

Neutral Citation No: [2026] NICA 18	Ref:	KEE13030
<i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i>	ICOS No:	19/62232/04
	Delivered:	14/04/2026

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

SOUTHERN HEALTH AND SOCIAL CARE TRUST

v

J

Ms Murphy KC with Ms McKernan (instructed by the Directorate of Legal Services) for the Trust
Mr Colmer KC with Ms Hyland (instructed by Thompson Mitchell Solicitors) for the Father
The Mother appeared as a Litigant in Person
Ms Smyth KC with Ms Casey (instructed by Haugheys Solicitors) for the Children’s Court Guardian

Before: Keegan LCJ and Colton LJ

KEEGAN LCJ *(delivering the judgment of the court ex-tempore)*

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

Introduction

[1] What follows is a written record of the ruling provided by the court after the hearing of this matter on 14 April 2026 as requested by the mother (“the applicant”).

[2] This is an application for an extension of time to appeal care orders made on 5 December 2022, relating to the applicants’ two children, L who is now aged 16, and G who is coming 14. L has been in a foster placement now for some years and G has been living with her father since about March 2023. We note that there is supervised weekly contact between the children and the applicant.

[3] The applicant, appears as a litigant in person having previously been represented by senior and junior counsel and a solicitor when the care orders were made. She has presented her case comprehensively in writing and made focused submissions to us. We note in the submissions that the applicant accepts the delay in bringing an application to appeal the care orders, but she asks to us extend time for a number of reasons. Firstly, she makes an argument that there is procedural irregularity with the care orders in that she was not physically in the court building, albeit outside the courtroom, that heard the case. She also makes a case that she has been denied a fact-finding hearing in relation to various allegations made against her of a domestic violence nature.

[4] The answer given by the applicant when she was pressed about why it has taken so long to bring an application to appeal is that she became aware of the availability of an out of time appeal upon beginning legal studies in October 2025 and she acted thereafter. There are other points made that we note in the written arguments, in relation to complaints against her legal representatives, complaints against social services and some issues about how information has been improperly shared from emails.

[5] The above is just a summary of the papers, which have been well put together by the applicant and are clear in terms of what she asks the court to do. All the other parties oppose the application. We have read skeleton arguments from Ms Murphy KC, Mr Colmer KC and Ms Smyth KC representing in sequence the Trust, the father and the Guardian ad Litem. Various they all point to the extent of the delay, the lack of explanation for the delay and the fact that since the care orders were made two other judges in the High Court have considered this case, that is Mr Justice Humphreys, who was asked to deal with discharge and a fact finding application and then Mr Justice Kinney who was also asked to consider discharge. Both applications were dismissed with reasons given in reported judgments [2025] NIFam 11 and [2026] NIFam 7 which speak for themselves.

[6] The relevant rule is Order 59 rule 4 of the Rules of the Court of Judicature 1980 which is the appeal provision, and it effectively means that the notice of appeal should have been filed six weeks after the care orders were made.

This application

[7] The application is substantially out of time by two years 10 months and a number of days – that is obviously a substantial period. The court can extend time by virtue of Order 59 rule 15. When a court is looking at whether it should extend time in any case there are a number of principles that apply. We are mindful that this is a children’s case and so the principles that emanate from civil cases are adapted because of the interests of children and the application of the European Convention on Human Rights (“ECHR”), particularly article 8.

[8] This law has been discussed in decisions of this court including a case of *A Father ("EF") and a Health and Social Care Trust* [2025] NICA 26. That case considered how you apply the principles flowing from a case of *Davis v Northern Ireland Carriers* [1979] NI 19, in relation to out of time appeals. The questions that *Davis* poses are these:

- (i) Has the time been sped for appeal or is the appeal out of time?
- (ii) Is the delay substantial?
- (iii) Would there be a very considerable effect on the parties?
- (iv) Is there a case that needs to be heard on a legal point of substance?
- (v) Has there been a hearing on the merits?

[9] We bear all of those principles in mind. We also bear in mind, that this is a family case and article 8 of the ECHR is engaged. Article 8 requires that once a care order is made there is a review of arrangements on an ongoing basis. Trusts usually do that through Looked After Child ("LAC") proceedings and LAC reviews take place every six months. Parents can also apply for discharge of care orders as this applicant did before bringing the application to appeal out of time. We need not cite all the law on this but there are some very well-known decisions such as *KA v Finland* (Application No. 46544/99), *Kutzner v Germany* (Application No. 27751/95) and a more recent line of decisions such as *Strand Lobben v Norway* (Application 37283/13) which discuss this positive obligation. The cases frame the argument with the welfare of children being the paramount consideration. We do not think anyone in this court loses sight of that. We are dealing with the arrangements for two children, now 16 and coming 14.

Conclusion

[10] Having considered all of the general principles and what the applicant has said, we are not satisfied that there has been an adequate explanation for the delay. In any event our judgment in this case is influenced by what would be the effect on the parties if there was an extension of time. The effect, we think, would be significant on the children as articulated by the Children's Court Guardian who refers to the fact that these children are exhausted by litigation and would be adversely affected if the care orders were reopened. To be fair to the applicant she can recognise the potential adverse effects on the children albeit she has her own personal issues she wants to pursue. However, we repeat that the potential effect on the children is a very strong factor for us.

[11] In addition, there has been a hearing on the merits of the points made by the applicant since the care orders were made in December 2022. There is the decision of Mr Justice Humphreys which deals with the fact finding and there is the decision

of Mr Justice Kinney. We disagree with the applicant when she says that they are not relevant.

[12] There is no point of principle in this case of substance which we think would merit us granting leave to appeal at this remove given the lives of these children have been settled for some time.

[13] In addition, we are not convinced that there was, on the face of the documents we have seen, a procedural irregularity in the care order proceedings. There is certainly no argument that can be made about the threshold hearing in 2021 that founded an interim care order and removal of the children from the applicant. The applicant was physically in court, and a judge approved the threshold.

[14] The Children (Northern Ireland) Order 1995 (“Children Order”) contains an extra mechanism which protects children notwithstanding any agreement of the parties as a judge has to approve the threshold criteria as happened here. There can be no argument about that.

[15] Similarly, in relation to the care order proceedings, we understand that the applicant was emotional about those proceedings and that she expressed that at various stages. However, the transcript of the hearing is clear as to what transpired and what senior counsel representing her said to the court, namely that the mother did not object to the care orders and she did not want to come into the court. The judge said he would not force her into the courtroom.

[16] Bearing in mind that there remain differences of opinion on what transpired with legal representatives, we will not say much more about this, save to note that the judge explains his reasoning in the transcript in making the care order in the way that he is required to by the Children Order to ensure that the welfare of the children is satisfied. Hence, we are not convinced that there has been a valid argument raised as to procedural impropriety. Ms Smyth also makes a good point in relation to timing because the application to extend time to appeal only issued once Mr Justice Humphreys dismissed an application for discharge and the fact-finding hearing. In truth, as this is another attempt to raise the same issues it is unsustainable in law.

[17] Accordingly, in the exercise of our discretion, we dismiss the application for leave to extend time to appeal the care orders which were made in 2022. In doing so, we are mindful of the difficulties that these types of proceedings present for parents, but we are also particularly mindful, as we think the applicant is, of the need to secure the welfare and stability of the children.