not regard events before the care orders were made to be of significance in this matter or in the daily lives of the children. I consider these aspects of the mother's case to be of marginal weight in the application now made for discharge of the care orders.

[30] In applying the welfare checklist and considering the evidence available I am satisfied that it would not be in the interests of either child for the Trust to relinquish parental responsibility for them. Applying the welfare checklist, the children are well settled and secure in their current placements. Their physical, emotional and educational needs are being met to a high standard. There is no prospect of either

child returning to the mother's care either now or in any timescale which reasonably meets their needs.

[31] The likely effect on each child of the change in their circumstances should the care orders be discharged would in my view result in enhanced risk of them coming to harm. I am satisfied that the continuation of the care orders is both necessary and proportionate to properly safeguard the welfare of the children. I am satisfied that not only are the care orders required to protect the children but they are also essential in maintaining the relationship between the children and the mother. They provide the appropriate scaffolding for that relationship to improve and develop in the remaining years of their childhood. This is not a case where there is a care plan of adoption nor is there any suggestion that severance of contact with the mother is planned. I am satisfied that the interference in the right to family life with the mother is necessary to protect the children.

[32] I am further satisfied that any change in contact at this stage is not in the best interests of the children. It is clear that further confidence in relationships needs to be built. Both children find contact with their mother challenging. There is a natural conflict for them, in that they love their mother and want to preserve and build their relationships with her, but at the same time are anxious and wary of what she may say and do at contact or how she may interpret their comments or actions. Both children were strong in their views that contact should remain as it is and in particular should remain supervised. I give weight to their wishes and feelings. I make it clear however that the children's views and their wishes and feelings are only one aspect of the evidence in this case that I have taken into account in arriving at my conclusions. The decisions are mine and the responsibility for those decisions is mine. The children bear no responsibility whatsoever for the outcome of these proceedings. The responsibility lies both with the court and also with the mother.

[33] The mother has a fixed view of life events which is not supported by the evidence. She feels that she is a victim. She has made allegations against the various professionals involved in the life of the family. Until she can move on from this perception it is unlikely that speedy progress will be made on family relations.

[34] During the course of the hearing I was invited to consider making an order under Article 179(14) of the 1995 Order. Such an order would prevent the mother from making further applications without the leave of the court. The mother was invited to express her views. She submitted that she had a right to a fair hearing and a right to proportionality. She wanted state intervention in the life of the family to cease. The children could stay where they were but not with the involvement of the Trust. The mother submitted that the remit of social services was to support families but they had never provided support in this case. She concluded by saying that she wanted the children to be happy.

[35] The children have been the subject of legal proceedings for much of their lives. This particular chapter has been ongoing for over two years. I am satisfied that

the children deserve some respite from the constant chatter of legal proceedings involving them. An order under Article 179(14) does not prevent the mother from making a further application. It introduces a filter. The mother must obtain the leave of the court before she is able to bring any further application.

[36] Both children have been described as insightful, articulate and intelligent. I am satisfied that they require relief from litigation. They should be allowed to enjoy at least one period of their childhood without court intervention or oversight. Litigation further complicates the children's relationship with their mother and the existence or potential of further litigation is undoubtedly an additional stress when the children have contact with the mother.

[37] I am satisfied that it is appropriate to make an order under Article 179(14) of the 1995 Order. I am further satisfied that a reasonable and proportionate period of time for such an order to be in place is one of two years. XG will then be almost 18 and BL almost 16.