

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Re Caitrin, Dona and Elliot (Care proceedings: Fact finding)

(Known under these pseudonyms for the purpose of anonymising this judgment)

STEPHENS J

Introduction

[1] A Trust, which I shall not name, (“the Trust”) makes an application for a care order under Article 50 of the Children (Northern Ireland) Order 1995 in relation to all three children, Caitrin, Dona and Elliot. The respondents are the mother, Marcail and the father, Fergus. The date of the Trust’s application is 11 September 2009 (1/2/34).

[2] I ordered that there should be a fact finding hearing to determine whether or not the threshold criteria or any of them have or have not been established by the Trust. This judgment is in respect of the fact finding hearing.

[3] I have anonymised this judgment. The names and initials used are not the real names or initials of any of the individuals. Nothing should be reported which would identify any of the children or any member of their extended family. Any report of this judgment should make it known that the names used are not the real names of any of the individuals. I refer to:-

- (a) The children, 2 girls and a boy, as **Caitrin, Dona and Elliot**.
- (b) The father as **Fergus**.
- (c) The mother as **Marcail**.
- (d) The social worker involved with the family between 17 October 2008 and 20 October 2008 as ~T~.
- (e) The social worker involved between 3 February 2009 and 24 February 2009 as ~U~.
- (f) The social worker involved between 24 February 2009 and 7 August 2009 as ~V~.

- (g) The social worker involved as from 7 August 2009 as ~W~
- (h) The country of which Fergus, Marcail, Caitrin, Dona and Elliot are nationals as **country ~A~**.
- (i) The country, which is geographically a considerable distance from and also culturally different from, both country ~A~ and Northern Ireland, where the family resided between 2000 and 2001 and again between 2002 and 2004 as **country ~B~**.
- (j) The police constable who visited the family home on 17 October 2008 as "**the constable**".
- (k) A co-ordinator in the women's hostel as ~P~.

[4] The parties are requested to consider the terms of this judgment and to inform the Office of Care and Protection in writing within one week as to whether there is any reason why the judgment should not be published on the Court Service website or if it requires any further anonymisation prior to publication. I specifically draw to the parties' attention that it has been necessary in this judgment to form an assessment not only in relation to Fergus and Marcail but also in respect of Caitrin, Dona and Elliot. I am concerned as to the welfare of Caitrin, Dona and Elliot if they gain access to the entire judgment and accordingly invite the parties to give careful consideration as to whether the judgment should be published and as to any possible deletions in any published judgment or further anonymisation.

[5] In this judgment I will identify documents by reference to the bundle in which they are contained followed by the page number. Bundle 1 has two parts and therefore I will refer to bundle 1, then the part and then the page number. Bundle 4 is divided into parts A and B. I will refer to 4A and 4B and then the page number. On some occasions I identify the paragraph number and that will follow the page number.

A summary of the contentions advanced at the hearing

[6] The factual allegations by the Trust in relation to the care given or likely to be given to the children all relate to the care given or likely to be given by the father, Fergus. In essence the Trust alleges that

- (a) Fergus is a highly intelligent, domineering and manipulative individual who has set out to and has destroyed the children's relationship with their mother engendering, particularly in Caitrin and Dona, hatred of her or similar emotions.
- (b) All 3 children are so heavily influenced and controlled by Fergus that they are almost mesmerised by him.
- (c) Through that control he has manipulated all 3 children so that they did not attend school and Caitrin and Dona still do not attend school.

- (d) As a result of the strong emotions that Caitrin and Dona feel towards Marcail, they are beyond her control.
- (e) In the alternative the Trust alleges that Caitrin and Dona are beyond the control of both their father Fergus and their mother Marcail in that they refuse to attend the schools which they had previously been attending and do not apply appropriate boundaries in respect of their relationship with Marcail.
- (f) Further that the care given or likely to be given by Fergus is deficient in that he does not maintain a sufficient level of cleanliness in the family home, does not maintain suitable personal hygiene standards in respect of the children and provides them with inappropriate food.

[7] The mother Marcail accepts and supports the factual case made by the Trust in relation to the care given or likely to be given by the father Fergus to all three children. She accepts that the care given or likely to be given to all three children by their father is not what it would be reasonable to expect a parent to give to them. She also accepts that as a result all three children have suffered and are likely to suffer significant harm. Furthermore that as a result of that significant harm Caitrin and Dona are beyond her control. She contends that all three children are and remain under the control of their father Fergus and that Fergus is using that control to further alienate them from her and thereby to continue to cause significant harm to them. That the wishes and feelings of the children and the factual contentions that they make, have to be seen in that context. Marcail wishes to remain in Northern Ireland or elsewhere in the United Kingdom with all 3 children though she presently accepts that by virtue of the harm caused to Caitrin and Dona by Fergus she is unable to provide a home for them.

[8] The father, Fergus, denies all the factual allegations in relation to the care given or likely to be given by him to the children. He contends that Marcail has invented allegations of domestic abuse against him as a means of obtaining a visa to remain in the United Kingdom. He also contends that the mother Marcail has physically assaulted all three children but in particular Dona. That these physical assaults were usually a reflection of their mother Marcail's "bad humour" and that she would not stop abusing the children despite them crying bitterly until Fergus intervened (1/1/33). That she was an angry and abusive individual who in the past could only parent the children under his supervision and control (3/1). He accepts that Caitrin and Dona do not like their mother and do not have any regard for her but states that this is entirely the result of her character and failings. He asserts that he has attempted to persuade Caitrin and Dona to attend school but they have declined to do so preferring to be educated at home either by himself or by way of an internet home education course organised by an international school in country ~A~. He wishes to return to country ~A~ with all three children.

[9] Caitrin and Dona, who have instructed their own legal representatives who are direct advocates for them, contend that their mother Marcail has physically assaulted and abused them. They accept that they have suffered and will suffer emotional harm as a result. Caitrin and Dona wish to live with their father Fergus and to return to country ~A~.

[10] A guardian ad litem has been appointed for Elliot. The guardian ad litem has made the court aware of factual allegations by Elliot that his mother, Marcail, has physically assaulted him and also that he wishes to live with his father Fergus and return to country ~A~.

[11] It is common case that all three children have suffered harm. The Trust, and Marcail state that the harm was caused by the care given by Fergus. Fergus and Caitrin and Dona state that the harm was caused by the care given by Marcail.

[12] The Trust and Marcail contend that the harm, which it is accepted has been suffered by the children, is significant.

Representation in these proceedings

[13] Mr Toner QC and Ms McKenzie appeared on behalf of the Trust, Ms McGreenera and Ms Niamh Devlin appeared on behalf of the mother, Marcail, the father, Fergus, was for the majority of the proceedings a litigant in person, Ms Keegan QC and Mrs Farrell appeared on behalf of Caitrin and Dona and Mr O'Hara QC and Ms Steele appeared on behalf of Elliot.

[14] I should say something about Fergus' decision not to avail of legal representation for the majority of the proceedings. On 3 February 2009 Marcail commenced private law proceedings against Fergus in relation to the residence of the children. On that date ~U~, a senior social worker, spoke to Fergus and advised him that he should get solicitors as the matter was up in court on Friday 6 February 2009. In response Fergus was "adamant that he will represent himself in court" (7/2). Fergus maintained that position from 3 February 2009 until September 2009 representing himself in relation to what were complex private law proceedings in the family proceedings court and in the family care centre. The private law proceedings were transferred to the High Court and these care proceedings were commenced on Friday 11 September 2009. I reviewed the case on that date and advised Fergus to obtain legal representation. By 17 September 2009 Fergus had obtained legal aid and had instructed solicitors and senior and junior counsel. His legal representatives were experienced family law practitioners who in accordance with their duty were assisting the court in identifying the issues, see the speech of Lord Templeman in *Ashmore v Corporation of Lloyd's* [1992] 2 All ER 486. Fergus was dissatisfied with his legal representation stating that it was

insufficiently aggressive. He discharged them preferring instead to represent himself. He had the option to instruct other solicitors and barristers but chose not to do so. He chose not to be assisted by a Mackenzie friend and also declined the suggestion that he could be assisted by two Mackenzie friends. I also explored with him the potential for him retaining his advocacy role but engaging a solicitor to be in court beside him to take notes and to quietly advise him as to the law. He declined and accordingly it was not necessary for me to decide whether such an arrangement could in fact be made.

[15] I consider that it was entirely in character for Fergus from the outset to be adamant that he wished to represent himself. He was competent in court with a good memory of extensive documentation and detailed evidence. He researched the law applicable in this country and also international treaty obligations. He was at ease in and also confident in the court environment. He was not daunted by the intellectual or forensic task which he had chosen to undertake. He was content to intervene whenever he perceived that the occasion demanded and did so frequently. He did use techniques on occasion to upset and distract for instance when challenged as to why he left the children in the care of an individual he hardly knew he asserted that he was a very good judge of character and then gratuitously gave his assessment that one of the persons in court would be unfit to look after his children whereas another would be. This was a highly personal and deeply offensive assessment. This was not a loss of temper by Fergus but a calculated technique to move from a difficult area of cross examination by attempting to provoke an outraged response from the person accused of being unfit (an assessment which I make clear was totally incorrect). The diversion in the event was only partially successful in that I indicated to the individual that he or she should not respond. The tactic did disrupt the train of thought.

[16] Fergus has evinced an intention to continue the proceedings to every tier of the higher courts if he is unsuccessful in these proceedings. He also intends to involve the press in country ~A~ (7/68a). On previous occasions when he has involved others in the facts of this case he has given a totally one sided, and as will appear from this judgment incorrect, account of the facts. For instance on 27 August 2009 (5/23-26) he gave an account to the Northern Ireland Commissioner for Young People which left out the serious allegations being made by Marcail and the concerns of the Trust as to his negative influence of the children's perception of Marcail. The Trusts concerns being expressed in for instance the report dated 23 March 2009 a copy of which he had and which he choose not to make available (2/19).

[17] During the course of his cross examination Fergus refused to answer questions that would have revealed his assets and in particular any question relating to his off-shore bank account. These questions were relevant to, for instance, the issues as to his alleged financial dominance of Marcail and the way in which he treated the family by refusing to provide suitable

accommodation with appropriate heating so that he could save money. On the penultimate day of the hearing I made a discovery order against both Fergus and Marcail in relation to their financial affairs. I also granted a Mareva injunction against him to secure his assets pending an application by Marcail for financial provision for the children. At this stage when the proceedings could affect him financially and through the enforcement of court orders he quickly sought and obtained legal representation with Mr Ferris QC and Ms Hannigan being instructed on his behalf. I granted a short extension of time in respect of compliance with the discovery order.

Conflict of evidence

[18] This is a case involving substantial conflicts of evidence. I start by resolving the reliability of the evidence of the family members and set out in summary form my conclusions in respect of the character and motivation of Fergus.

(a) Reliability of the evidence of Marcail

[19] I find that the first respondent, Marcail, was a truthful and reliable witness. I have come to that conclusion on the basis of her demeanour in the witness box. She gave her evidence quietly and with restraint. She appeared visibly drawn and was physically affected by the stress of her family's situation and the litigation. I am confirmed in that finding on the basis of the open and straightforward way in which she dealt with the Trust's social workers and by the consistency of her accounts compared with the evidence she gave. The only reservation that I entertain about her evidence is in relation to her disclosure as to her rental income from the property in country ~A~ that is in her name and which Fergus claims belongs to him. I do not conclude that her evidence is incorrect in that respect, but if it is I consider that this is a reflection of her financial vulnerability through years of financial domination by Fergus who I hold wishes to leave her destitute without anything to show financially or emotionally as a result of a partnership that has lasted for over 20 years.

(b) Reliability of the evidence of Fergus, and my conclusions in relation to his character and motivation

[20] I find that the second respondent, Fergus, is a manipulative individual prepared to distort and exaggerate his evidence. I come to that conclusion on the basis of his demeanour in the witness box and numerous instances in which Fergus has adopted that approach. The first example is that he distorts and exaggerates physical sanctions imposed by Marcail on the children into systematic child abuse. The second example is that he was prepared to involve the police on an emergency basis without any proper enquiries regardless as to the effect on his children. On 23 February 2009 Fergus dialled '999' to make a

report to the police. He stated that Elliot had rung him in a very distressed state stating that Marcail had left him alone in the hostel. The police attended the hostel and spoke with Elliot. They found that he had been watching a DVD and had been supervised. Marcail was in another room. There were several staff on the premises. I find that all this could have been determined by Fergus by a few very short questions to Elliot when he was on the phone and that there was no need to involve the police.

[21] Another example of Fergus' determination to exaggerate and manipulate is his allegation that Marcail's relationship with their son Elliot is sexually inappropriate. All the children have been under considerable emotional pressure. Their relationships with their parents, their home, their education, and their relationships with each other have all been disrupted. In circumstances where as here Elliot must be suffering emotional insecurity, a grievous sense of loss, loneliness and a need for attachment to his mother, I find that it is hardly surprising that Elliot recently sought the emotional and physical comfort of sleeping in his mother's bed at night. Marcail volunteered this development to ~W~ on 6 November 2009 (11/32). ~W's~ evidence was that this was an entirely understandable situation to have developed in the circumstances. Indeed he considered that Elliot must be generally happy in Marcail's care given that he was acting in this way (11/32) combined with the fact that on his visits Elliot presented as the total opposite of a boy who was withdrawn from or fearful of his mother.

[22] On 20 November 2009 Fergus expressed concerns to ~W~ as to Elliot's being depressed in Marcail's care and as to Elliot's wellbeing. ~W~ responded by reassuring Fergus that this was not the position and illustrated by reference to the fact that Elliot slept in Marcail's bed at night. Fergus used this information to undermine ~W~ stating that it was strange for ~W~ to consider that this was a positive reflection on the relationship between Marcail and Elliot (10/54). He also used it to undermine Marcail in a statement to the court which contained the following:-

“Even more worrying in this situation is the fact that mother is encouraging 8-year old son to join her in the bed. It could be early stage of conscientious or sub-conscientious sexual abuse, particularly if encouragement is in the form of offering the skin rubbing, massaging, oiling etc. Anyway, current situation is very inappropriate as it undermines future role of male child in his own future family and retard his mental, emotional and physical maturation supporting development of infantilism.” (10/55).

At the time Fergus made this statement there was no evidence that Marcail had *encouraged* Elliot to sleep in her bed as opposed to responding to Elliot's needs. There was no evidence of any "skin rubbing, massaging, oiling etc". Those factors were always embroideries constructed by and added by Fergus to the fact that Elliot had recently taken to sleeping in his mother's bed. At the hearing Fergus persisted in the allegation that this "could be early stages of sexual abuse" by Marcail of Elliot despite the lack of any history of anything inappropriate in Marcail's previous conduct and despite this being an entirely understandable reaction on the part of Elliot to the pressures he was under. It is a situation that has developed because of the emotional pressure on Elliot and is temporary. The contrast with a case where a parent delays a child's development to satisfy his or her own emotional needs is obvious. This case has none of the characteristics of such a case. I reject any such suggestion. I consider that Fergus fully appreciates that the allegations of immorality and supporting the development of infantilism that he has made have no foundation and that he is using them to debase Marcail and to separate Elliot from Marcail's affections. I hold that Fergus knows that Elliot craves and undoubtedly needs solace from Marcail at this stage but despite that knowledge Fergus is quite prepared to follow this strategy even if it deprives Elliot of that solace.

[23] I also consider that if Marcail had not responded to Elliot's request to sleep in her bed then Fergus would have been painting her as a mother devoid of the ability to provide emotional and physical comfort to Elliot at a time when he is under considerable emotional pressure. I also add, in case there be any doubt, that Fergus in seeking to prevent such solace being given to Elliot is acting in a way which is not in the interests of Elliot. This is not an instance of Fergus failing to understand and appreciate the emotional needs of Elliot but rather it is an instance of his disregard for those needs in seeking to obtain his overriding objectives.

[24] I hold that Fergus' evidence was not only exaggerated and distorted but was also dishonest. He is a person who is careful with social services and in court not to make a statement that could easily be proved to be false and that would leave him a hostage to fortune. However I conclude that his evidence was false to his knowledge. For instance he was not able to maintain his consistency over the period of the hearing in that he espoused positions which were inconsistent with other aspects of his evidence. For instance being cross examined as to the various situations in which he ran down Marcail in front of the children, such as the use of abusive language, he gave evidence that he would not have stated to a third party in front of the children that Marcail assaulted them. However he was unable to explain why he would not have done that if in fact the children knew all about the assaults, they looked to him for protection, he openly discussed a whole range of matters in front of them (5/25) and the individual was a person with some authority. It was apparent from his demeanour at this stage that his

answer that he would not have done this in front of the children had been false to his knowledge lead on by a string of denials that he would not have said other things in front of the children. I consider that he was a dishonest witness not only in the wide sense that he purports to espouse the best interests of his children whilst in fact completely disregarding the significant harm that he has caused to them but also in the narrow details of his evidence which is false.

[25] My assessment of Fergus is that he is a domineering individual both physically and mentally. Physically through his size and presence: though not through physical violence. Mentally through his intelligence, his manipulation, his use of the pressure of uninterrupted speech, the lack of proportion of his responses, the use of concepts that have to be analysed to be understood as to what they are and whether they bear any relationship to what has occurred. In court in his attitude to Marcail he presented with an emotional indifference towards her without regard, empathy or remorse. However in his armoury is the use of abusive language in order to create a heated and emotionally hostile environment but this is not to be seen as an emotional loss of temper or control but rather to be seen as part of a cold egocentric calculation based on an inflated and disproportionate sense of his own self worth with a disregard for the views of others and the consequences of his actions. I find that Fergus exercised control over Marcail through the force of his personality, his greater experience, manipulation, a greater degree of confidence and also significantly by controlling the family finances so that Marcail was financially under his control. I also find that Fergus disregards social norms.

[26] Fergus has read extensively on the topic of psychology though this is not the area of his academic specialisation. He asserts that he has an understanding of psychology and also asserts that he knows the reactions of members of his family from the smallest dilation of their pupils. I consider that some of his considerable ability to manipulate comes from his extensive reading in psychology.

[27] I consider that Fergus' overriding objectives are to exclude Marcail from the lives of all 3 children and to have them in his sole care. A further objective is to leave Marcail with nothing financially and emotionally after a 20 year partnership. I reject Fergus' evidence that he has a fixed intention to return to country ~A~ and hold that he uses his stated intention as a tool in achieving his overriding objectives. Fergus has an ability to react to changes in circumstances. If circumstances suited him not to return to country ~A~, and if he could acquire care of all 3 children, then he and at his instigation, they would not return. In seeking to achieve his overriding objectives Fergus has caused significant emotional harm to all 3 children. I have given consideration as to whether he is in denial as to the harm that he has caused but rather I consider that he understands that harm and continues to use it as

a tool to achieve his overriding objectives disregarding the consequences of his actions.

(c) Reliability of the evidence of Caitrin, Dona and Elliot

[28] The accounts given by the children, insofar as they differ from the evidence of Marcail I find are as a result of the influence exercised over each of them by Fergus.

(d) Conclusion in relation to the reliability of the evidence of Fergus, Marcail, Caitrin, Dona and Elliot

[29] I conclude that the only reliable witness in the family group is Marcail.

The family members

[30] Fergus is approximately 46 years of age. He has achieved considerable academic success and is a highly intelligent, educated and qualified individual. Fergus has leave to remain in the United Kingdom until May 2010 and is a work permit holder (6/4). He has been eligible to apply for indefinite leave to remain in the United Kingdom as from 1 January 2010 (3/50/21). Marcail is approximately 38 years of age. She also has achieved considerable academic success and is also a highly intelligent, educated and qualified individual. They are both nationals of country ~A~. Fergus and Marcail first met in country ~A~ on 1 August 1987 when Marcail was 16 years of age and Fergus was 8 years older. He had been married and had a daughter. That marriage had come to an end. His ex wife and daughter moved to America. Fergus did not and does not have contact with his ex wife or with his daughter whilst his daughter was alive (she was tragically killed in a road traffic accident at the age of 20).

[31] The relationship between Fergus and Marcail commenced when Marcail was 17 years of age. This disparity in age combined with their respective life experiences and characters meant that from the start Fergus was in control and required obedience. Marcail's case that she was always dominated by Fergus gains support from Fergus' own evidence. He informed the social worker ~U~ on 11 February 2009 that for the first 16 years of their relationship there were no issues. That it was only when Marcail started to attend a women's centre that her attitude changed. That she was "more obedient to him before this" (7/16). That she had been more co-operative until she came to Northern Ireland and started to associate with "feminists" at the women's centre (7/83).

[32] Fergus and Marcail have never married because Fergus did not wish to do so. He explained in evidence that a marriage certificate was just a piece of paper and that his promise was quite enough as he never broke his word. In

fact Fergus' regard for his obligations towards Marcail, including having an understanding of her, being solicitous in his care of her and having a sense of an enduring obligation towards her, is demonstrated by the fact that as soon as the partnership came to an end on 3 February 2009 he failed to provide her with any financial support, he attempted to have her deported and he actively sought to prevent her from working so that she could obtain financial independence. He refused to make available money to her to provide for the children. Rather he wished to give the money to the children (7/19). He then bought food for the children but not for her (7/25). This led the children to inform Marcail that the food was for them and not for her. This was a consequence of his actions which I consider was entirely predictable and was Fergus' desired consequence so that Marcail was demeaned by her children. The antithesis of a family meal. This technique to demean Marcail is a technique which Dona has learnt and adopted from Fergus. On 15 October 2009 Dona gave a present of sweets to Elliot but with the injunction that he was not to give them to anyone else, by which I hold she meant her mother Marcail (11/13). I do not accept Fergus' evidence that his promise was quite enough and was equivalent to or better than a marriage certificate.

[33] Caitrin, a girl was born in country ~A~ in 1996 and is now 13 years of age. She remained there until 2000 when she moved to country ~B~ aged approximately 4. In 2004 she moved to the United Kingdom and to Northern Ireland in January 2005. Since 2000 and the age of approximately 4 she has in effect lived in either country ~B~ or Northern Ireland. Caitrin enjoys a wide range of extra-curricular activities all of which occur at school which she had been attending (4A/28-29). She has been assessed as in the top 8% in the United Kingdom in terms of ability. The assessment by the school was that she is a very bright and conscientious pupil producing work of a high standard. She is a pleasant, quiet pupil who interacts effectively in class and participates successfully in group work. She answers questions when required and has friends in her class (4A/28-29). As can be seen from the school's library's loan history the range and depth of Caitrin's own reading is excellent (4A/29 and 4A/36-39).

[34] Dona, a girl was born in country ~A~ in 1997 and is now 12 years of age. She remained there until 2000 when she moved to country ~B~ aged approximately 3. In 2004 she moved to the United Kingdom and to Northern Ireland in January 2005. Since 2000 and the age of approximately 3 she has in effect lived in either country ~B~ or Northern Ireland. Dona also has been assessed as being in the top 8% in the United Kingdom in terms of ability. Her school results were not quite as impressive as those of her sister though still outstanding. The assessment by the school was that she was a diligent pupil who gave of her best consistently. That she interacts with peers in group work and pair work. That she also has done well in social areas (4A/31). I find that Dona also enjoyed her school it being an environment in which she was comfortable and was developing well academically and

socially. I also consider that Dona is strong minded and has unfortunately acquired certain traits from Fergus. I make it clear that I consider these to have been acquired by virtue of the example that Fergus has given to her of how to manipulate and how to disregard the consequences of her actions.

[35] Elliot, a boy was born in country ~A~ in 2001 is now 8 years of age. He remained there until 2002 when he moved to country ~B~. Since 2002 and the age of a few months he has in effect lived in either country ~B~ or Northern Ireland. Elliot attends a different school than Caitrin and Dona. He is progressing extremely well academically. The school is consistent in its reports that he is prospering in that environment both academically and socially. He is a happy cheerful young boy eager to talk to the social workers and interested in age appropriate activities.

The different locations in which the family has lived and the employment history of Fergus and Marcail

[36] The dates which I will set out during which the family have resided in country ~A~, country ~B~ and in Northern Ireland are approximate. Fergus gave evidence, which I accept, that in broad terms over the last 10 years the family has only resided in country ~A~ for some 6 months, though it might have been a few months longer for some of the family members.

[37] Fergus and Marcail met on 1 August 1987 in country ~A~ though their relationship commenced in 1988 (7/100). They remained in country ~A~ until 2000 when Fergus obtained a job in country ~B~. He moved there and for the first six months Marcail, Caitrin and Dona remained in country ~A~. They then joined him in country ~B~. Both Fergus and Marcail worked in country ~B~. There was a significant disparity in their wage earning capacity but Marcail paid exactly half of the living expenses so that all her salary was consumed. By contrast and by this device, Fergus was able to save money. The family returned to country ~A~ in 2001.

[38] In 2002 Fergus obtained another job with the same employers in country ~B~. Again he initially went on his own but was quickly followed by the rest of the family. Marcail also worked for a period of one year in country ~B~.

[39] In July 2004 the family returned to country ~A~ and stayed there until December 2004 when they moved to the United Kingdom and then in January 2005 to Northern Ireland (7/102).

[40] Fergus has been in employment in Northern Ireland since January 2005.

[41] Marcail initially worked unpaid assisting Fergus in his work. She then obtained work as a classroom assistant working two hours per week (7/104). Thereafter she obtained paid employment from the same organisation that employed Fergus (7/104). Fergus demanded that she gave him half of what she earned.

[42] In early 2009 Marcail was offered a full-time job in Northern Ireland. She made after school arrangements for the children but on the morning she was due to start work Fergus told the children that if they did not want to go to school they did not have to do so. All three children decided not to go to school. This meant that Marcail could not leave the house to get to her job compelling her to decide not to go out to work. As soon as she told the children this they were ready in 5 minutes and then went to school (7/105).

[43] Marcail has recently obtained employment on a full time basis (3/53/32).

[44] The qualifications of Fergus and Marcail are approximately equivalent. Their earning capacities have historically been different. Neither are high income earners. Marcail's earnings have all been expended. Fergus has been able to save by dint of severely curtailing their living expenses disregarding social norms in relation to hygiene and living conditions.

The private law proceedings

[45] The public law care proceedings commenced on 11 September 2009 but they were preceded by private law proceedings between Marcail and Fergus. The Trust, though not a party to those proceedings had an involvement with the family and provided reports to the court. I do not intend to rehearse every aspect of the private law proceedings but rather I highlight some of the significant events.

[46] On Tuesday 3 February 2009 Marcail applied ex parte in the Family Proceedings Court for a residence order in respect of all three children and a non-molestation order against Fergus. The ex parte residence order was granted. The effect was that all three children moved out of the family home to reside with Marcail in hostel accommodation.

[47] On Friday 6 February 2009 there was an inter partes hearing before the District Judge. The outcome was that all three children remained with their mother in the hostel accommodation.

[48] On 6 March 2009 ~V~, the social worker then involved, informed the Family Proceedings Court of Caitrin and Dona's lack of respect towards Marcail, that they had nothing positive to say about her, stating that they only wished to have contact with her when they felt like it. ~V~ expressed a

concern that given the children's extreme feelings there was the possibility that Fergus had negatively influenced their perception of their mother. ~V~ informed the court that the children's relationship with their mother could further deteriorate if they were to live with their father (2/21/22). In the event the District Judge varied the residence order so that all three children spent alternate weeks with Fergus and Marvail (7/36). He also advised Marvail that physical chastisement was not an acceptable form of parenting (2/21).

[49] On 11 March 2009 ~V~ made an unannounced home visit at a time when the children were residing with Fergus. All three children appeared to be more relaxed and they spoke positively about their mother. They stated that they had enjoyed contact with her that they were "missing her a little bit" and looking forward to seeing her the next day, (2/22).

[50] In a report prepared by ~V~ dated 23 March 2009 to the Family Proceedings Court the Trust stated that it did not feel able to offer a final recommendation but was of the view that the children should reside with Fergus in the interim and have contact with their mother three times a week including an overnight at the weekend. The Trust were of the view that this would present "an opportunity to try and safeguard the children's relationship with their mother, as it would appear that the children have some appreciation and respect for their mother when they spend less time with her and are removed from the stresses of living in a hostel" (2/23). The report went on to emphasise that the recommendation did "not diminish the concerns the Trust holds with regards to the extreme negative feelings that the children have towards their mother and the extent to which their father may have influenced these feelings and perceptions".

[51] On foot of that recommendation on 24 March 2009 the Family Proceedings Court made an interim residence order in favour of Fergus in respect of all 3 children.

[52] The children resided with Fergus from 24 March 2009 until shortly after this court made an interim care order in respect of Caitrin and Dona on 28 September 2009 and in respect of Elliot on 5 October 2009. Since then Caitrin and Dona have been placed in separate foster placements and Elliot resides with Marvail. Unfortunately Caitrin and Dona's foster placements broke down on 14 December 2009 and efforts are being made to find new placements.

[53] The private law proceedings were transferred to the Family Care Centre and then to the High Court. They await the outcome of the public law proceedings though I will keep under review the stage at which they should be heard.

Physical violence

[54] Fergus states that Marcaïl is uncontrollably violent towards the children. That on occasions she could not stop. Her eyes became blank with a total lack of control of her anger. Fergus states that she probably did not understand what she was doing. That on these occasions Fergus was really scared. Furthermore that the violence was longstanding commencing when the children were in country ~B~ and each of them achieved the age of about 3 - 4. That Marcaïl would be violent almost every day.

[55] I have given careful consideration not only to the nature and extent of the physical violence alleged by Fergus against Marcaïl but also to the evidence of the children and to the question as to whether there was some lesser degree of violence which would have been unlawful (see *Northern Ireland Commissioners for Children and Young Peoples Application* [2007] NIQB 115 at first instance and [2009] NICA 10 in the Court of Appeal) or which could have caused emotional or physical harm.

[56] I accept that Marcaïl has resorted to physical sanctions to control all three children but I find that these sanctions did not amount to abuse of any of them let alone to systematic abuse. Sanctions were applied in the context of discipline and have also to be seen in the context that Fergus eroded the children's respect for Marcaïl's authority placing her in an invidious position as to how she was to maintain appropriate boundaries and disciplines. The harsh irony is that Fergus undermined Marcaïl's authority leaving her with more difficult children to control and then when she used physical sanctions to assert her authority it is Fergus who excoriates her for doing so, using those sanctions to further undermine her. I also make it clear that I accept that Marcaïl now genuinely wishes to follow the policy of the Trust that physical sanctions should not be used.

[57] I make those finding on the basis that I accept the evidence of Marcaïl. Also no injuries were sustained by any of the children and none have been alleged by Fergus. Historically the children never attended any doctor or nurse. Surprisingly in view of the description given by Fergus and his professed degree of concern no special measures were put in place by Fergus to guard against these alleged attacks but rather he was content to go to work leaving Marcaïl in sole and unsupervised control of all three children. He made no report of these concerns to anyone until after 3 February 2009 when Marcaïl had left the family home. Furthermore Fergus initially recounted to ~U~ that the violence was in the context of discipline (7/15) though he attempted to convey in court that it was irrational as well as uncontrollable.

[58] In rejecting the evidence against Marcaïl in relation to the degree, frequency and effect of physical sanctions imposed by her on the children I

have given careful consideration to the initial description given by the children to social services on 3 February 2009. That description did not include any allegation of physical sanctions being applied by Marcail. On that day Marcail applied ex parte for and obtained an interim residence order in relation to all three children. She had left the family home and was to move into hostel accommodation. Caitrin and Dona were reluctant to leave the family home and move into the hostel. Social Services were informed and a senior social work practitioner, ~U~, was involved. There was something of an impasse as to where the children should go that evening on leaving school. ~U~ attended at Caitrin and Dona's school and he met with all the family members to seek to resolve the issue. He sought and obtained the consent of Fergus and Marcail to speak to the children in the absence of both of them. Prior to speaking to the children ~U~ had been informed by Fergus that Marcail smacked the children and he had concerns about them going to live with her. ~U~ spoke to Caitrin, Dona and Elliot in the presence of a teacher at and the principal of Caitrin and Dona's school. The children informed him that they got on well with both parents. That they "like mum, like dad". They also stated that sanctions were the removal of privileges and that there were no physical sanctions by Fergus or Marcail (7/1). Fergus alleges that the children were inhibited from revealing their true emotions in respect of their mother Marcail and the true facts in relation to sanctions because this interview was conducted by a social worker that they had never previously met, in front of the principal of their school and a teacher and the natural loyalty of children to their parents has also to be seen in the context of their cultural background which would further inhibit them.

[59] Caitrin and Dona are both very articulate and intelligent children with for their age a high level of independence. They have met with considerable academic success at the schools which they were attending. ~U~ prior to speaking to them on 3 February 2009 checked as to whether they wished to have the principal and the teacher present. The children wanted them to remain in the meeting. The meeting lasted some 15-20 minutes. ~U~ is a senior social worker with considerable experience. I formed a favourable assessment of him as he gave evidence and I find that he has approached the issues in this case and his contact with all the family members in an appropriate manner. I do not consider that there was any language or cultural issue inhibiting the children. They can speak English fluently. They have achieved academically being taught in English and in particular Caitrin's reading list in English is impressive. All 3 children and in particular Caitrin and Dona have subsequently demonstrated an ability to be open about their wishes and feelings and what they state has occurred. However this was a meeting for which they were unprepared and furthermore I also consider that there was a degree of inhibition due to the fact that this was their first meeting with a social worker and it was in the presence of the school principal and a teacher. They stated that they "liked" Marcail and they gave a similar description of their affection towards Fergus. I do not consider

this to be a true reflection at this stage of their feelings. In particular Dona, but also Caitrin, then had considerably less regard for her than for Fergus. At this stage the relationship of both Caitrin and Dona with Marcail was extremely fragile. Caitrin and Dona also informed ~U~ that physical sanctions were not used by Marcail. As will become apparent I do not consider this to be correct factually in that Marcail did use physical sanctions. However I find that if there had been systematic physical abuse of any of them by Marcail so that any of them were in fear, or if corporal punishment had been a prominent feature of their relationship with Marcail giving rise to fear on behalf of any of them, or if at this stage they had no relationship with Marcail they all or alternatively at least one of them would have said so.

[60] Furthermore in rejecting the evidence against Marcail in relation to the degree, frequency and effect of physical sanctions I have analysed each and every incident allegedly perpetrated by Marcail on Caitrin, Dona and Elliot since 3 February 2009. My conclusions in relation to each incident, subject to some minor and insignificant variations, are the same. I will illustrate those conclusions by reference to two examples. I accept the evidence of Marcail that these incidents are also entirely consistent with what occurred prior to 3 February 2009.

[61] The first example relates to the events of 3 February 2009. Fergus contacted ~U~ about an incident that had occurred on the evening of 3 February 2009 (7/3). That was the first evening that the children were with Marcail in the hostel. Fergus informed ~U~ that he had been contacted by Dona the previous night alleging that Marcail had pulled her by her wrists onto the floor. In court he described this as Dona being dropped onto the floor. He expressed concern that Marcail would injure Dona. I find that Fergus could easily have found out from Dona the full circumstances of this incident including details such as precisely what had occurred, whether Dona had been disruptive, whether Dona was injured or whether Dona was even sore. I find that he deliberately did not enquire from Dona about it because he wished to use the incident to discredit Marcail in the eyes of the Trust and also undermine Marcail's authority in relation to the children. He wished to create a situation where the children knew that all they had to do was to report some minor incident to him and that he would then take it up with Marcail in disproportionate terms. By this device the children obtained autonomy and independence from Marcail with the reassurance that Fergus would support them no matter how irrational they were and Fergus furthered his aim that the children would remain with him on the break up of the partnership between Marcail and himself.

[62] This incident was investigated by ~U~. He spoke to Dona at her school on 5 February 2009 (7/5). It appeared from Dona's account that on her first night in the hostel on 3 February 2009 she had not been tired and refused to go to sleep. She was singing and keeping Caitrin and Elliot awake. She

stated that Marcaïl grabbed her by the wrists and pulled her up out of bed to tell her to stop disturbing the others. Dona said that she had no injuries to her wrists which she showed M. There were no marks or scratches and she said that it was not sore.

[63] M then sought to obtain Marcaïl's version of incident. It coincided with the version given by Dona.

[64] Dona required to be controlled by Marcaïl. She was not injured. This was a most trivial incident. All this information could and should have been obtained by Fergus from Dona. If he had obtained this information he should have supported Marcaïl in her attempts to control the children by explaining to Dona that she should not have been acting in that way. Rather Fergus chose to undermine appropriate boundaries for Dona and at the same time reinforce to her and to the other children that he wished to remove Marcaïl from their lives.

[65] The second example of an alleged incident of physical violence is in relation to the events of 8 February 2009. On that date Fergus dialled '999' to make a report to the police. He stated that one of his children, Dona, had telephoned him to state that their mother had assaulted them and locked them in a room. The police collected Fergus and they proceeded to the hostel. The children were found to be safe and well. Fergus was conveyed home and thereafter the police returned to speak to Marcaïl, to the children and to the staff at the hostel.

[66] On 9 February 2009 ~U~ was informed by staff at the hostel that police had been called to the hostel on 8 February 2009 (7/6). He was also contacted by a Detective Sergeant (7/6). ~U~ investigated with Caitrin (7/8) and Elliot (7/7). It was quite clear that this was a squabble between children over the television which Marcaïl had to control. She got no assistance from any of the children who were skipping and fighting. She slapped Dona. Caitrin stated to ~U~ that she was not smacked as a punishment but to stop fights. The upshot of the police investigation and the investigation by the Trust was that this was not an incident of abuse by Marcaïl. I agree.

[67] I find that Fergus deliberately chose not to make any enquiries when he was rung by Dona (7/7). That he did not try to assist Marcaïl. That he did not support her authority. That he desired to undermine Marcaïl's authority and to diminish her in the eyes of her own children so that they knew that they could act in whatever way they pleased with impunity. At no stage has he chosen to apologise to Marcaïl for over-reacting even though ~U~ informed him of the outcome of the investigation.

[68] I reject the allegations of physical violence amounting to physical or emotional abuse by Marcaïl of any of the children. Rather I conclude that

Fergus has distorted and exaggerated the incidents using the allegations of physical violence to manipulate all 3 children to achieve his overriding objectives.

The allegation that Fergus has negatively influenced all three children against Marcail and has undermined their relationship with her.

[69] The Trust and Marcail allege that Fergus is a highly intelligent, domineering and manipulative individual who has used a number of techniques to negatively influence all three children against Marcail, to undermine the relationship which all of them had with her, to control all of them and to prevent them from going to school. The techniques include:

- (a) The use of abusive negative language by Fergus towards Marcail in the presence of the children demonstrating to them his lack of regard for her, demeaning her, undermining her authority and setting an example to them of how they can treat their mother.
- (b) The lack of any positive verbal or physical support by Fergus for Marcail in her relationship with the children with similar effects as in (a).
- (c) Directing, condoning and encouraging all three children not to attend school as of the 1st September 2009 due to the ongoing court proceedings or in the alternative his failure to exercise parental responsibility in order to ensure that the children returned to school as of the 1st September 2009.
- (d) Isolating Marcail, Caitrin, Dona and Elliot.
- (e) Exploiting Marcail's lack of financial means thereby emphasising to the children her subservient position in the household, her lack of authority and demeaning her in the eyes of the children whilst at the same time by contrast demonstrating to the children that time spent in his company was more enjoyable and financially secure.
- (f) Exploiting Marcail's immigration status to cause her to leave the country so that he could remain with the children in Northern Ireland or else to compel her to return to country ~A~ where at his option and on his terms she could either join him with the children or choose to continue to live elsewhere without them.
- (g) Disruption of contacts between Marcail and the children to bring contact to an end and to exclude Marcail from the lives of the children.
- (h) Exploiting and exaggerating minor incidents involving Marcail smacking the children to further denigrate her in the estimation of the children and to demonstrate to the children, particularly Dona, the ease with which they could further undermine Marcail's involvement in their lives.

- (i) Undermining any support for Marcaïl and the children by influencing the children against social workers for instance by making unjustified complaints about them and by failing to engage with necessary therapeutic work.

[70] Marcaïl alleges that the precise stage when Fergus began to make every effort to turn the children against her was in July 2008 (3/45). The occasion which prompted this was Marcaïl's refusal to sign documents to transfer to Fergus property which is in her name in country ~A~ but which Fergus claims belongs to him. She refused to do so because if she had then she would have been completely destitute and thereby totally under the control of Fergus.

[71] In order to support these allegations it is incumbent on the Trust to establish a number of propositions as follows:

- (i) The nature of the previous relationship between Marcaïl and all three children before it is alleged that Fergus set out to destroy it in July 2008.
- (ii) That Marcaïl's relationship with the children has been adversely affected since July 2008.
- (iii) That the children were refusing to go to school.
- (iv) That this adverse effect and their refusal was caused by the care given to the children by Fergus
- (v) That the care given to the children by Fergus was not what it would be reasonable to expect a parent to give to them.
- (vi) That the children have suffered significant harm

In considering these propositions I do so in relation to the children not only collectively but also individually.

The previous relationship between Marcaïl and her children

[72] To understand Marcaïl's relationship with her children one has first to understand the relationship between Fergus and Marcaïl. Marcaïl alleges, and I find that in her relationship with Fergus she has been in a subservient position dominated and under the control of Fergus.

[73] All of the children from birth would have lived in an atmosphere where Fergus was the parent with control and authority and Marcaïl was subservient to him. This would have affected their attitude to Marcaïl but would not have led to any fracturing of their love towards her. However it made it substantially easier for Fergus at a subsequent stage to totally fracture the relationship of the children with their mother.

Adverse impact on the children's relationship with Marcail

[74] Fergus' attempt to turn the children against Marcail could not be achieved in a short space of time. The speed at which it could be achieved in respect of each child could be and in the event was, dependent in part on their ages, personalities and vulnerabilities and in part on the previous strength of each child's individual relationship with their mother and father. I also find that the extent of the rupture in the relationship of each child with their mother could vary and in any event has varied, dependent on the same factors.

[75] The relationship between each of the children and Marcail deteriorated at different rates and purportedly for different reasons over the period from July 2008. I say purportedly because I find that the real reason is that Fergus has manipulated each of them. I will deal first with the relationship between Dona and her mother then Caitrin and finally Elliot.

[76] Dona despite the fact that she was older than Elliot was the most vulnerable of the children by virtue of the fact that she did not have a strong relationship with her mother. By 5 March 2009 Dona did not have a positive thing to say about her mother (7/53). In April 2009 Dona spat in her mother's face and refused to apologise. Marcail did not wish to see Dona again until she apologised and she looked to Fergus for support. He did not challenge Dona stating that Marcail must have done something to provoke this reaction. In court he initially and bizarrely attempted to justify this on the basis of a tradition in country ~A~ that women would spit in each others faces rather than fighting but then qualified this explanation by stating that the tradition did not apply between mother and daughter. On 16 April 2009 ~V~ spoke to Dona who confirmed that she had spat in her mother's face and that she was refusing to apologise so that she did not have to see her mother. She appeared relieved that she did not have to see her mother. On 5 May 2009 Marcail agreed to inform Dona that she forgave her and wanted to see her. Accordingly there was therefore no need for an apology. However Dona continued to refuse to see Marcail (see note dated 3 June 2009 at 7/60). At this stage Caitrin and Elliot were still seeing Marcail three times a week. Dona's relationship with her mother was not only the first to be fractured but the emotions engendered in Dona by Fergus are the most damaging and potentially the most enduring

[77] I find that thereafter Dona was used by Fergus to reinforce to the other children that it was acceptable to treat their mother in this way and also allowed Dona to join him in further undermining Caitrin and Elliot's relationship with Marcail.

[78] The disruption of the relationship with Caitrin developed at a different pace. On 1 May 2009 Caitrin informed the social worker ~U~ at a meeting including Fergus that there was a recent incident in which she felt that her mother had insulted her. She stated that she would only see Marcail again if she apologised. She recounted that the incident was that her mother believed that she was in a bad mood and this had upset her (7/56). ~U~ spoke to Marcail about this on 5 May 2009 (7/58). Marcail recounted to her and in her evidence in court to me, which evidence I accept, that Caitrin had been in a bad mood. She explained the reason or potential reason for this which I accept. It appears that Marcail had commented on her mood and by using a word in the language of country ~A~ which translates as “crazy” which Caitrin found insulting. I find that Fergus has supported Caitrin in the view that this was an appropriate and proportionate response to what I find was a trivial incident. Caitrin’s relationship with her mother survived this particular incident. However it was not to survive a further incident.

[79] Marcail states and I accept that on Sunday 28 June 2009 during the course of a contact visit Caitrin asked for a laptop as a birthday present. There then followed a conversation between Marcail and Caitrin during which Caitrin became quite upset and cried. I find that at this general time Caitrin was under enormous emotional pressure. I consider that her emotional attachment to her mother was being manipulated and destroyed by Fergus. Given all that she had been through this discussion about the laptop was the occasion for an understandable emotional outburst by Caitrin. That outburst was contributed to, but not caused by the laptop issue. It was a reflection of the deep sadness and emotional pressure being suffered by Caitrin. During this meeting Caitrin was deeply unhappy, crying and said that she was going to hang herself. Marcail was deeply concerned and enquired why and Caitrin replied that she did not know what would happen in six months time.

[80] Marcail was extremely concerned about this incident and she initially sought the advice of an individual in the women’s centre and they together then approached and sought the advice of ~P~, a co-ordinator. ~P~ has provided a statement (3/73). She gave evidence. She is an extremely experienced and highly qualified individual. She would have been in the general category of individuals that Fergus described as “feminists”. She is among other things an assist worker with potential suicides. She has devoted her professional life to the most complex areas of human emotions and relationships. She is not and was not biased against Fergus but rather is a highly professional, dispassionate and objective individual. ~P~ stated, and I accept, that when she was approached by Marcail on 29 June 2009 for advice as to what she had been told by Caitrin that Marcail was genuinely distressed and very tearful. That she was crying and at a loss to know what to do as her social worker was not available until Wednesday 1 July 2009. It was suggested to ~P~ in cross-examination by Fergus that Marcail was acting

having made up the whole incident with the motive of having a prolonged psychological assessment of Caitrin and thereby keeping Caitrin in the country and frustrating Fergus and Caitrin's desire to relocate to country ~A~.

[81] ~P~ replied and I accept that Marcail's distraught condition was entirely genuine. I also reject any suggestion that Marcail was constructing this incident. This incident and in particular Fergus' insistence to Caitrin that Marcail is fabricating it has fractured Caitrin's relationship with her mother but the degree of disruption is less than that suffered by Dona.

[82] Elliot, the youngest child was also by 5 March 2009 unable to say anything positive about his mother (7/37). However in July 2009 he refused to see her ostensibly on the basis that he was afraid of her. As is apparent from this judgment there was no basis for that fear which I hold was constructed in his mind by the actions of Fergus. The duration of total disruption of Elliot's relationship with his mother was considerably shorter.

[83] I find that Marcail's relationship with all three children was vulnerable prior to July 2008. That it had been undermined to an extent by October 2008. That there was an ongoing process which was continuing so that by 3 February 2009 in particular Caitrin and Dona had considerable reservations in respect of their mother. By July 2009 Fergus had succeeded in destroying the love and affection of all three children for their mother so that her relationship with all 3 children had been brought to an end without any contact between them.

The care given by Fergus

[84] I have set out the various allegations made by the Trust in relation to what they say are the steps that Fergus took to bring about the disruption of the children's relationship with Marcail and to prevent them from going to school. I will deal with those allegations in turn.

(a) The use of abusive negative language by Fergus towards Marcail in the presence of the children

[85] It is Marcail's case, which I accept, that prior to July 2008, Fergus was at times supportive of her role as the children's mother. For example, that if they were asking for something he would advise them to speak to Marcail to find out her views. That she had a role within the household with some authority and some respect (3/46). I also accept her evidence that after July 2008 Fergus maintained a barrage of abuse towards her in front of the children.

[86] Marcail states and I accept that Fergus would refer to her in derogatory language in the presence of the children. Fergus would call her a “bad mother”, a “bitch” and a “witch”. That he would frequently tell the children that “you can’t trust her she tells lies. She doesn’t love you, she loves her nieces”. Furthermore, that Fergus would say that Marcail was not a member of their family and that she was an outsider (3/45).

[87] By the use of such language Fergus wished to demean Marcail in the eyes of the children so that they came to view her as inferior and not worthy of their love and respect. Ultimately his aim was to destroy their attachment to her. He also wished to verbally assault her so that her self-confidence and self-esteem was eroded.

[88] The use of language became even more distressing with sexual themes in it and again in part these occurred in front of the children. Fergus would tell the children that Marcail had a boyfriend and would for instance query whether she had split up with her boyfriend. This would occur in front of the children (3/45). On 28 January 2009, but not in front of the children, and when Marcail was a few minutes late for a meeting, he said to her, in the language of country ~A~, that she must have been having sex with another individual (10/128). On 30 January 2009, Fergus, in front of the children, accused Marcail of selling her “vagina”. He then asked her to buy milk for the children. She asked for the money and in front of the children Fergus shouted that Marcail should have the money she earned from selling her vagina (10/128). The fact that this denigration was effective is reflected by the fact that the next day one of the children repeated the remark back to her.

[89] Fergus’ abuse of Marcail was observed by the constable on 17 October 2008 (7/96) as amended at (7/96F). The constable spoke to Fergus who was seated in the kitchen of the family home at a laptop. The constable explained that he was checking on the welfare of the children. He found Fergus’ demeanour as one of dismissiveness. The constable observed Fergus being verbally abusive to Marcail within her earshot and that of police and their children stating that “They don’t like their mother because of communication issues” which he could not substantiate when asked. Fergus’ abusive language was also observed by personnel in the Women’s Centre (7/17) though the translation of these remarks came from Marcail. I specifically make it clear that I accept her evidence in that respect.

[90] I accept that Fergus would frequently shout and use foul language and these tactics were deployed with sophistication in that it was not a sudden uncontrollable loss of temper but a technique used to dominate and control and to achieve his overriding objectives.

(b) The lack of any positive verbal or physical support by Fergus for Marcail in her relationship with the children.

[91] Fergus' use of language was not only utterly negative towards Marcail but it also contained no positives in respect of her. The children were fed a diet of negative impressions of their mother couched in emphatic and dogmatic language without any counterbalance of positive endorsements by Fergus of their mother's abilities and of his regard and affection towards her. Fergus was interviewed by social workers on behalf of the Trust on numerous occasions since 3 February 2009. His lack of any positive endorsement of Marcail was a feature of all his interviews with Social Services.

[92] The lack of any positive endorsement by Fergus of Marcail and also the barrage of negative abuse has had from Marcail's point of view its desired effect on all three children. For instance, on 5 March 2009, ~V~ interviewed all three children. Dona and Elliot were unable to cite any positive things about their relationship with their mother (7/33 and 7/37). At that stage Caitrin spoke more positively about having contact with Marcail (7/34). The depth of the animosity of Dona against Marcail generated by Fergus is reflected in that she told ~V~ that if her mother died "she would probably feel happy because it would mean that Elliot would not have to live with her anymore" (11/32). However, Caitrin also has cut off all contact with her mother and positively shuns her (11/20).

(c) Directing condoning and encouraging all three children not to attend school as of the 1st September 2009 due to the ongoing court proceedings or in the alternative his failure to exercise parental responsibility in order to ensure that the children returned to school as of the 1st September 2009.

[93] On 10 July 2009 Caitrin stated that she really enjoyed her school, though she regretted that most of her friends were on holiday, the school term having come to an end (7/90). I hold that Caitrin was in a school environment in which she thrived and prospered academically and socially and which she enjoyed. I make the same finding in relation to Dona and Elliot.

[94] Caitrin and Dona's school also teaches the language of country A. The teacher is fluent in that language. It is clear that he is an excellent teacher (4A/30-31). Caitrin and Dona opted not to study that language. This is a matter which I take into account when considering the independence of Caitrin and Dona's statements that they wish to study in the language of country ~A~. I bear in mind that they had the option of studying that language but chose not to do so. In forming that assessment I appreciate and have taken into account the difference between studying the language and studying in the language.

[95] At the end of summer term on 27 June 2009 Caitrin asked her classmates to sign a book because she was not returning to the school. I hold that the decision that Caitrin, Dona and Elliot would not return to the schools that they were attending was made shortly prior to 27 June 2009 (4A/29). I consider that this decision was in effect made by Fergus at a stage when he hoped that the children's residence with him would be confirmed and/or that he could relocate with the children to country ~A~. That Fergus deliberately and Caitrin, Dona and Elliot at his instigation did not reveal this decision to Marcail or any person in authority. That Fergus' aim in so doing was to present Marcail, the court, the Trust and the respective schools with a fait accompli and thereby to disturb any attempts to secure Caitrin, Dona and Elliot's return to school if that was considered to be in their welfare. In fact Marcail learnt of the decision in the middle of August 2009. She asked Fergus to allow her to take the girls to get new school uniforms. He stated that the children were not going to go to school as a protest because they wished to go to school in country ~A~, (2/132).

[96] On 3 September 2009 ~V~ called at the family home. Fergus would not allow him in nor was he allowed by Fergus to speak to any of the children. Fergus informed him that the children were making a protest not to go to school as they wanted to go to school in country ~A~ (7/72). Subsequent to 11 September 2009 Elliot returned to school but Caitrin and Dona refuse to return even though it has been carefully explained to them that they should return as an interim measure to enable there to be a proper opportunity for a considered decision as to whether they should relocate to country ~A~ or whether they should have home tuition.

[97] A number of reasons have been given for Caitrin and Dona's refusal to go to school. I consider that they do not bear analysis. I will illustrate by reference to one of the features relied upon by Fergus as to why he could not compel Caitrin and Dona to return to their school. He stated that they had attained Bat Mitzvah and in accordance with his and their Jewish culture and their religion they could make their own decisions. For evidence of this approach by Fergus the Trust referred to Fergus' response at three separate meetings.

[98] The first was a meeting on 8 August 2009. This was a meeting attended by Fergus, Caitrin and Dona during the course of which Fergus said that he had been accused that the children knew too much of the whole court process and explained that in accordance with Jewish culture after the Bat Mitzvah "a girl comes of age and is responsible for her own actions" (5/25). He also said, in the presence of all three children, that he was not happy with their decision not to go to school but he would not press them as it was their decision (5/26).

[99] The second was a meeting at which Caitrin and Dona's return to school was being discussed. Ms Armstrong the guardian ad litem was present together with Fergus, Caitrin and Dona and representatives from the school. Fergus stated that he wanted the children to go to school but he said that he could not make them. He then indicated that the children, that is Caitrin and Dona, "had attained the age of their Bat Mitzvah and could make their own decisions" (8/112).

[100] The third was a meeting on 14 September 2009 dealing with the education of Caitrin, Dona and Elliot at which stage all three children were refusing to go to school, Fergus stated that he would not be able to force the children to return to school and asked "Am I supposed to beat them?" Fergus also reported that he had been in contact with a Rabbi from Israel (who it transpires was a family friend) and the Rabbi stated that in his opinion, the girls were old enough to have made Bat Mitzvah and in Jewish law they were regarded as adult and able to make their own decisions in relation to education (4B/20).

[101] Whether Fergus was being genuine in his reliance on the children's religion and Jewish culture was called into question by the Trust and by Marcail. There was also a challenge as to whether he genuinely adhered to cultural traditions and as to whether he had regard for the religious convictions of others except when they coincided with his views.

[102] Caitrin's admission form, for the school which she was attending up to September 2009, was completed by Marcail in 2007. It stated that Caitrin had no religious affiliations (4B/28). On 5 October 2009 Caitrin was asked whether she practised the Jewish faith and as to whether she needed a kosher diet. She replied that she ate normal food and was not a practising Jew (11/1).

[103] Dona's admission form, for the school which she was attending up to September 2009, was completed by Fergus in 2008. It stated that Dona had no religious affiliation (4B/29).

[104] An attempt during the course of the hearing before me to understand from Fergus as to why Bat Mitzvah, whatever its significance, was important to Caitrin and Dona when they were not practising Jews was met with the response that he did not wish to discuss religious matters and he found the questions very offensive. I consider that the real explanation is that Fergus wished to avoid answering any questions which could have demonstrated that his reasoning as to Bat Mitzvah was fundamentally flawed in that neither Caitrin or Dona attached to it any religious or cultural significance.

[105] I also make it clear that I do not accept Fergus' evidence that in accordance with Jewish religion or culture after Bat Mitzvah a child is

empowered to make decisions entirely on their own about education. There was no evidence from, for instance, a Rabbi to that effect and I do not consider Fergus' evidence to be of sufficient credibility to establish any such proposition.

[106] I consider that Fergus was empowering all three children to do what they wanted by making it clear to them that he could not force them to go to school and that he was powerless in the face of their refusal to do so. Far from telling them that they had to go back to school he was telling them in effect that they could make up their own minds. He empowered the children not only to ignore his "advice" but also to ignore court orders. I accept the evidence of Marcail that she overheard a telephone conversation in which Fergus stated "Nobody can make the children do anything" (7/75). Further in relation to Caitrin and Dona, Fergus was proffering to them a religious or cultural basis upon which they could seek to justify their refusal to go to school. A basis which they both adopted, Caitrin expressly (5/25). I consider that they adopted this approach knowing that it was one of which Fergus in reality approved.

[107] I also find that Fergus proffered this basis to them knowing that it had no foundation in deep seated religious or cultural convictions either on his part or on the part of any of his children. It was just an unacceptable excuse that he was using to justify his actions in not taking a firm and consistent stance with Caitrin and Dona that they should return to school.

[108] I accept the evidence of, for instance ~V~ that Caitrin and Dona would have returned to school if Fergus had insisted. That Fergus is a very strong minded and assertive individual. I consider that both Caitrin and Dona would follow their father's instructions. That they are completely under his control and that the only substantial reason why they have not returned to school is that he has made it known to them that he admires and approves of their decision not to do so.

[109] If I am incorrect in that factual conclusion then I hold that Caitrin and Dona are beyond the control of Fergus and Marcail in that they will not return to school when told to do so by their parents. That as a result they are suffering significant harm.

(d) Isolating Marcail, Caitrin, Dona and Elliot.

[110] One of the tactics which I find that Fergus has used in controlling Caitrin, Dona and Elliot and in the past controlling Marcail is that of isolation and controlling whom they and their extended family could meet.

[111] Fergus and Marcail met in 1988. Fergus did not wish Marcail's parents to meet his parents with the result that they did not meet until 2005. When they did meet it was without his knowledge or approval. He discovered they had met because during the course of a holiday in country ~A~ during the summer of 2005 and whilst visiting his parents' house he saw a photograph of both his and Marcail's parents together. As a result Fergus was extremely angry and blamed Marcail's sister for bringing about this meeting. As a consequence he forbade the children from seeing Marcail's sister and they did not do so for a period of three years. He expressed negative comments to the children in relation to Marcail's sister (9/17/23).

[112] Fergus not only did not wish his and Marcail's parents to meet but he also did not wish the children to meet with and form attachments to their maternal grandparents. In addition he discouraged Marcail from bringing her own friends to the home. I consider that this isolation of Marcail and also of the children was a conscious part of Fergus' desire to exert control over Marcail and the children. In particular from the end of June 2009 until September 2009 all of the children were isolated from outside influences. Their school terms had come to an end. All contact between the children and Marcail had come to an end. Social workers were not permitted access to the family home and to the children (7/68, 7/68A and 7/72). Marcail expressed concerns about the complete isolation of the children and that Fergus would now be their only source of information and interaction (7/69A). She attempted to keep in contact with the children but was rebuffed (7/70). The only exception to his isolation was Mrs Penman on behalf of the Official Solicitor who interviewed the children for the court hearing on 11 August 2009 though she did not visit the family home (2/6). I consider that this isolation of the children and any person who would express different views than Fergus' was quite deliberate.

[113] An illustration of the effectiveness of this isolation is the quite naïve and unrealistic, but all the same strongly held views of Dona about country ~A~. On 6 November 2009 Dona idolised to ~W~ about the maturity of the children of country ~A~ as opposed to the children in the United Kingdom. When challenged she gave examples such as children here expect their parents to buy them everything and they rely on their parents too much. ~W~ queried as to how children in country ~A~ could buy things themselves if they did not work and that parents in the United Kingdom would actually want to buy their children things. Dona persisted in suggesting that children in country ~A~ were intellectually, educationally and emotionally superior to those in the United Kingdom. I consider that this went far beyond an understandable natural and acceptable pride in country ~A~ and was an idolised notion out of all proportion. This was either induced in her by Fergus or alternatively Fergus took no steps to correct it or to keep it in proportion. Mrs Penman on behalf of the Official Solicitor also commented that the children "have perhaps an unrealistic view of life in" (country ~A~)

(2/14). I hold that the views of all three children of country ~A~ are unrealistic and this is as a result of their isolation in the company of Fergus. It suited Fergus' purposes to induce these feelings and/or not to correct them in that it would assist his desire to relocate to country ~A~ with all three children if Marcail stayed in Northern Ireland and was a tool in seeking to achieve his overriding objectives.

(e) Exploiting Marcail's lack of financial means.

[114] Marcail has always not only been financially dependent on Fergus but she has also been under his tight financial control (7/100-106). She had to ask his permission to spend money on what would be the most basic of family necessities. She would have to tell Fergus what she would like to buy and obtain his approval for every day items. She would be compelled to find food past its sell by dates at reduced prices. Marcail states that "the main task of Fergus' life was to save money". I accept that is how she saw it and I also accept that this is a defining aspect of his life. It is not now the main task of his life which is the achievement of his overriding objectives. I also accept that the financial control of Marcail diminished her in the eyes of the children. The financial control as a tactic to obtain his overriding objectives fully flowered after Marcail left the family home on 3 February 2009. Thereafter she did not obtain any financial support from him and he used money to emphasise to the children her diminished status. For instance on 18 February 2009 whilst Marcail was in the hostel Fergus refused to make any financial provision for her or for the children. Accordingly a £50 allowance was made by the Trust for their support on 18 February 2009. This lack of financial support was taken up with Fergus at court on 20 February 2009. Fergus refused to provide financial support for the children. He wanted to give the money direct to the children. ~U~ advised him that this was unacceptable.

[115] I find that Fergus was deliberately using financial pressures on Marcail. That he sought to further undermine her authority by seeking to give money to the children rather than to Marcail. That he wished the children to know that they could ignore Marcail in all things including the provision of basic necessities from her (6/28-30, 7/17, 7/19, 7/22, and 7/25).

(f) Exploiting Marcail's immigration status.

[116] On 3 February 2009 Marcail applied for and obtained an ex parte residence order in respect of all three children. She and the children then moved to reside in a women's hostel.

[117] On 4 February 2009 Fergus wrote to the Family Proceedings Court (3/1) and also to the Border and Immigration Agency (6/4). In the first letter

he informed the court that if the court decided that the children should live with him he would not apply any restrictions on their meetings and conversations with Marcail. In the same letter to the court Fergus stated that he had applied to the Home Office so that Marcail's leave to remain should be cancelled accordingly far from facilitating her contact with the children he wished to frustrate that contact by securing her deportation to country ~A~. The letter to the Border and Immigration Agency (6/4) made Fergus' position clear. He stated that Marcail was no longer his partner. He asked that her leave to remain in the United Kingdom was cancelled. He stated that she was living and working somewhere in Belfast and he hoped that this report would help prevent abuse of the United Kingdom immigration system.

[118] I hold that Fergus' contact with the UK Border Agency was a deliberate attempt on his part to separate the children from Marcail. I have no doubt that Fergus would have persuaded all three children to remain in Northern Ireland with him attending their previous schools if Marcail had been deported. The children could only have stayed in Northern Ireland with Fergus if Marcail had been deported. This was an attempt by Fergus to achieve his overriding objectives.

[119] Fergus' initial letter dated 4 February 2009 to the Family Proceedings Court (6/1) also asked the court to enquire of Marcail as to whether she had a United Kingdom work permit, whether she had any right to work in the United Kingdom and as to whether she had any job with a salary so as to provide for the children. Fergus also by contrast made the point that his salary allowed him to provide for the children's "life and education in UK". Fergus was relying not only on the contrasting immigration position of himself and Marcail but also the contrasting financial positions as an additional factor to persuade the Family Proceedings Court to order in his favour the residence of the children.

[120] It was in Fergus' interest to maintain that contrast. Marcail wished to have a copy of Fergus' work visa and passport in order to obtain employment (7/22 and 7/28). Fergus failed to assist stating that it was illegal for Marcail to work in the United Kingdom. I do not consider that Fergus' failure to assist was motivated by a desire not to assist in a breach of immigration law. If Fergus was concerned only as to whether Marcail could work legally then he should have facilitated enquiries in that regard by making available whatever documents he had to Marcail so that she could independently check the position. On 11 March 2009 Fergus was asked by ~U~ as to why he had not provided his passport which would allow Marcail to start her employment. Fergus stated that it is illegal for Marcail to work in the United Kingdom. ~U~ asked Fergus to produce his passport as requested and allow immigration to decide on the legality of the matter. He refused. I hold Fergus was intent on preventing Marcail from regularising her position in the

United Kingdom and obtaining employment. This was part of Fergus' overriding objective of separating Marcaïl from all three children.

[121] In the event Marcaïl has now obtained employment (11/51) and has permission limited in duration to remain in the United Kingdom. This tactic did not have the desired result of compelling Marcaïl to leave the United Kingdom nor did it result in her having no independent financial means but it added to her distress at a time when she was seeking to make a stable environment for the children as their primary carer. Fergus disregarded the effect that this would have on Caitrin, Dona and Elliot.

(g) Disruption of contacts between Marcaïl and the children.

[122] I hold that Fergus has disrupted contacts between Marcaïl and the children and also used contacts between him and the children to undermine their placements.

[123] An example of him disrupting contacts between the children and Marcaïl was his technique of asking Elliot at the start of a contact session as to whether he wanted to go for contact with his mother or whether he wanted to go with him (1/2/17). A technique he continued in even more strained circumstances on 12 August 2009. On that occasion Marcaïl went to the family home on the occasion of a family birthday. She was not allowed in. Elliot wished to speak to her crouching down and opening the letter box to talk to her. He put his hand through the letterbox to hold her hand. Fergus said that if he wanted to speak to his mother he should put on his coat and go out. Faced with the choice between mother and father he pulled his hand back and said "no" (2/132). See also for instance (7/61, 7/50).

[124] An example of Fergus using his contact with the children to undermine placement occurred on 26 October 2009. At this stage Elliot resided with Marcaïl. Fergus discussed issues around residence in the presence of Elliot and asked Elliot if he wanted to return to country ~A~ something that could only be achieved if Elliot was to reside with him. Fergus then continued to discuss in Elliot's presence issues he had with social services and the court process. He told Elliot that his mother had beaten him and this was being minimised (11/25). I hold that all this was done with a view to undermining Elliot's placement with his mother. See also 11/15, 11/22, 11/42, 11/43, 11/44 and 11/27.

(h) Exploiting and exaggerating minor incidents involving Marcail smacking the children to further denigrate her in the estimation of the children and to demonstrate to the children, particularly Dona, the ease with which they could further undermine Marcail's involvement in their lives.

[125] For the reasons set out in the part of the judgment entitled "Physical violence" I hold that the Trust have established that Fergus has exploited and exaggerated minor incidents involving Marcail smacking the children to further denigrate her in the estimation of the children and to demonstrate to the children, particularly Dona, the ease with which they could further undermine Marcail's involvement in their lives.

(i) Undermining any support for Marcail and the children by influencing the children against social workers for instance by making unjustified complaints about them and by failing to engage with necessary therapeutic work.

[126] The social worker ~V~ was involved with the family between 24 February 2009 and 7 August 2009. She had met the children on a total of 11 occasions. She gave evidence and I find that she was a highly professional and caring social worker who at all times was concerned to achieve the best possible outcome for the children and to assist both Fergus and Marcail. She had considerable knowledge of all the family members and her continued involvement would have been for the benefit of the children. She was the social worker who recommended that residence of the children should be changed from Marcail to Fergus.

[127] Fergus complained about ~V~ first to the Trust and then to the Northern Ireland Social Care Council (10/136). In view of the second complaint it was thought prudent by the Trust to appoint another social worker. ~W~ then took over. He is an extremely experienced social worker and has undertaken a very considerable volume of work in relation to this family. It is no reflection on him that the change of social workers inevitably meant that the children had to form a relationship with a different social worker. Furthermore this change occurred at a crucial time when the children were isolated during the summer months and were being influenced not to return to school. Continuity was not only disrupted but was disrupted at a crucial time.

[128] The complaints against ~V~ were found, as I find them, to be groundless. When ~V~ came to give evidence the first question asked of her in cross examination by Fergus was whether her evidence was now biased against him in view of the fact that he had made a complaint about her. She rejected that allegation, as do I, but it is a further example of how Fergus manipulates by making a groundless complaint, disrupting care for his

children, the complaint is then dismissed and then using the complaint to potentially undermine the evidence of ~V~.

[129] Fergus has made clear to the children his disregard for social workers. An example of this occurred on 4 September 2009. Fergus called into the place of work of ~W~ with all 3 children who were then not attending school. The children sat in the reception area. ~W~ was concerned about the childcare arrangements when the children were at home and when Fergus was at work. Fergus refused to give details. In the public reception area in front of the children and in a raised voice drawing the attention of members of the public and the staff Fergus stated that he did not want to have anything more to do with the Trust (2/134). I conclude that Fergus has been denigrating the Trust to the children and undermining their confidence in social workers and further is isolating them from moderating and objective influences.

[130] This tactic I hold also affected Fergus' attitude to any therapeutic work. There was an obvious need for therapeutic family work to assist the children. The need is self evident. This work could have been carried out by Barnardo's. Marcail agreed to the work. Fergus refused to participate and I hold that he did so in order to achieve his overriding objectives rather than for the reasons which he purports to give. Fergus was quite intent on frustrating any repair of the relationship between the children and Marcail. (7/57, 7/59 and 6/25). His approach is in contrast to Marcail who has taken up the offers of various courses suggested by the trust (2/73).

[131] Fergus also refused (2/72) to participate in mediation recommended by the Official Solicitor (2/15) which recommendation was endorsed by the Lord Chief Justice (5/24) despite the fact that Marcail had agreed to mediation. I hold that the reason was the same. Fergus was intent on frustrating anything that would repair the relationship between the children and Marcail.

Levels of cleanliness in the family home, hygiene standards in respect of the children and inappropriate food.

[132] The trust alleges that Fergus has "been unable to sustain appropriate levels of cleanliness in the family home, that he has failed to maintain suitable personal hygiene standards in respect of the children and provides them with inappropriate food." I find that these allegations are correct. However the physical harm thereby caused to the children has not been significant. It is Fergus' manipulation of the children as a result of these conditions that has caused them significant emotional harm.

[133] The family home is rented. It is a cramped and damp two bedroom flat. It has central heating but I hold that Fergus severely curtailed its use

wishing to save money. The advantage of these premises for him was that the rent reflected the poor quality of the accommodation. Marcaïl wished to move to larger, drier and more appropriate accommodation. Fergus' response was that if she could find such rental accommodation at the same price in the same area that they would move. This was however an impossible task. By devices such as this Fergus frustrated attempts to obtain better accommodation. It is by Fergus' choice that the family lived in this standard of accommodation. This choice had inevitable consequences. For instance damp is present on the internal walls of the flat and clothes have to be accommodated in bags in the hall. These problems were either ignored by Fergus or the blame for them was placed by him and at his instigation by the children, on Marcaïl.

[134] Marcaïl has been living in separate accommodation from Fergus since 3 February 2009. On 16 March 2009 ~V~ found that Marcaïl's accommodation was untidy with a damp odour as a result of laundry being dried in the room (7/42). Marcaïl explained that she could not afford to purchase the token for the drier. Marcaïl was also having difficulty in obtaining the cooperation of the children in doing household chores. I accept those explanations. Apart from this one occasion Marcaïl has at all time kept her environment tidy and appropriate for the children since 3 February 2009.

[135] By contrast Fergus has not maintained appropriate standards in his accommodation since Marcaïl left on 3 February 2009. I set out below the instances on which it was found that Fergus did not maintain appropriate standards since 3 February 2009 and his prevention of access to the premises by social workers.

[136] On 11 February 2009 ~U~ visited Fergus in the family home and spoke to Fergus. ~U~ also observed that the family home was in a disgusting condition. Rubbish was strewn about, it was cold and damp. ~U~ was unable to see the floor for clutter. (7/16)

[137] On 23 June 2009 (7/65-66) at a time when the children were living with Fergus, ~V~ called unannounced to the family home. It was untidy, stuffy, grubby and dirty in parts. The kitchen floor was dirty as were the surfaces and there were dirty dishes everywhere. The bathroom floor was dirty. As ~V~ inspected the bathroom Fergus covered the lid of the toilet. The carpet in the hallway was dirty. ~V~ advised Fergus that the home conditions had deteriorated and that he needed to clean up the home as soon as possible. Fergus conceded that the home could be tidier but he stated that there had been a party in the home the previous night. ~V~ rejected that as an acceptable explanation considering that what she saw was as a result of a number of days of neglect if not a number of weeks. I accept ~V's~ assessment.

[138] On 2 July 2009 Fergus prevented ~W~, a social worker, from gaining access to the family home (7/68). On 3 September 2009 he again prevented ~W~ from entering the family home but on this occasion ~W~ briefly saw into the hall which he considered to be unkempt and untidy (7/72).

[139] On 11 September 2009 ~W~ did gain access to the family home (7/76). He found that the overall appearance of the home was one of clutter. There was a strong smell of damp that would be consistent with either a lack of heating and ventilation or a more structural problem with the dampness generally. The living room had a particularly bad smell of damp. There was evidence of a fly infestation that was being managed by a sticky fly strip hanging from the light. This had a number of flies on it as well as a number flying around both there and in the kitchen. The worktops and floor of the kitchen were unhygienic with evidence of food stuffs on both. There was a cabbage/lettuce heart on the kitchen surface that had a significant amount of mould growing on it having been there for some time. There was evidence of a fly infestation here as well. There was evidence of cooked food items both in the oven and deep fat fryer that Fergus explained was the previous evening's meal. There were a large number of dishes washed on the sink draining board. There were also three 2 litre cartons of milk in the fridge all of which were off. The use by date was some one month previously. ~W's~ summary, with which I agree, is that the kitchen fell below an acceptable standard.

[140] I conclude that as between Fergus and Marcail it is Fergus who is inherently untidy being tolerant of conditions which go beyond the acceptable and that he disregards social norms in relation to living conditions.

[141] In addition to the occasions after Marcail left the family home on 3 February 2009 the first occasion in which the conditions were found to be unacceptable was on the occasion of a visit to the family home by the constable on Friday 17 October 2008. On that date Marcail attended a police station to report on going domestic abuse by her partner Fergus. The constable met Marcail at approximately 3.30 pm at which stage Marcail was highly upset and was crying continually taking about 5 to 10 minutes to properly compose herself. She then informed the constable that Fergus had become over the previous 3 years continually verbally, emotionally and mentally abusive towards her. She stated that she had never been in receipt of physical violence but that she felt that she could no longer live with Fergus as their living conditions had become unbearable. She stated that the emotional abuse to which she was regularly subjected was often in ear shot of the children and that Fergus had successfully turned her children against her. She expressed concerns in relation to Fergus looking after the children as he collected and retained rubbish in the household over long periods and would not have ready access to food. She stated that she had been told by Fergus to leave the house and that on her return she would find the locks changed. The

police offered to and did escort her back to her home to witness her entering the premises. The police with the permission of Marcaïl entered the home.

[142] Immediately on entering the premises the constable observed large amounts of household and other rubbish strewn everywhere in the hallway. The constable considered that the hallway and the kitchen were impassable because of the amount of rubbish present. The constable observed blue and black mould several feet upon different walls. Foodstuffs lying on surfaces and across different floors, much of it rotting or decomposing. Beds were unchanged and dirtied. Dirty laundry was strewn about the floor and surfaces and a general odour of rotting food, particularly in the kitchen. The constable observed several plastic carrier bags containing rubbish strewn about the floors.

[143] The constable spoke to Fergus who was seated in the kitchen at a laptop.

[144] The constable formed the opinion that the living conditions were highly unsanitary and on return to the police station at approximately 7.00 pm he reported this to Social Services for their information and any further investigation.

[145] Upon receipt of the report from the constable Social Services investigated. ~T~, the social worker, then but not subsequently involved, engaged with the family to assess the children's circumstances and the matter was closed on 20 October 2008. ~U~, a social worker who was subsequently involved summarised the conclusions of that investigation as being "no concerns raised by either parent or child and none noted by the social worker" (2/2).

[146] Fergus contends on the basis of that investigation by ~T~ that the constable had overstated the conditions of the family home on 17 October 2008. The documents in relation to ~T's~ inspection of the family home have been made available (10/72). The file was assigned to ~T~ on 20 October 2008 (10/87). ~T~ visited the home that afternoon. He found the hallway cluttered but that there was sufficient room to walk up it. He stated that there was no evidence of faecal or other unhygienic material in the home. He concluded that there was no health risk.

[147] I find that the constable was a reliable witness and gave an accurate account of the conditions on Friday 17 October 2008. I find that in the period between 17 October 2008 and Monday 20 October 2008 Fergus and Marcaïl had taken steps to tidy up the house. Fergus states that the home was usually tidied on a Sunday. Accordingly I find that by 20 October 2008 the rotten and decomposing food stuffs had been removed. The dirty laundry had been taken off the floor. That some of the plastic bags had been put into order.

However that there would still have been blue and black mould on the walls and the home still remained in a fairly chaotic condition. I find that the conditions of the home on 17 October 2008 were unhygienic and would be likely to cause physical harm to the children.

[148] Fergus alleges that Marcaïl deliberately let the home get into the condition in which it was found by the constable on 17 October 2008 in order to construct a case against him. I reject that allegation. I have had the opportunity of observing Marcaïl I consider that she is a truthful, honest and reliable witness.

[149] Fergus also alleges that the condition of the house was caused by Marcaïl in that it was her responsibility to do the housework as she did not work whereas he did (7/15). That instead of tidying the house she “does nothing in the house and just lies around sleeping all day” (7/2/). I considered that it is in character for Fergus to be found sitting in the kitchen by the constable with rotting and decomposing food and to consider that he need do nothing about it himself leaving it to Marcaïl. I also considered that it is in character in that he finds that level of hygiene to be acceptable. Even if Marcaïl did do nothing as he alleges that does not exonerate him from his responsibility to his children. However I reject the contention that Marcaïl never attempted to do anything. She was presented with Fergus’ inappropriate living standards and his habit of bringing rubbish into the house in black plastic bags and filling up the hallway and the floor space.

[150] Fergus cultivated the concept that all of the housework should be done by Marcaïl. He also permitted all three children to ignore Marcaïl’s request that they help with the household chores (7/22), (7/32), (7/33), (7/37), (7/42). For instance on 5 March 2009 Caitrin stated that Marcaïl expects them to do housework and this in Caitrin’s view was all Marcaïl’s responsibility. I find that Fergus not only failed to support Marcaïl in her attempts to set proper boundaries and standards in the home but also encouraged all three children to take the view that they had no responsibilities for housework and that this was the task of Marcaïl and Marcaïl alone. That he thereby demeaned Marcaïl in the estimation of the children so that they would come to view her as a housekeeper. That he used the standards in the home to further abuse and diminish Marcaïl. These tactics were part of his disruption of the children’s bond with Marcaïl by making it clear to them that he had no regard for Marcaïl. I find that cumulatively this with his other tactics have caused all three children significant emotional harm. It is the emotional harm caused by the home conditions and by Fergus’ tactics in relation to them that is the significant harm.

[151] The personal hygiene of Caitrin and Dona is another example of how Fergus fails to maintain appropriate standards, fails to react appropriately to valid concerns and then manipulates. Faced with concerns as to the personal

hygiene problems of Caitrin and Dona, which he accepts and I find they had, he choose not to respond as a concerned parent would which would involve him being considerate towards and supportive of them gently addressing and sorting out a simple issue. Rather he seized on this issue to say that Caitrin and Dona had been grievously insulted by their school and by a social worker in circumstances where the social worker had entirely appropriately made discreet enquiries of Caitrin and Dona's school. He then used this as another reason for Caitrin and Dona refusing to return to their school. (7/61, 7/63, 7/65, 7/67, 5/24, 2/71 and 2/132)

[152] I also find that the food that Fergus buys for the children which is to an extent inappropriate. It is an unbalanced diet motivated by his desire to maintain a contrast between himself and Marvail, disregarding their welfare.

Harm to the children

[153] I find that all 3 children have suffered and are likely to suffer significant harm by virtue of the care given to them by Fergus. Caitrin and Dona have not been receiving any education since September 2009. The relationship of all 3 children with their mother has been significantly affected particularly the relationship of Caitrin and Dona. They are and will all suffer from distorted development including the emergence of emotional and behavioural difficulties with personality deficits. They are all seriously damaged children.

Whether the care given to the children by Fergus was not what it would be reasonable to expect a parent to give to them.

[154] In view of the facts which I have set out it is self evident that the care given to the children by Fergus was not what it would be reasonable to expect a parent to give to them and I so find.

Conclusion

[156] The Trust has established the threshold criteria in summary having established the facts or factual propositions set out in paragraphs [6] (a) - (d) and (f) and paragraphs [69] - [71] inclusive.

Further directions

[157] I will now seek counsels' assistance in relation to a number of matters including the question as to whether a guardian ad litem should now be appointed for Caitrin and Dona, by whom and when information is to be provided to the children as to the outcome of the fact finding hearing, the steps to be taken in preparation for a hearing of the remaining part of the care proceedings, and any other matters that need to be addressed.