Neutral Citation no. [2004] NIFam 1 | *Ref:* **MCLC4090**

Judgment: approved by the Court for handing down | *Delivered:* **01.04.04**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

_____

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

BETWEEN:

FOYLE HEALTH AND SOCIAL SERVICES TRUST

Applicant;

and

LM

Respondent.

_____

McLAUGHLIN J

The Parties and the Application

[1] The principal persons must be referred to by the following letters in order to protect the identities of the children involved:-

(i) LM – the respondent and mother of the two children who are the subject of these proceedings.
(ii) TD – the father of the two children.
(iii) L1 and L2 the children of LM and TD, the subjects of this application, born respectively on 17 January 2001 and 16 September 2002.
(iv) SS – former husband of LM and father of three of her other children, respectively O (DOB 10/04/89), N (DOB 14/04/90) and A (DOB 27/12/91).
(v) TC - father of Z (DOB 5/07/97) fourth born child of LM.

(vi) MGM – maternal grandmother of all six children and mother of LM.

(vii) PGM – paternal grandmother of L1 and L2.

(viii) LMcC – friend of LM,

(ix) SMcC – brother of LMcC and MMcC.

(x) MMcC –brother of LMcC and SMcC.

(xi) PH – cohabite of LMcC.

(xii) PJM – a taxi driver.

[2] The application in these proceedings is for Care Orders in respect of the children L1 and L2 pursuant to Article 50 of the Children (Northern Ireland) Order 1995 which provides as follows:-

> "50(1) ….
>
> (2) A court may only make a care or a supervision order if it is satisfied –
>
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
>
> (b) that the harm, or likelihood of harm, is attributable to –
>
> (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or …"

[3] In brief outline the application arises in circumstances where L2 was brought initially to Dr O'Flaherty at Waterside Health Centre, then to Altnagelvin Hospital Londonderry (AHL) and ultimately to the Royal Belfast Hospital for Sick Children (RBHSC). I have set out further details of the course of her treatment and investigations at a later point but for the present suffice it to say that investigations on Monday 21 October 2002 established, inter alia, an extensive laceration and fragmentation of the left kidney. It is alleged that this is non-accidental injury, caused, according to the Trust, by LM, mother of L2. This has been denied by her throughout. The Trust alleges that both an accident and a naturally occurring medical condition can be ruled out. It goes without saying that in the light of the serious nature and

extent of the injuries to L2 that grave issues are at stake. LM will be tried before the Crown Court in the very near future for causing the injuries to LM.

The burden of proof

[4] In this, as in most civil cases the general rule is that "he who asserts must prove". It is for the applicant Trust in this case to establish all the pre-conditions and other facts entitling it to the order sought. This was reaffirmed by Lord Nicholls in *Re H & R (Child Sex Abuse: Standard of Proof)* [1996] 1 FLR 80. At page 95E he stated the following:

> "The power of the court to make a care or supervision order only arises if the court is 'satisfied' that the criteria stated in Section 31(2) exist. The expression 'if the court is satisfied', here and elsewhere in the Act, envisages that the court must be judicially satisfied on proper material. There is also inherent in the expression an indication of the need for the subject matter to be affirmatively proved. If the court is left in a state of indecision the matter has not been established to the level, or standard, needed for the court to be 'satisfied'. Thus in Section 31(2), in order for the threshold to be crossed, the conditions set out in paras (a) and (b) must be affirmatively established to the satisfaction of the court."

Section 31(2) of the Children Order 1989 and Article 50(2) of the Children (NI) Order 1995 are in identical terms.

The standard of proof

[5] This matter was also considered in *Re H & R*. In that case the local authority had failed to establish allegations of sex abuse of the child, who was the subject of the application, by her mother's partner. This followed his acquittal in the Crown Court on charges arising out of the same allegations. The court therefore was obliged to proceed on the basis that the child had not suffered significant harm in the past. In that case the core question, upon which the House divided by 3:2 was the approach to be adopted in respect of future risk, ie. whether or not unproven allegations of mal-treatment could form the basis for a finding by the court that either limb of Section 31(2)(a) was established. Lord Nicholls of Birkenhead stated the following at pages 95H-97C:

> "The standard of proof

Where the matters in issue are facts the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability. This is the established general principle. There are exceptions such as contempt of court applications, but I can see no reason for thinking that family proceedings are, or should be, an exception. By family proceedings I mean proceedings so described in the 1989 Act, ss 105 and 8(3). Despite their special features, family proceedings remain essentially a form of civil proceedings. Family proceedings often raise very serious issues, but so do other forms of civil proceedings.

The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under-age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a serious degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established. Ungoed-Thomas J expressed this neatly in *Re Dellow's Will Trusts, Lloyd's Bank v Institute of Cancer Research* [1964] 1 WLR 451 at p 455:

> 'The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it.'

This substantially accords with the approach adopted in authorities such as the well-known judgment of Morris LJ in *Hornal v Neuberger Products Ltd* [1957] 1 QB 247 at p 266. This approach also provides a means by which the balance of probability standard can accommodate one's instinctive feeling that even in civil proceedings a court should be more sure before finding serious allegations proved than when deciding less serious or trivial matters.

No doubt it is this feeling which prompts judicial comment from time to time that grave issues call for proof to a standard higher than the preponderance of probability. Similar suggestions have been made recently regarding proof of allegations of sexual abuse of children: see *Re G (No 2) (A Minor) (Child Abuse: Evidence)* [1988] 1 FLR 314 at p 321, and *Re W (Minors) (Sexual Abuse: Standard of Proof)* [1994] 1 FLR 419 at p 429. So I must pursue this a little further. The law looks for probability, not certainty. Certainty is seldom attainable. But probability is an unsatisfactorily vague criterion because there are degrees of probability. In establishing principles regarding the standard of proof, therefore, the law seeks to define the degree of probability appropriate for different types of proceedings. Proof beyond reasonable doubt, in whatever form of words expressed, is one standard. Proof on a preponderance of probability is another, a lower standard having the in-built flexibility already mentioned. If the balance of probability standard were departed from, and a third standard were substituted in some civil cases, it would be necessary to identify what the standard is and when it would apply. Herein lies a difficulty. If the standard were to be higher than the balance of probability but lower than the criminal standard of proof beyond reasonable doubt, what would it be? The only alternative which suggests itself is that

> the standard should be commensurate with the gravity of the allegation and the seriousness of the consequences. A formula to this effect has its attraction. But I doubt whether in practice it would add much to the present test in civil cases, and it would risk causing confusion and uncertainty. As at present advised I think it is better to stick to the existing, established law on this subject. I can see no compelling need for a change.
>
> I therefore agree with the recent decisions of the Court of Appeal in several cases involving the care of children, to the effect that the standard of proof is the ordinary civil standard of balance of probability."

[6] He made clear that there should be no difficulty in applying the standard when considering the first limb of Article 50(2)(a) because it deals with an existing state of affairs, namely, that the child is suffering significant harm. He described the relevant time for the purposes of that consideration and made clear that whether the child was suffering significant harm is to be decided by the court "On the basis of the facts admitted or proved before it. The balance of probabilities standard applies to proof of the facts". In dealing with the second limb, namely the risk of significant harm arising in the future he stated:

> "The same approach applies to the second limb of Section 31(2)(a). This is concerned with evaluating the risk of something happening in the future: aye or no, is there a real possibility that the child will suffer significant harm? Having heard and considered the evidence and decided any disputed questions of relevant fact upon the balance of probability, the court must reach a decision on how highly it evaluates the risk of significant harm befalling the child, always remembering upon whom the burden of proof rests."

At this stage the court must act on facts which have been established to the normal civil standard in the sense which he had earlier described. If relevant facts have not been established then the court could not act upon suspicions or anxieties that may linger where proofs have come up short. He made clear that "unproved allegations of mal-treatment cannot form the basis of a finding by the court that either limb of the section was established". The test could only be satisfied if there was other evidence, actually proved sufficient to satisfy the test of the likelihood of future harm. After explaining that

Parliament had used the threshold test as the line between the protection of the privacy and integrity of the family and the point at which public intervention for the protection of children began, he made clear that the likelihood of future harm did not require proof that it was "probable". At page 94H he states:

> "In this context Parliament cannot have been using lightly in the sense of more likely than not. If the word likely were given this meaning, it would have the effect of leaving outside the scope of care and supervision orders cases where the court is satisfied that there is a real possibility of significant harm to the child in the future but that possibility falls short of being more likely than not. Strictly, if this were the correct reading of the Act a care or supervision order would not be available even in a case where the risk of significant harm is as likely as not. Nothing would suffice short of proof that the child will probably suffer significant harm. ….".

At page 95D he continued:

> "In my view, therefore, the context shows that in Section 31(2)(a) likely is being used in the sense of a real possibility, a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in the particular case. By parity of reasoning, the expression likely to suffer significant harm bears the same meaning elsewhere in the Act; for instance, in ss 43,44 and 46. Likely also bears a similar meaning, for a similar reason, in the requirements in Section 31(2)(b) that the harm or likelihood of harm must be attributable to the care given to the child or 'likely' to be given to him if the order were not made."

[7] In deciding the truth or otherwise of the allegations made by the Trust in this case I must apply the civil standard of balance of probability, but, having regard to the gravity of the allegations I must look for evidence which is sufficiently cogent to overcome the inherent unlikelihood that a mother would so seriously injure her four week old helpless child. Since L1 was not actually injured, and since the Trust relies upon the second limb in support of its application in her case, I must then consider the established facts and

determine whether they demonstrate that there is a real possibility that either of the children will suffer significant harm in the future.

Background of LM and her children

[8] LM was born in England and has spent most of her life in Northamptonshire. She lived with her parents until she was about 15 when she commenced an adult relationship with a man in his late 20s. This relationship lasted for approximately one year but during it her partner was unfaithful to her and infected her with venereal disease. She now blames her mother for not intervening sufficiently to prevent her from leaving home when she was so young.

[9] LM then met SS when she was 17, they married and had 3 children O, N and A. The relationship broke up when she was about 23 years old and they divorced when she was 25 years old.

[10] She then commenced a relationship with TC and Z was born to them. This appears to have lasted for approximately 3 years but ended before her 30th birthday. At one stage she said that the relationship began to break down because TC had been traumatised by being present at the birth of Z but on other occasions she has said that their relationship terminated as he "didn't love me".

[11] Her relationship with TD, father of L1 and L2, commenced when she was about 30. TD lived in the same street with an uncle and aunt. He is a native of Northern Ireland. The evidence is beyond dispute that he is a thoroughly violent and unsavoury character. It appears that he had fled the wrath of paramilitaries in Northern Ireland due to his violent behaviour. His activities included giving his previous partner a severe beating, stabbing her father and beating up her mother. LM and TD met in or about March 2000 and were living together by about May. I am satisfied that despite his character flaws LM fell so deeply in love with him that she was unable to make any rational assessment of his character. She admits that he subjected her to at least three assaults whilst they lived together in England, and he wrecked both the bedroom and kitchen during his outbursts. It seems that he also made plain that his true love was for his former partner in Northern Ireland and eventually he left LM in order to return home to pursue that relationship.

[12] From the time she separated from SS, and subsequently from TC, all of her children lived with her, including the period of her cohabitation with TD so that after the birth of L1 the household was further increased to five children. Although TD had returned to Northern Ireland and effectively abandoned her, it would seem that LM's feelings for him remained strong.

[13] In June 2001 she came to Northern Ireland with L1 and stayed for a number of days. Her other children were left with their maternal grandparents. She returned again in August 2001 and stayed for five days. On her return to England she discussed with her children the possibility of moving to Northern Ireland. She has given a number of reasons for considering this, one of which was clearly to pursue the possibility of a resumption of her relationship with TD. She added that she considered Northern Ireland to be a good place to bring up children because of the high quality school system here and also because religion was an integral part of the lives of most people. I do not consider these additional reasons to be very convincing and am satisfied that by far the most important motivation was to pursue her relationship with TD.

[14] On 16 October 2001 she returned to Northern Ireland. She told her family and children that this was to be for a two week period. She was accompanied by A and L2 only. O and N were left with their father, SS, and Z, her other son, was left with his father, TC. All of these people understood she was leaving for two weeks only, including her child A. After one week she phoned MGM and told her that she was going to stay in Northern Ireland permanently and would not be returning to England. Until she was allocated her own house a few months later she resided in Northern Ireland with the sister-in-law of TD.

[15] MGM was put in a very difficult position as she was unable to look after the children long term. She contacted SS and made arrangements for him to take responsibility for O and N. Z was already with his father and she then had to explain the position to him. All of these children have remained with their respective fathers since.

[16] LM returned to England in February 2002 to deal with her personal affairs, and no doubt to see her children: this was her first visit to them in four months. Her daughter A returned with her. SS then served proceedings seeking a Residence Order in respect of O, N and A and he also secured a Prohibited Steps Order to prevent any of their children being removed from England.

[17] On 6 March 2002 the case came before Northampton County Court and it directed that a welfare report be prepared. This was written by James Fitzgerald, Children and Family Reporter, CAFCASS. He prepared three reports in total and I had the benefit of reading these and hearing his evidence. He recommended that a Residence Order should be granted in favour of SS in respect of all three children.

[18] The proceedings were intended to be heard on 2 July 2002 before His Honour Judge Mitchell. The matter did not proceed however because LM

indicated that she wished to return permanently to England, obtain accommodation and resume the care of her children. In order to facilitate her and to enable a reassessment of the recommendation of Mr Fitzgerald to take place the matter was postponed until October 2002. In fact by that date LM had not secured accommodation and indeed had gone back to Northern Ireland so that the contact arrangements then in place were disrupted. It takes little imagination to understand how much confusion all of this caused her children. I am satisfied by the evidence of Mr Fitzgerald that they were deeply saddened by the conflict between their parents brought about by the actions of LM and each of them made clear that their wish was to reside with their father.

[19] There were no proceedings between TC and LM in respect of Z. By agreement he lives with his father.

[20] LM had not just returned to Northern Ireland in the period between July and October 2002; when the court hearing stood adjourned in Northampton she had resumed her relationship with TD. She was of course heavily pregnant and L2 was born on 16 September. TD however abandoned her some three weeks before the birth of L2 just as he had done a short time before the birth of L1.

[21] The net result of her pursuit of TD has been the comprehensive break-up of the pre-existing family structures. Her three children by SS live with him, Z lives with his father and L1 and L2 are in care in Northern Ireland. She left England without making any proper goodbyes to her children or explaining to them why she was going. She misled everyone, including MGM, TC and her daughter A about her intentions. She had told A that her intention was to go to Northern Ireland for two weeks only but in fact kept her here for four months. It was only when she returned to England in February with A, and a court order was secured, that A was reunited with her siblings. Apart from the disruption to the family arrangements in respect of the three children of SS, the child Z, who had been part of her household was removed from his three siblings. L1 was also removed from each of them but given her tender age at the time the consequences of separation for her may not have been so pronounced.

[22] Z was approximately four years three months when she left in October 2001. He had just started school and indeed the day she left was his first full day at school. He had lived with her and the other children all his life. He understood she was going to Northern Ireland for two weeks and he would live with his father during that time, but he was in effect abandoned. The fact that TC is able to take good care of them cannot have been much consolation to such a young boy when he in effect lost his mother and contact with his half-sisters and brother at a stroke.

[23] At the time of the final hearing before His Honour Judge Mitchell on 14 October 2002 LM was living in Northern Ireland with L1, then aged one year eight months, with L2 then aged 28 days and had been abandoned by TD, her lover and father of these two very young children.

Evidence of Dr Bownes

[24] Dr Ian T Bownes is a Consultant Forensic Psychiatrist who holds a number of appointments including a consultancy at Gransha Hospital, Londonderry. He was asked to interview and assess LM with a view to addressing her mental health issues relevant to the issue of risk. He examined her on 30 April and 9 May 2003. He recorded a detailed family and personal history. He had access to medical notes and records dating from 1986. I do not consider it necessary to review these at present as Dr Bownes has summarised them in some considerable detail in his report. He considered that the case was a complex one given the previous personal circumstances of LM, the ongoing criminal proceedings against her and the unresolved care issues. He considered that her narrative was often "vague, inconsistent and contradictory so that a true reflection of her `internal world' was not obtained by him." He was unable to find any evidence to suggest that she was suffering from any clinically significant disturbance of mood, mental state, or functioning of a nature or severity to indicate any current mental illness. He could find no evidence of mental impairment, or a mental illness process, of a nature or severity to indicate that she would be inherently incapable of understanding Social Services concerns in the case, or in developing insight to these, or that any child placed in her care would be inevitably at risk.

[25] The analysis of the notes and records of her GP indicated that she had a lengthy history of mental health problems consequent upon her experience of stressful and demanding social and occupational situations and disfunctionality in her relationships, including periods of low mood; poor sleep; anxiety feelings and `panic attacks'; decreased appetite and weight loss. The nature and severity of the psychologically distressing symptomatology she described warranted prescription of several courses of anxiolytic and anti-depressant medication on a number of occasions.

[26] He stated his opinion that LM's account of her personal history and functioning, and her presentation at the interviews, was consistent with longstanding personality based and attitudinal deficits and problems including `neurotic' `histrionic' and `dependent' personality traits as defined in the ICD 10 – International Classification of Mental and Behavioural Disorders. These traits when found could, he said, have the following effects:

> "Individuals with personality based difficulties of this nature … often demonstrate a maladaptive approach to interpersonal relationships, a limited

> ability to cope with life's adversities, poor tolerance of stress or difficult or demanding situations and they generally fear being alone in life. As a result of this `abandonment fear' they often enter relationships characterised by subordination of their own needs to those of their partner; compliance with their partner's wishes; tolerance of difficult or demanding behaviour on the part of their partner (including persistent and significant levels of violence or infidelity); unwillingness to make demands on their partner and a limited capacity to make decisions without the partner's advice and reassurance."

He said:

> "… LM is likely to have considerable difficulty particularly in determining her lifestyle, empathising with and prioritising her children's needs over her own needs and appraising and formulating strategies to cope with difficult and demanding situations independent of any partners for the foreseeable future."

[27] Dr Bownes stated that considerable therapeutic effort would be required to address her complex personality based and emotional difficulties. In expanding on his report in evidence he was strongly of the opinion that she had a great need to be in a relationship and to be attractive, wanted and admired by men so that she might not assess a partner who took an interest in her properly or would suppress mentally any evident deficits in his character. He was impressed by the marked lack of emotional responsitivity and said she became emotionally detached when talking about her children or about matters which were difficult for her to confront. In recommending therapeutic work he emphasised its importance in enabling her to reach the stage where she might parent safely and to ensure her competence. For the present there was insufficient evidence that she could parent alone and unsupervised until these deficits were addressed. The prognosis for effecting change for the long-term was very poor but the therapy would help her improve her general well-being and to understand her emotions better. Success was not assured and the timescale over which work would be necessary could be long-term.

Evidence of Marcella Leonard

[28] Miss Leonard is an independent social work consultant and has given evidence in this court on many occasions. She was engaged by the Trust to

undertake the therapy suggested by Dr Bownes. She has conducted six sessions to date commencing in September 2003 and continuing until December 2003. She found LM to be a very pleasant lady, not aggressive and open to suggestions. Although she was hesitant at the outset she entered into the work rapidly. She has cooperated fully with Miss Leonard and did not miss any appointments. Her view is that long-term work is required as there are many issues to cover. At present it is not possible to know whether she could apply the strategies developed in therapy to her ordinary life, childcare or child protection matters. The extent to which progress might be achieved would also be dependent upon the personality of any partner with whom she might be living during the relevant period. Clearly TD was a negative influence in her life and any resumption of that relationship would have adverse consequences and render success difficult to achieve. She considered that LM still had strong feelings for TD. For the therapy to work the external circumstances must be favourable. Unfortunately there was nothing in the six sessions conducted to date to suggest to Miss Leonard that she could recommend the return of the children to the care of LM before completion of her therapeutic work. This long-term work would be necessary irrespective of the outcome of the criminal case.

Evidence of Dr Gerry McDonald

[29] Dr McDonald is a Consultant Clinical Psychologist at Daisyhill Hospital, Newry. He is highly experienced and has worked in psychology for approximately 30 years. He was requested to assess LM by her solicitor and the court granted leave to the Trust to release all of their papers (including the report of Dr Bownes), together with the police documentation, to him. He has reviewed all of this material and interviewed LM. Neither his report nor his evidence before me were reassuring about the long-term prospects of LM in a parenting role. He considered that she had fatalistic and defeatist attitudes which were residua of her life history, especially in her developing years. He considered that she had quite a troubled personality with dependent and avoidant traits. The propensity to detachment was very prominent and he described in evidence how when interviewing her it was "like speaking to someone through a window" due to the apparent lack of connection between her and the topics being discussed. He did emphasise however that there was considerable warmth demonstrated when she was speaking of her children. He noted a high tolerance of stressful situations and that she was dependent on other people. She has a compromised attachment due to her relationship with her parents in her developing years. The impression was created that her emotions could be switched on and off. He considered that she was very troubled, damaged and vulnerable with considerable needs to be addressed if she is to have any quality of life. He felt that if she does not address her problems there will be continuing difficulty in dealing with the needs of her children. The high level of dependence and avoidance traits was such that

they were deeply ingrained so that a timescale of at least 12 months would be required for initial therapeutic work to be undertaken.

[30] He pointed out the essential dichotomy in the personality of LM. He described her as being "socially graced" but she then displayed as a person who was emotionally detached from her current settings:

> "Her expressive use of language indicated that she had exceptional difficulty in engaging in appropriate self-reflective thinking relating to her historic and current life circumstances. She had a marked tendency to speak about interpersonal and affective experiences in a matter of fact, abstract manner, and the mechanical nature of her emotional and verbal presentations when making references to significant episodes within her life history was markedly noteworthy."

[31] It is clear from this aspect of the evidence that beneath a veneer of parental competence LM has deep-seated personality problems. Many of these are rooted in her own difficult upbringing and her lack of significant attachment to her mother. Her departure from home at 15 to take up a relationship, as outlined earlier, is clearly a symptom of these problems. Dr Bownes, Dr McDonald and Miss Leonard were unanimous that she could not parent adequately at present given her deep-seated personality deficits. The manner in which she left four children behind in England (three initially) without any preparation or pre-warning can, I consider, be explained largely by the findings of these witnesses. Mr Fitzgerald was highly complimentary of the presentation, demeanour and personalities of O, N and A, her three children by SS. He pointed out however that his assessments had been carried out in the context of private law proceedings and he had not been asked to delve deeper into underlying child protection issues which might have involved a deeper analysis of the attitudes and behaviours of the parties. I consider therefore that there is consistency between his evidence and that of Dr McDonald when he spoke of LM being socially graced. There has never been any suggestion that LM neglected her children in the strict physical sense. They all appear to have been properly housed, clothed, fed and medically attended to. It has taken the crisis brought about by the injuries suffered by L2 to bring to light these underlying personality and emotional deficits and the extent to which they compromise her parenting ability.

Evidence of the paediatricians

[32] I had the benefit of hearing from three highly experienced paediatric specialists.

[33] Mr Alan Bailie is a consultant surgeon in paediatric urology at the Royal Belfast Hospital for Sick Children (RBHSC). He prepared a number of reports for the purposes of this hearing and for the associated criminal proceedings: these are contained at pages 43-53 of bundle 3. He graduated from the School of Medicine of The Queen's University, Belfast in 1988 and has held various posts at the RBHSC in the intervening years. He qualified FRCS in 2002 and was appointed to his present post in September 2002.

[34] Initially there was a discussion as to his level of expertise to enable him to comment on the issues in the case. This arose a result of remarks which he had made in one of his reports to the effect that he was not an expert in the field of child abuse and that the opinions given by him were not those of an expert witness. In fact he clarified these comments from the witness box and indicated that he meant by he was not trained formally in the protocols of handling cases of alleged child abuse and therefore was not fully conversant with the procedures to be followed. As a consultant surgeon in paediatric urology however he felt he was well able to comment upon the nature, extent and causes of the injuries suffered by L2. I entirely accept the explanation given by him and am satisfied that he is an expert witness in the proper sense of the description.

[35] He indicated that he had been the duty surgeon at RBHSC on the weekend of Friday 18, Saturday 19 and Sunday 20 October 2002. He had occasion to discuss L's case with Dr Neil Corrigan, Consultant Paediatrician at Altnagelvin Hospital Londonderry. Between them they agreed L2 should be transferred to the RBHSC and she arrived there at 11.00 pm on Sunday 20 October 2002. Mr Bailie also stated that prior to the transfer of L2 to Belfast there had been a discussion as to whether the transfer might have been effected at an earlier stage. In view of her poor state at that earlier point however it was decided that it would too hazardous to do so. They agreed that she would need to be resuscitated and stabilised before such a hazardous journey could be untaken.

[36] The presumptive diagnosis at AHL and initially in the RBHSC was of in intra-abdominal tumour (a neuro blastoma) which was bleeding. This was based on ultra-sound imaging which had been carried out at AHL. On arrival in Belfast her condition appeared to deteriorate somewhat and further resuscitation was undertaken in order to re-stabilise her. She remained a very sick child but by the morning of Monday 21 October she had stabilised sufficiently to permit further investigations. These were carried out on behalf of Mr Bailie by Dr L E Sweeney, Consultant Radiologist. A CT scan of the chest and abdomen was performed. This showed extensive laceration and fragmentation of the left kidney which was surrounded by a large peri renal

haematoma which was causing some displacement of the bowel. Bilateral adrenal haematomata were noted and the left kidney was much larger than the right. No damage occurred to the spleen, liver or pancreas and there was no evidence of injury or any other abnormality; in particular the right kidney was normal. There was free intra peritoneal fluid and the mesentery, the tissue which contains blood vessels supplying the bowel, appeared to be swollen. A CT scan of the chest showed no evidence of injury to the organs or tissues of that part of the body. When Dr Sweeney reported initially she considered that there was evidence of a small laceration of the medial aspect of the spleen. She drew this inference as there were differences in density at the edge of the spleen. She resiled from this opinion at a later stage however because a follow up CT scan of the abdomen was carried out on 14 January 2003 and the same feature of the spleen appeared at that time. This led her to conclude that her original opinion that a small laceration was present was incorrect.

[37] The question of potential damage to the spleen is relevant only because those who dealt with L2 later, or who commented on the basis of her notes and records, assumed there was a laceration to the spleen. In the event the removal of the possibility of injury to the spleen from the case has had no bearing on any of the subsequent opinions of these experts.

[38] The findings of Dr Sweeney based on the CT scans were of vital importance. The consequence was that a medical or developmental aetiology was ruled out and it was obvious from the nature and extent of the injuries that they were traumatic in origin. From that point onwards the concern was to establish whether the trauma was inflicted accidentally or deliberately.

[39] Mr Bailie was unambiguous, as were the other paediatricians that these injuries were non-accidental. The severity of the injury to the right kidney was such that only a significant force could have been responsible for producing it. Having tried to assess any possible natural basis for the state of the kidney demonstrated on the CT scan he concluded that there was no such explanation. He expressed himself as being 95% sure that the injuries were non-accidental. In a report dictated on 12 February 2003 (page 50 of bundle 3) he stated:

> "It is conceivable that if an adult fell downstairs holding her and fell on top of her, she could sustain these injuries, but an explanation of this sort has not been offered by mother. … The very small degree of uncertainty rests only on the fact that the mother is completely adamant that she didn't cause her child any harm."

It was his view that the injury had probably been caused a maximum of six hours prior to the admission of L2 to AHL at 5.00 pm on 19 October although it could have been much closer to the time of her admission to hospital than that.

[40] Dr Bailie also said that since there is no report of any accident or any external event which might have caused the injury that it would be reasonable to have expected this child to have been brought to the hospital or her GP at a much earlier stage. When seen by the GP she was in an advanced state of decline, being very pale, with her temperature unrecordable. His experience was that parents tended to be over anxious of their children and to seek help at an early rather than a late stage.

[41] In trying to deal with the evidence of the mother, who had not given evidence from the witness box by that stage, but had of course given a full explanation to the police during their enquiries and had filed a written statement on oath to the court, he indicated that a child injured in this way would obviously be crying from pain and the crying would be high pitched. After about an hour the child might have become quiet, listless, unresponsive, floppy, cold and pale but these symptoms would have been obvious as they developed. The crying of the child might abate but would do so in parallel with its deteriorating condition. He said it would have been obvious to anyone familiar with the child that it was unwell and was not a child at peace. He also opined that it would be very unlikely that one blow could inflict injuries of the nature and extent suffered by L unless it was very severe.

[42] Each of the paediatricians who gave evidence agreed that the absence of bruising initially was not unusual and indeed discolouration of the left flank was noted on the Monday. They also agreed that the absence of any fractures, particularly fracturing around the ribs was not unusual as the ribs of a child, particularly a very young baby, are very cartilaginous and do not fracture easily. In any event rib fractures do not always show up.

[43] Evidence was also received however from Dr John Glasgow, recently retired surgeon in accident and emergency paediatrics at the RBHSC and from Dr J O Beattie of the Royal Hospital for Sick Children, Yorkhill, Glasgow, Scotland. Any differences between their evidence was slight.

[44] Dr Glasgow discussed the mechanism of the injuries in evidence and was of the clear view that they had been caused by "blunt force of some violence". By that he meant that there had been a non-penetrating injury such as a punch or a kick applied to the body of this child, possibly to the left flank and to the left side of the abdomen at the front of the body. He thought the likelihood of more than one blow was about 75%, perhaps greater. Considerable force would have been applied given the serious nature of the

injury to the kidney which lies deep in the abdominal cavity and is attached to the back wall. It was ruptured extensively and there was a large collection of blood around it. The tissue surrounding the kidney appears to have remained intact and when the blood began to flow from the kidney it collected in the sac, which did not burst or leak, causing the blood to act in a sense as a tourniquet (a description given by Dr Beattie). This was a very unusual injury and in the experience of Dr Glasgow would have been found in practice in circumstances where perhaps a child was hit by a moving vehicle, although that could not arise in the case of a helpless four week old child but was indicative of the degree of force required.

[45] Dr Beattie thought that it was possible that the injuries could have been caused by one blow especially having regard to the particularly small size of a baby of four weeks, whereas Dr Glasgow was more inclined to the view that more than one blow had been struck. All three however were adamant that these injuries were non-accidental. When I asked Dr Beattie to put it in his own words he said that he was 100% certain that it was a case of non-accidental injury. It was a severe injury and only if a dramatic accident was described to account for it would the possibility of an accidental injury arise. No such history appears in this case and there is no evidence of one at any point. Dr Beattie did ask me to be cautious about his use of the expression '100% certain' because he recognised that doctors rarely, if ever, used that as a way of describing their degree of certainty and I take account of that. His response was as a result of an invitation from me to described it in his own words and I am satisfied that he did so in a descriptive manner of everyday speech rather than in a considered reflective way as a professional. He conveyed to me, and obviously intended to do so, that he had no doubt these injuries were inflicted deliberately. Dr Glasgow described the likelihood of an accident having caused the injuries as being so small as to be neglible, ie. non-existant. However one describes the standard of proof in these cases I can express myself satisfied beyond any reasonable doubt that these injuries were caused deliberately. Having excluded a disease process, a congenital condition and an accidental injury, the question becomes who inflicted the injury deliberately?

[46] Before leaving a review of the medical evidence however I should also record that Dr Glasgow described in evidence how, in the best spirit of the independent expert witness, he tried, by calling on his professional experience, to work out any possible accidental mechanism that could have caused such a severe injury to L2. He raised the possibility that sometimes a child is dropped accidentally or an adult falls on a child, for example when going up or downstairs, and feels so guilty about it that they do not admit it initially. As he put it "I am waiting to hear if there is any such suggestion here and I haven't heard one". I asked him if such an accident had happened during the short interval when mother was out of the house between 12.00 and 1.00 pm, whether she could have been unaware on her return of some

serious event occurring. As with the other consultants he was of the view that with such a severe injury the child would have been in obvious distress from an early point, and its condition would have been deteriorating so obviously, that any mother would have realised that her baby was in trouble and would have sought medical attention forthwith. She was bound to have realised that something was wrong within a very short period of time. He still was strongly in favour of the cause being a kick or a punch rather than a concealed accidental fall.

[47] Dr Beattie agreed with this possibility and added the suggestion that something like a heavy fall on to the handle bars of a bicycle might equate to the force considered necessary to cause the injury. The suggestion that a toddler such as L1 might have fallen on to L2 was rejected by all of the paediatricians as a realistic possibility. Dr Beattie referred to the bilateral haemorrhages of the adrenal glands: he considered the haemorrhage on the left gland, which is attached to the kidney, was a direct effect of the blow causing the damage to the kidney. The haemorrhage from the right gland however may therefore have been an indirect effect of the trauma to the left side as there was no other associated injury to the area of the right kidney. The damage on the right side may have been caused by a surge of blood in the veins as a result of the injury to the left side or perhaps some later collapse. In the event this is not of great significance since it would not have altered the diagnosis of non-accidental injury. Dr Glasgow considered it possible that the bilateral nature of the haemorrhages might be supportive of there being more than one blow.

[48] I conclude therefore that the medical evidence proves the injuries suffered by L2 have been shown beyond any reasonable doubt to have been caused by blunt trauma to the abdomen and to exclude any underlying constitutional medical origin. I am also satisfied the injuries were caused non accidentally and this fact was accepted by LM in closing written submissions made by counsel on her behalf.

[49] The issue of the timing of the injury is also central to the inquiry. It is evident from the evidence of the experts that a precise time cannot be given for the infliction of the injury but certain parameters have been established very clearly. Dr Bailie considered that about six hours before presentation at hospital was a reasonable suggestion. Since L2 arrived at hospital at 5.00 pm that would suggest some time from late morning towards mid afternoon. Had the injury occurred at about 6.00 or 7.00 am on Saturday then he felt it was unlikely L2 could have survived until 5.00 o'clock when she was admitted to hospital. Dr Glasgow thought that the injury must have occurred within a few hours of admission to hospital. Recognising the difficulties of timing these things precisely he said that he would have serious doubts that it could have occurred as early as say 10.30-11.00 am. On the other hand if the blood loss produced by the injury was very rapid then shock would develop

within a timescale measured in minutes. Dr Bailie in paragraph 6.32 of his report said that it was unlikely the injury had occurred less than 12 hours before and indicated that it could be as short 1-2 hours. He agreed that he was more vague than Dr Glasgow about timing but if forced would say 9.00 am-3.00 pm is the realistic time frame.

[50] In the event the precise timing of the injury is not of immediate importance. It is beyond dispute that from about 3.00 am on the 19 September only four human beings had any contact with L2 and these are:

(i) L1.
(ii) LM.
(iii) A taxi driver.
(iv) SMcC.

Consideration of the suspects

[51] The first step in my analysis is to consider L1 as a possible cause of the injury. At the material time she was aged one year eight months, little more than a toddler. I accept the evidence of Dr Beattie to the effect that a toddler falling or lying on L2 is not a tenable explanation for her injuries. There is no evidence that she fell or lay on L2, or did anything that could have caused such a severe injury, This featured as a consideration only because LM had said at one point that L1 had been alone with L2 whilst she was temporarily out of sight and when she returned she found L2 was not on her changing mat which was on the floor. This was simply another version of events put forward by LM by way of possible explanation for the condition of L2. It arose from an alleged conversation between LM and PGM of L1 and L2 at AHL shortly after the admission of L2. She said that after arriving at hospital to visit the child on the night's of its admission she was present when the doctor in attendance had explained to them that L2 was very ill and would have to go to hospital in Belfast, but in the meantime they were trying to stabilise her. She described how the doctor mentioned possible spleen and kidney damage. Her evidence was that she inferred from what the doctor was saying that the baby had been shaken, thumped or that something untoward had happened to it. In response LM asked whether L1 could have picked up or dropped the baby. As with so many other aspects of the case LM denied that such a conversation took place. PGM's evidence was that LMcC was present throughout and the latter confirmed her presence in her own evidence. I am satisfied this conversation did take place between the three ladies and is simply an example of LM not telling the truth or forgetting matters which she finds uncomfortable or difficult to explain. There is nothing about the description of that event, or the surrounding or subsequent events, which gives any cause for concern about L1 having caused the injuries to her sister. At no stage did L1 show any sign of injury or upset such as might be caused by falling onto her sister and certainly nothing that could

have caused such a serious injury to L2. No argument was advanced at the trial to support this theory and I reject it and exclude L1 as a possible perpetrator as there is no real possibility she caused the injuries to L2.

Evidence of LMcC

[52] LMcC lives with PH and her four children aged 9, 6, 4 and 2. At the material time her brothers MMcC and SMcC lived with her also. She has one sister. Her evidence was that the family is extremely close knit, her brothers actually lived with her at the time and her sister was a frequent caller at the house. She also gave evidence that throughout the lives of her children both MMcC and SMcC had attended her house on a routine basis and had played a significant role in the upbringing of her children, their nieces and nephews.

[53] LM obtained a house in the same street where she lived with her family. They became very good friends. Their houses were diagonally opposite each other in a small cul-de-sac. Their relationship became very close so that LMcC described LM as being like a sister to her. She was present at the birth of L2. When L2 became ill LM stayed in her house most of the time, when she was not at hospital, except that she returned to her own home in the late evening to sleep. LMcC stated that LM ate in her house almost every night for a period of about 2-3 months after the events of 19 October. During the six months or so prior to the 19 October LM visited LMcC almost every day initially with L1 and then with L2 also. She baby sat for L1 frequently and after the birth of L2 she baby sat for both children twice overnight in order to give LM respite.

[54] A striking aspect of the McC household was the close relationship between her children and her two brothers. The evidence of LMcC and of SMcC satisfies me that both SMcC and MMcC played an integral part in the lives of her children and spent long periods playing with them, looking after, helping to dress, feed, put to bed and supervise them. I have formed the clear impression that she was something of an "earth mother" figure. On the evening before L2 sustained her injuries, LMcC was at home looking after her own four children, L1, L2 and another child who was a friend of one of her daughters. Not only did she supervise them but she was responsible for settling L1 and L2 since her mother did not return that evening until about 1.30 am. She gave evidence that she fed L2 at about 10.00 pm, winded her, changed her nappy, dressed her and settled her for the night in her Moses basket. She said that L2 did not stir prior to the arrival home of LM. L1 was settled on the sofa beside her and slept from the later part of the evening. Both children were entirely happy and settled throughout by her account.

[55] Her brother M gave evidence that he returned to the house before LM and looked after the sleeping children, in the sense of supervising, whilst his sister was upstairs getting ready for bed. After LM returned they were al

together in the living room for a period. M helped LM to carry the children and their various pieces of equipment back to LM's house.

[56] There was no more contact between the McC family members and LM or her children until around midday on Saturday 19 October. At about midday SMcC went to her house and remained there for about an hour or so. I shall deal with the events which may or may not have occurred during that period at a later stage.

[57] At around 3o'clock LM contacted MMcC and raised concerns about the state of L2. L2 said that the baby was not the best and Linda questioned LM about the symptoms which the baby exhibited. Eventually LM brought L2 across the road to Linda's house. There was concern on Linda's part at that stage about the state of the baby. She described her as being "chalky, death white" although her eyes were open. She said that Linda told her that the baby had taken all her bottles up to midday. Linda was sufficiently astute to remove the Babygro from L2 to check for a rash, thinking of the dangers of meningitis, but there was nothing on the baby's body to cause alarm. There was some feeling, expressed by her partner, that the baby's tummy was swollen but Linda dismissed this on the basis that a very young baby had a naturally rotund abdomen. At some point BMcC, sister of LMcC, arrived in the house and she too gave her view about the baby but it seems that it was really PH who was the catalyst in the decision to phone for medical advice. LM returned to her own house, phoned her GP and was referred to the duty doctor at Waterside Health Centre. In consequence of the advice given she returned to LMcC's house saying that she had to take the baby to the surgery. LMcC immediately volunteered to drive her there and did so. L2 was carried into the surgery by LMcC and Dr O'Flaherty addressed her initially assuming she was the mother. She remained at the health centre whilst the baby was attended to and ultimately drove both mother and baby to the Altnagelvin Hospital. She remained with mother whilst the baby was attended to in casualty until she had to go home to look after her own children. She did however return after about an hour and remained with LM as it was clear that the baby was in crisis and that her condition was life threatening. At that point the belief was that she had a cancerous tumour, or perhaps a form of leukaemia.

[58] LM was given an open house reception at LMcC home for many weeks after 19 October. During that period however Linda was told that LM had alleged she was responsible for causing the injuries to the child. I am satisfied by the evidence of LMcC that these allegations were reported to her and had been made to PGM, and also to TD, father of the children. It was put to LMcC in cross-examination that these allegations could not have been made since LM had never made such allegations to anyone else. I am satisfied, despite her denials, that she did make these allegations and indeed it is the unchallenged evidence of LMcC that eventually LM came to her one

afternoon in January 2003 and confronted her and alleged that she had done something to harm L2 and this caused great distress to LMcC. Her response was to ask if after all they have been through was she going to accuse her of this? I am satisfied that LM asked that day for the return of a baby's bangle which belonged to L2, that she then left LMcC house and they have not spoken since.

[59] It is clear beyond reasonable doubt from all of the medical evidence that LMcC could not have caused the injuries to L2 as it is common case that she was not in contact with L2 between 3 am and approximately 3 pm on 19 October. She is a lady who has given a lot to LM and has received no gratitude in return. I consider this speaks volumes for the personality of LM. There are still good people in this world and good neighbours who help other people who are lonely, vulnerable or under stress. I am satisfied that LMcC is one of those people and that she tried to be a good and faithful friend to LM and her return has been to be accused of causing near fatal injuries to L2. Despite the fact that the medical evidence has clearly exonerated LMcC there has been no retraction of these wounding and hurtful allegations. It should be stated for the record that at the end of giving her evidence I made it clear to LMcC that she should leave the court in the clear knowledge that it had been demonstrated she could not have caused these injuries and should no longer feel any sense of concern or anguish about the allegations which had been made as they were groundless.

The position of the taxi driver

[60] In giving an account of events to the police, social services and ultimately before me, LN explained that she left the house at about 11.30 am on 19 October to go to the Post Office to cash her Giro cheque. In evidence she stated that she phoned for a taxi about 11.25 and that it came very quickly. She took both girls with her and they all travelled in the back seat. The round trip lasted about 10 to 15 minutes and she thought she was home by 11.50. The local post office is situated inside a larger shop which she thought was a Co-Op or Centra store. She described it as being beside the taxi office. She took L1 into the store and left L2 in the back seat of the cab. When she returned L2 was crying but the return journey was otherwise uneventful.

[61] Efforts were made to trace the taxi driver through his agency office, Galliagh Taxis. A Mr PJM was interviewed and gave evidence before me. He could recollect collecting a woman with an English accent from the house where LM lives and driving her to the Post Office. He said she brought her baby with her but he had no specific day or date in mind as to when this might have occurred. He acknowledged that it could have occurred on some Saturday other than 19 October. He remembered that the baby was crying a bit and that the woman went into the post office and returned fairly promptly. He stated that usually only 4 or 5 men work from the depot on

Saturday mornings. His car was a blue Mondeo and of all of the drivers based at the depot he thought about 3 or 4 of them had the same type and colour of car. In those circumstances it was not possible to establish with certainty that he was the driver on 19 October. Nevertheless there is substantial evidence that would support the proposition that it was in fact PJM who drove the taxi that morning. The police had conducted their enquiries through the taxi firm's office and PJM was the only one identified as a possible driver. When asked about this LM said that she did not think he was the driver and at one stage undertook to conduct further enquiries with a view to identifying the driver involved. Nothing ever came of this suggestion however. He remains the only person who can assist with this aspect of the investigation.

[62] Whether he was the actual driver or not appears to have little bearing on the matter. LM left L2 in the taxi for a matter of a few minutes. The taxi was parked outside the shop and beside the taxi depot: it was broad daylight and a Saturday morning. If the taxi driver had caused the injury to L2 he would have had to leave the driver's seat, open the back door of the vehicle and lean inside in order to inflict a blow of some very significant force. This would have been carried out in a highly public place in a manner where he might have been readily detected, when the mother might have returned at any stage and where an injury might have been expected to have been revealed immediately. I have no hesitation in rejecting any such theorising. LM herself said that it was most unlikely that the taxi driver hit L2 whether it was PJM or some other person. I reject the suggestion that there is any reasonable possibility that the injury to L2 was caused in this manner.

The evidence of SMcC

[63] SMcC is the brother of LMcC and lived with his sister at the material time. He stated that he had taken LM out for the evening of Friday 18 October and early hours of Saturday 19 October. It is not clear whether he had suggested that she join him for the evening or vice versa. In the event LM did join him in a local bar. SMcC is a member of a darts team based in a pub and after a few drinks they moved to another bar where a darts match took place for the rest of the evening. The team then returned to its "home pub" and the group stayed together into the early hours of 19th. By all accounts it was a perfectly sociable evening: it was not a date: SMcC had simply accompanied her in order to allow LM to have an evening away from her children.

[64] Unfortunately the evening was marred somewhat because SMcC had a row with his mother who was in the "home pub" when he returned after the darts match. She had been with her husband but he had gone home. The evidence was to the effect that she was inebriated, had refused to go home with her husband and continued to do so despite SMcC urging her. A row

developed between mother and son which continued outside as he tried to encourage her into a taxi. Something of a disturbance must have occurred, and it appears his mother fell to the ground at one stage, which led the doormen to refuse SMcC readmission. He accompanied LM back to his sister's house where he had a disagreement with his brother. He left the house in consequence for a period of about 1½-2 hours before returning. He said he went to bed about 4.00 o'clock. In meantime LM had returned home, and this was confirmed by both LM and his brother in evidence.

[65] Next day, probably around midday, he visited LM to apologise for the row which had occurred his mother. The precise sequence of events is not entirely clear and some differences appear in accounts which he gave in evidence, in the course of a police statement made on 24 October 2002 and during an interview at Strand Road police station on 18 November 2001. The latter interview took place on the basis that he was simply a witness. He was not cautioned and it was made clear to him that he was free to go at any stage. He remained voluntarily however and answered all the questions put to him. He was offered legal assistance but answered that he did not need legal advice.

[66] The differences in his various statements are not particularly material but it would appear that he remained at LM's house for about an hour, perhaps as long 1½ hours. During that time, except for a period of about 10 minutes or so, he was accompanied by both LM and L1. At one stage LM offered him tea or coffee and then realised she had no milk. She left the house to go to the local shop, which was just a short distance away and returned immediately. LM and SMcC then sat chatting socially for the remainder of his stay and drank the tea/coffee.

[67] He said that during this time L2 was disturbed in the sense that she was crying and unsettled. There are some differences between the various statements which he has made as to when he lifted L2. Under oath before me he said that L2 was crying and LM told him that she had been like that most of the morning. He asked if it would be okay if he went ahead and winded L2. He then lifted her and nursed her against his shoulder and managed to bring up to belches of wind. In a written statement he said that he lifted L2 when LM had left the house. It is clear however that he was handling the baby during the short absence of LM.

[68] This episode lasting approximately 10 minutes during which LM was absent from the house was not mentioned by her when she was first interviewed by the police. She was re-interviewed after SMcC made his statement in which he stated that he had been alone with the child for 10 minutes: it was at that stage that she recalled it. Clearly it was not something fixed in her mind even though by the time she was interviewed she was trying to work out how or when the baby might have been injured. I consider

this to be significant. In the event there is no one else who could have injured L2 but SMcC and it is strange that it did not occur to LM to tell the police that he had been alone with her for 10 minutes during a period which was clearly relevant.

[69] SMcC is 24 years old, tall and apparently strongly built. I consider that I had an excellent opportunity to observe his personality and demeanour in the course of his time in the witness box. I have also the benefit of the written statement which he made to the police and the transcript of an interview conducted on 18 November 2001. He relayed very frankly the details of the argument which he had with his own mother on the evening of 18 October. He admitted that he could get over excited at times and it is apparent that he had a row not just with his mother that evening but also with his brother. He did not attempt to put any gloss on his evening out. He was there for a good night drinking and playing darts with all his pals and fellow team members. He was not on a date but had agreed to let LM accompany him, together with the darts team, in order to facilitate her having a break from her normal routine. I consider that he is however out of the normal mould in some important respects. At the material time he lived with his sister, her partner, their four children and his brother. He discussed quite openly how he was able to care for each of those nieces and nephews, had baby sat for them, changed nappies, fed them and dressed them in a much more thorough way than might be expected of a typical uncle. He also demonstrated spontaneously in the course of giving evidence how he held L2 during the vital ten minutes. He did this by holding an imaginary baby in both hands with his left hand behind the head and the right hand towards the baby's bottom and placing the baby carefully against his left shoulder. He did not stop there however as he demonstrated also how he nursed the baby with a gentle rocking motion and tried to release trapped wind. I have no doubt from having observed him and taken account of his demeanour that he was doing so in an entirely natural fashion. I am certain that he did so as someone who has considerable experience of handling young children, including a small baby. This was confirmatory of the evidence of his sister.

[70] It is central to this case to determine whether or not SMcC could have cause the injuries to L2. He had an opportunity of approximately 10 minutes in which to do so. There is no suggestion by LM, or SMcC, that the baby was other than upset and disturbed within the normal bounds of a baby who was perhaps hungry or upset by wind. The baby was not suffering marked distress and was not out of control. If it had been it is inconceivable that LM would have left for the shop at all. During the 10 minutes or so of LM's absence his sister was in her own house, from where he had just come, and that was only a matter of yards away across the street. There was nothing to prevent him going over to his sister's house for help, or calling for it if it had been really necessary. I do not see any possible reason why he might have hit this child, let alone with the force that was necessary to cause its injuries and

then have remained in the house talking to LM for almost an hour afterwards. No injury, sign of distress or embarrassment was ever evident in his presentation and I am satisfied no such event occurred. For these reasons I also exclude as a real possibility the suggestion that he might have fallen onto, or dropped L1 and caused the injuries to her in that way. The paediatric evidence left this open as a mere possibility in the light of the adamant denials by LM that she had caused the injury to L2, but once excluded the potential guilt of LM becomes a stronger possibility still.

[71] I am also satisfied that SMcC, despite his superficial appearance to the contrary, is someone who is instinctively careful in handling children, is experienced in doing so and has an affinity for young children. Many people find it difficult and awkward to handle a baby that is crying. I am satisfied that he did not have such difficulty at all. I am confident that he did so naturally and with nothing more than the normal nursing technique that would be expected to be applied where a child was crying and upset and which he demonstrated. I am confident that LM's attempts to blame him for the injuries to her child came about, and perhaps became more assertive, once she became more acquainted with the medical evidence which limited the time span within which the injury could have occurred. As the time span was reduced so it became obvious that there were less and less possible perpetrators who might be considered seriously for that role.

[72] Being conscious of the importance of my assessment of SMcC, and of the inference that would follow if he was not the perpetrator or that there was no real possibility he was, I have paid very close attention to his evidence and his demeanour. This is never an easy task for a judge but it is one where judgment is called for. Insofar as I am able to determine in good conscience, and calling upon my own experience to the fullest extent possible, I find there is no reasonable possibility that S caused the injury to L2 during the course of the 10 minutes or so that he was in charge of the baby in the absence of LM.

The position of LM

[73] As I stated earlier there are only four possible persons who could have been responsible for inflicting the injuries suffered by L2. For the reasons which I have indicated above I have eliminated L1, the taxi driver and SMcC. That leaves LM the mother of L2 to be considered. Because I have eliminated the others it does not mean that I must of necessity find that LM caused the injury to L1 because the onus of proof remains on the Trust to establish the injury was caused by LM on the balance of probability as explained earlier.

[74] I should therefore review the evidence in relation to the mother in order to decide whether or not it is possible to come to a conclusion about her possible guilt on the balance of probabilities. In doing so I should have regard to all of the evidence but it seems to me that by far the most important

is to consider the opportunity she had to inflict the injury. There is little doubt that she did. She was alone with the child from approximately 3.00 am until she visited LMcC in the late afternoon of Saturday 19 October with the exception of the short periods of time during which the taxi driver and SMcC were alone with L2. Because of the nature and extent of the injury to L2 it is obvious that LM must be regarded with a high degree of suspicion at the very least. Not only did she have the opportunity to inflict the injury but she had the opportunity of doing so during protracted periods when no one but L1 was present.

[75] There are many other matters which bear on this important decision. It is clear from the evidence given by LM that matters were not normal in her household that day. She stated that when she arrived home from her night out that she stayed downstairs, L2 slept in her Moses basket (which rested on a stand) whilst L1 remained beside her on a sofa. She said she woke up at about 7.30 am and "felt okay". She said she gave L1 a bottle at about 7.40 am but was unable to remember if she had given her one later in the morning. She explained that L2 could go for six hours sometimes without being fed and that she adopted the attitude of feeding her on demand. She would wait until the baby cried rather than feed her on a regular three-four hour basis. She also said that L1 had received nothing other than some small amount of toast during the course of that day. At other stages she had referred to difficulty in feeding L2, but in giving evidence before me she said that she did not try to feed her at around midday when she had returned from Post Office. This seems rather extraordinary because by her own account the child was upset and crying. When SMcC called to the house it was obvious that the child was crying and was described as needing winded or was colicky. It never seems to have occurred to LM that the child was simply hungry.

[76] The difficulties that are apparent from the evidence of LM, both at the hearing and earlier when speaking to various social services personnel, are all the more extraordinary in the context of the records of her connection with Mrs Christine Cosgrove, her assigned health visitor. The records indicate that on 1 October 2002 L2 was reported to be feeding well on Cow and Gate Premium and receiving Daktarin for oral thrush. On 11 October 2002 Miss Cosgrove visited LM and L2 at home. The baby was 8lb 8½ozs, a weight gain of 7½ozs in the previous ten days. L2 was reported to have been sick mid-week but was settling by then. She was however only tolerating 2-3ozs per feed. There was a discussion with LM about feeding L2. It was noted that the community mid wife was still visiting and an arrangement was made for L2 to be brought to the baby clinic on 17 October 2002. In fact she did not attend the clinic as arranged on that date. On 18 October Miss Cosgrove telephoned LM at home who reported that L2 was more alert and tolerating 4ozs Cow and Gate Premium feed 3-4 hourly. A review at home in approximately one week was arranged. The latter telephone conversation occurred on the day preceding L2 sustaining her injuries. LM had no difficulty in describing her

feeding routine and pattern and this is a stark contrast to the confused picture that she presented about the feeding routine of L2 that day on subsequent occasions. No explanation was forthcoming from LM as to why she did not feed her baby routinely rather than on demand. Neither is there any explanation forthcoming as to why she sat drinking coffee with SMcC in her house when it was obviously feeding time for the baby and it was in distress. Eventually some effort was made to feed her at about 1.30 but it is entirely obscure whether the baby fed or not.

[77] PGM indicated that she had spoken to LM at about 2.30 and she complained about the baby being colicky at that time.

[78] It is clear that we shall never know precisely what happened to L2 in the course of that Saturday other than that she was grievously injured. The precise mental state of LM may not be capable of exact definition either. She had lost her residence order application in respect of three of her four children just days before and she was separated from them for most of the time since she was now living in Northern Ireland and they were living in England. She had been abandoned by her lover and was left alone with two little girls. She was in a strange part of the country with no family supports, with only very recently developed neighbour contacts and some support from social services in the form of the health visitor. The background history shows that she had abandoned her four older children even though she disguised that by conducting a residence application in respect of three of them. I am satisfied she was never really committed to returning to England however and demonstrated that by making only nominal attempts to secure accommodation there and she returned to Northern Ireland as soon as she was unsuccessful. She was never at any time willing to give up her house in Northern Ireland which would have facilitated the local authority in England providing her with emergency accommodation.

[79] We know also that she has significant background personality problems and character traits of dependence, avoidance and with clearly defective attachments to her children. She has lied repeatedly throughout the course of these proceedings. It is obvious also that she has accorded significantly different and adverse treatment to her child A compared to that given to O and N. Although L2 was just four weeks old when she suffered the terrible injury LN told the Guardian that L1 was the person that she loved most in all the world. I consider that to be another illustration of the psychiatric and psychological profile of LM which has a bearing on the outcome of this case.

[80] During the course of enquiries in connection with the injuries to L2 the applicant Trust maintained contact with the social work staff in Northhamptonshire. In consequence a Ms Bain, duty social worker conducted an interview on 12 December 2002 with O, N and A with a view to

establishing some background details of their time with their mother. This was after Judge Mitchell had made the residence order in favour of their father and so it may be assumed they were secure in the knowledge that they would not have to go to live in Northern Ireland. Both O and N denied ever being hit by LM. N however, who was spoken to first, told Ms Bain that when she was living with her mother "it was okay but she used to shout and hit A very often". When A was interviewed she stated that "her mother often held her by the throat, slapped her across the face and pulled her hair". She also stated that her mother had lied to her about going to live in Ireland saying that she had been told she was being taken there for a holiday for two weeks. When she had not been returned after two weeks she realised that she was not going to go back to England.

[81] In due course these allegations were raised with LM by Ms Rhodes who kept careful notes of the exchanges. The first note is dated 13 December 2002 (bundle 5) and LM was able to tell her that the children had been interviewed by Ms Bain the day before. Ms Rhodes, who knew nothing about the interview at that stage recorded that LM admitted that she had smacked her children and demonstrated a light smack on the head. The attitude of LM to these allegations varied from time to time. On the one hand she seemed to admit to Ms Rhodes that she did physically chastise A but when this was raised with her in evidence she denied it. She continued to deny it in the face of the written contemporaneous records. On another occasion she said she had smacked A on the arm. When she continued to deny ever having told Ms Rhodes that she had smacked A on the head she was asked how Ms Rhodes could have recorded not only that she had said it but that she had given an actual demonstration she could give no answer.

[82] LM said to Ms Rhodes that she did not know why N would make these allegations but in her evidence her reply was that she had spoken to N about these allegations and had been told by her that she had never said this at all. I am satisfied that Ms Rhodes recorded her comments accurately in the detailed notes. The result is that either LM has lied about speaking to N at all, has misreported what she said in response or that N did so respond to her but was afraid to admit that she had revealed these matters to Miss Bain.

[83] The problem for LM is that A complained at the same time, but independently, of similar behaviour. LM had a ready response to that saying that A was angry with her for taking her to Northern Ireland and lied. She also said that A had written a letter, at the behest of her grandfather, admitting that she had lied. A however had given a graphic account to Mr Fitzgerald of how she was pulled by her hair across the living room of her house in Northern Ireland. In demonstrating that to Mr Fitzgerald he noted that she had almost been lifted from the ground. The facts therefore are that A has made independent complaints to both Mr Fitzgerald and Miss Bain on quite separate occasions to the effect that she had been mistreated by LM. I

consider that LM has lied about her treatment of A and that she has hit her on the face or head, arm, pulled her hair and shouted at her. These reports have been received from more than one child and have been repeated by A in two separate interviews. LM has admitted in the witness box that she told lies to me about how she treated A and I am satisfied that these lies were designed to deny or minimise her responsibility for excessive punishment of A. It is also quite apparent that she did so in order to divert attention, as she admitted, from the possibility that it was she who injured L2.

[84] During the trial I realised that LM was becoming more and more distressed as she was pressed about these allegations and I adjourned the proceedings for 30 minutes. It was clear to me that she was lying and was simply making things more difficult for herself. I excused her from the normal obligation not to discuss her evidence with anyone during the interval and allowed her to consult with and receive advice from her legal advisers. When she returned to the witness box she admitted that she had hit A on the head more than once but not often. She said she did this if A had been naughty and did so when she was angry. She demonstrated this by presenting an open hand and making a flick of the wrist which was not at all forceful. She agreed that this would not be a nice thing to do and claimed that she did not intend to cause any pain.

[85] There have been other times when it was obvious to me that LM had difficulty in distinguishing between actual truth from that which it was convenient for her to say at a given time. The following are some examples:

> (i) Her denials of responsibility for ill-treatment of A, and of treating her in a significantly different way from her other children, should be seen in that context.
>
> (ii) When she spoke glowingly of TD and his relationship with her children when she wished to justify coming to Northern Ireland yet it was clear from her evidence she knew that he was violent, exploitive, a danger to her and harmful to her children.
>
> (iii) In respect of LMcC she agreed that she was her best friend in Northern Ireland but when it was necessary to find an explanation for the injuries to L2 she accused her of having neglected her children, smoked dope and of lying to other people about her.
>
> (iv) LM also lied in turn to her parents, TC and each of her children about her true intentions in

> coming to Northern Ireland. She attempted to rationalise this decision by talking about the quality of the schools and strength of the community in Northern Ireland. These were transparent attempts to blur her real reason for coming to Northern Ireland which was to pursue TD.

[86] I conclude that LM is a person who lies at will and does so to cover guilt and to divert criticism from herself in order to be cast in a favourable light. Her denials of responsibility for causing the injuries to L2 given before me on oath, and to other persons are simply self serving exculpatory assertions which I reject. Having weighed all of these matters together I have concluded that the injury to L2 was caused by LM and I conclude that on the very strong balance of probability in the sense in which I have described it earlier. I might have been able to so conclude beyond reasonable doubt but it is better if I refrain from considering that in view of the proceedings still pending.

The threshold criteria

[87] In view of the devastating injuries suffered by L2 at the hands of LM which has resulted in permanent damage to one of her kidneys it is clearly established that L2 suffered significant harm as a result of the care given to her by LM. That harm is continuing harm resulting from the permanent nature of the damage to the left kidney.

[88] The threshold criteria have also been satisfied in my opinion in respect of L2. Although it is accepted that she has a significant bond with her mother there are a number of matters giving rise to concern which place her in a position where there is real possibility that she will suffer future harm if returned to her mother's care. It cannot be ignored that LM has left all of her other children behind in England. She has done so in circumstances which demonstrate a lack of real empathy with them. In addition she appears to have had no real insight in to the likely consequences for the children individually through having their home broken up and through being separated from each other, a comment which applies particularly to Z. She has lied about her chastisement of A. It is clear that her own needs are her first priority and she will pursue relationships with prospective partners who are a danger to both herself and her children. Her problems of avoidance and detachment are far from resolution and will require long term therapy. Finally, the fact that she has caused such a devastating injury to L1, and remains in complete denial, means that she is a continuing danger to the physical and emotional well being of her children and therefore leaves the court with no practical alternative but to ensure the future safety of both children by removing them from her care. I find the threshold criteria

established in respect of both L1 and L2 and I must now consider which order I should make having regard to the various powers available to me.

The welfare checklist

[89] Article 3(3) of the 1995 Order provides that the court shall have regard to what is referred to as the welfare checklist when considering whether or which order to make in securing the child's welfare. These checklist points are as follows:

> "(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
> (b) his physical, emotional and educational needs;
> (c) the likely effect on him to any change in his circumstances;
> (d) his age, sex, background and any characteristics of his which the court considers relevant;
> (e) any harm which he has suffered or is at risk of suffering;
> (f) how capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant;
> (g) the range of powers available to the court under this Order in the proceedings in question."

[90] I am of course dealing with an application for a care order in respect of both children. L1 is now aged 3 and L2 one year 5 months. Neither child is of sufficient age or understanding to be able to express its wishes or feelings. Both children are having their physical needs met to a high standard in their current foster placement. L1 did not sustain any injuries in the care of her mother but in view of the concerns raised by her causing injury to L2 it is clear that she requires a similar degree of protection. Although L2 has recovered well from her injuries the medical evidence is to the effect that the left kidney is now smaller than the right and function is reduced to about 14% of capacity. The right kidney compensates and is operating at about 85% capacity. This leaves her with normal renal function but with lower reserves should anything occur to cause damage to the right kidney. Both children require considerable care and attention for many years in order to bring them to a healthy and secure adulthood. They are presently in a joint placement and L1 has been there from 1 June 2000. Unfortunately in order to secure a permanent adoptive placement a further move will be required. Clearly the

children will have to be assisted to form new attachments. L1 has spent only four weeks in the care of her mother and after her release from hospital was moved to her current foster placement. Overall the girls are now growing rapidly and their emotional demands upon parental figures become more obvious. It is therefore important that they should find secure permanent placements as soon as possible. There is nothing in the age, sex, background or other characteristics of the children which I consider relevant for present purposes.

[91] In deciding the relevance of any harm which either child has suffered or is at risk of suffering it is important to bear in mind the whole of the background life circumstances of LM. Not only has L2 suffered a potentially life threatening injury but it is clear from the way in which LM has treated her other four children that L1 and L2 are at risk in the future of being abandoned in a similar fashion. At present LM has undergone only preliminary or exploratory therapy, her personality deficits are otherwise unaddressed and any work to achieve an improvement in her mind set will be protracted. I am satisfied that while LM is capable of looking after the immediate physical needs and wants of the children, and has demonstrated that capacity in the past, these children could not thrive emotionally in the care of their mother in her present state. The treatment of her child A gives rise to sufficient concern in itself, but, seen in the overall context of the failures by LM to give caring parenting to her children and to secure their emotional well being means the children will remain at risk of suffering significant harm if in her care. For that reason I am satisfied she is not capable of meeting the needs of either child for the foreseeable future. The father of these little girls is even less able to do so. He abandoned their mother a short time before each was born in turn, he has played little part in their lives and his background of violence and drunkenness means that they are deserving of much better than he can provide for them.

The order required

[92] The court is asked to make a care order in respect of both children. Before doing so however I must consider whether to act upon the no order principle. Should I proceed along that line then both children would be subject only to their mother's care as parental responsibility would revert to LM and I consider that the be wholly inappropriate in the circumstances. A supervision order likewise would not give the Trust parental responsibility and would not permit it to ensure the proper planning for the children's future. It would not be in their best interests to stop at a supervision order. For similar reasons an Article 8 order would be inappropriate. It is clear to me that only a care order will suffice in this case which means that the children must be maintained in foster care. I consider that to be an appropriate and proportionate response in all of the circumstances of this case and accords sufficient respect for the private and family life of LM when

balanced with the needs of each of her children to be brought up in a safe, healthy and stimulating environment. A care order is also supported by the guardian ad litem and I give considerable weight to her views.

The care and contact proposals

[93] I am satisfied that the Trust has established that reunification of either child with LM within a timescale compatible with their best interests cannot be achieved. There is much prolonged and difficult work to be undertaken by LM before that stage might be achieved. In the meantime she has to undergo a difficult criminal trial of which the outcome is uncertain. Preliminary work of a fairly basic kind has been completed but nothing more. As I have stated these children are growing rapidly and it will not be long before L1 will be of school age. They each deserve individually to be placed in a home where they will be loved and cherished by persons capable of giving them all the care and attention they need to enable them to develop physically and emotionally.

[94] There is at present some lack of certainty about whether the children should be looked after in long term foster care or by way of adoption. The current Trust proposal is that permanence should be secured by adoption. I am satisfied that in normal circumstances that would be the first choice, and may well be the proper choice in this case. The position has been made more complicated by the uncertainty due to the pending criminal trial. The Trust was obviously unable to make concrete plans whilst the criminal trial might have resulted in an acquittal and they did not have a care order from this court. During the course of the hearing it was obvious that the plans for these children would be moved forward rapidly once these proceedings were determined. The Trust will also have to take on board the comments of the Guardian. She is concerned that L1 has a significant bond with her mother and has shown some reaction when moved from her care. This does not apply in the case of L2 who is much younger. The children are well settled in their current foster home but this was intended to be a short term placement. The guardian has indicated her understanding however that the current foster carers would be prepared to give the children a long term foster home. That of course is not the same as a permanent family, although it may turn out that way. It is therefore less satisfactory than the course favoured by the Trust at present. If this proposal by the current foster carers is made concrete then the Trust will have to take stock of the situation overall with a view to determining whether it is better to avoid a further move for the children and leave them in long term foster care, or whether the benefits of permanency by way of adoption outweigh the difficulties that will be created in effecting a move to a new placement.

[95] Approval of the proposal that adoption is in the best interests of the children would ordinarily bring about a corresponding reduction in contact in preparation for freeing and ultimate adoption. In view of the uncertainty at present I do not propose to make any comment about that. The matter can be dealt with by the Trust and if necessary brought back before me by way of a separate application.

[96] In conclusion therefore I shall make a care order in respect of each of the children and approve the care plan for long term care away from their mother. I direct that the Trust should now consider whether adoption or long term foster care is better to meet their needs and to draw up contact proposals accordingly.